

TRANSCRIPT OF PROCEEDINGS

Ref. CL-2019-000274

[2019] EWHC 3066

**IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION**

Strand
London

Before THE HONOURABLE MR JUSTICE WAKSMAN

IN THE MATTER OF

UNITED PETROLEUM TRADING SWITZERLAND SA (Claimant)

-v-

MITRO INTERNATIONAL LIMITED (Defendant)

**MR TURLOUGH STONE appeared on behalf of the Claimant
MR C SMITH QC and MR ENGLAND appeared on behalf of the Defendant**

JUDGMENT

7th MAY 2019, 09.30-10.52

(AS APPROVED)

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MR JUSTICE WAKSMAN:

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1. I shall be very brief and I note that the court has taken this matter out of ordinary hours at the request of one of the parties. I am concerned only with the period up to the return date of 21 May and I have an overriding concern in this matter that the level of distrust between the parties is such that, unless the short period ahead is closely case managed, then the issues or potential issues will increase. As a result of suspicion which may or may not be well-founded, I approach the matter also by reference to the degree of information that the court itself will find valuable in this particular case for the period up to 21 May.

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2. I have no hesitation in rejecting the claimant's request for information of the breadth sought in its application notice; a breadth that is now sought to apply to any payments forward from this point up to 21 May where they exceed \$250,000. I am pleased that the defendant has provided, voluntarily, the PSA and what has been variously termed the JOA or JAA, together with invoices in relation to the sums due as a result of the combination of the PSA and certain service contracts. And I am also pleased that the defendant offers to provide the service contracts.

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3. The additional requirement that I will make is that, in relation to salary payments - that allow the business of the JAA or JOA is provided by the defendant to the claimant, either a contemporaneous document that by way of invoice, worksheet or budget entry, that identifies the salary payments in question or, failing that, provides a very short statement of the salary payments in question, ideally employee by employee.

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4. Insofar as the period between now and 21 May is concerned, in the event that there is to be any further payment or payments that are said to be in the ordinary proper course of business and exceed \$250,000, then I will require the provision, not only of advance notice as the order does, but like limited documentation, in other words, the contract in question and the document, whether it is an invoice or otherwise, that shows that the contract in question has engaged at a particular point in relation to a particular amount. Obviously, it is open to the defendant to provide that information in greater advance if it knows now that over the next couple of weeks there are going to be payments in the ordinary course, then there would be quite a lot to be said for putting that down now, providing the limited documents I have mentioned and then the atmosphere of that suspicion, where it can be managed, is managed further.

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5. Subject to drafting, I think I have indicated sufficiently the course that, in this particular case, this interim period does the justice that I think is appropriate.

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MR STONE: Thank you, my Lord. In light of your Lordship's ruling on that point I would seek my client's cost of this application (inaudible) has been occasioned by this application. Whilst your Lordship has not granted us the entirety of the documentation that we sought, nevertheless, the substantive relief that we were after has been granted for which my client is grateful. And, in those circumstances, my Lord, we would say that it would – this would be an appropriate case for my client to have its costs.

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MR JUSTICE WAKSMAN: Mr Smith.

MR SMITH: My Lord, we would oppose that. We would say that the appropriate order is no order for costs on the application, or alternatively that costs be reserved until the return date. So far as those matters are concerned, in support of the submission that there should be no

A order for costs, as you have seen my Lord, the claimant asked for an extraordinary number of documents. It cannot be right for a person in UPT’s position to ask for reams and reams of documentation and just because one needle is picked out of the haystack and the court says provided, that they say, “Ah, we have bene successful.” It is not right. They were asking for much, much more and, my Lord, you have rejected, in clear and robust terms, the scope of the application and said it was too broad and they should not be rewarded simply for the fact that there is, effectively, one further document that you have identified that my client should provide.

B Alternatively, we say costs reserved until the return date. As you have indicated, my Lord, there is an atmosphere of mistrust between the parties. The judge at the return date will effectively be able to determine whether the order is properly granted, whether there are actually any proper reasons for concern about my client’s conduct and, thereafter, whether or not UPT has in fact been chasing its shadows, or has in fact been seeking to dig down for well-founded suspicions. And, as such, the judge at the return date will be best placed to determine whether or not the costs sought now should be awarded to UPT or to my clients.

C MR STONE: My Lord, just in response to that. The relief sought was indeed – one accepts a lot of documents were sought, nevertheless the substantive relief sought was information of any kind. It should not be forgotten that the original stance was, “You are not going to get anything.” It is only as a result of bringing this application that we have now obtained, in the course of submission to my learned friend, a concession that the CIS service contracts will be provided. It was also suggested that any requests for future payments, that was also excessive and oppressive, and your Lordship has been with us on that point, that it is necessary to provide the information. The stance taken by the defendant was that we are not entitled to any of this and your Lordship has categorically disagreed with them on that point and, therefore, the substantive relief has been obtained by my client and we would say that, in those circumstances, my client should have its costs, alternatively, perhaps claimant’s costs in the case.

D MR JUSTICE WAKSMAN: Thank you both very much. I do not propose to make an order in favour of the claimants because I consider too much was being sought. I do propose to make the order which – and, similarly, not give any costs to the defendant because it has proved necessary for there to be a hearing for some further material to be provided. So, the order I will make in the present case is simply no order as to costs.

E I give one other example, if I may, of where another part of the commercial group (inaudible) engages here and that is the part that requires the cooperation of the parties, aided by their legal teams. Whatever the ins and outs of the information provision about which of the three companies – I think it was Jersey, Malta and Cyprus – whatever the ins and outs of that, a question of that sort put by one side to the other deserves an answer right away. And, if there is any similar piece of information that one client needs ask of the other through the lawyers, I would expect that to be asked and answered between now and 21 May.

F MR STONE: Thank you for that indication, my Lord.

MR JUSTICE WAKSMAN: You will let me have a draft order (inaudible).

MR STONE: Certainly, my Lord.

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MR JUSTICE WAKSMAN: Thanks very much to everybody. I very much appreciate including the very helpful written submissions. If I may, I will leave those two files to go back to you now.

MR STONE: Thank you, my Lord.

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MR JUSTICE WAKSMAN: Thanks.

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We hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

This transcript has been approved by the Judge

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