



NEUTRAL CITATION NUMBER:[2020] EWHC 634 (Ch)

IN THE HIGH COURT OF JUSTICE

No. HC-2016-001872

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

BUSINESS LIST

7 Rolls Building
Fetter Lane
London, EC4A 1NL

Friday, 31 January 2020

Before:

MR JUSTICE ZACAROLI

Between

- (1) BLUE POWER GROUP SARL
- (2) BLUE WAVE CO SA
- (3) BLUE MGMT LTD

Claimants/Respondents

- and -

- (1) ENI NORGE SA
 - (2) ENI SPA
 - (3) ENIPROGETTI SPA
- (FORMERLY KNOWN AS TECNOMARE SPA) **Defendants/Applicants**

MR ANDREW TWIGGER QC and MR JONATHAN ALLCOCK (instructed by **Stephenson Harwood LLP**) appeared on behalf of the **Claimants/Respondents**.

MR FIONN PILBROW QC (instructed by **Herbert Smith Freehills LLP**) appeared on behalf of the **Defendants/Applicants**.

APPROVED JUDGMENT

MR JUSTICE ZACAROLI:

- 1 I will give brief reasons for the following conclusions in relation to the application for security for costs.
- 2 First, in relation to the question whether I should order security for costs on the basis that the costs at trial will be assessed on an indemnity basis, I am not satisfied that if the claimants lose at trial there is a sufficient possibility of them being liable to pay costs on the indemnity basis. The argument rests solely on the recently disclosed alleged fraudulent document, but the claim involves much more than that, and success or failure on other parts of the case are not dependent on the new document.
- 3 In any event, it is certainly not a foregone conclusion that failure to establish the document is genuine means that the claimants are themselves guilty of conduct justifying an award of costs on an indemnity basis. There are many possibilities in that respect. Therefore, I start from the position that the likely costs order at trial is that they will be assessed on the standard basis.
- 4 As to the appropriate percentage one should adopt as a starting point, subject to any reduction on the basis of particular categories of work, I consider the appropriate percentage to award, balancing the risks of under- and over- estimation in this case, is 60 per cent.
- 5 Turning to the particular categories that remain in issue between the parties. First, the cost of preparation of statements of witnesses of fact. On 27 November 2018, Chief Master Marsh ordered security at 50 per cent of the sum claimed for the cost of preparation of witness statements in the period up to 31 January 2019. The sum claimed was £1.82 million. The date of exchange of first round statements was 1 February 2019, therefore the security sought covered the estimated costs of completing the first round of witness statements. The current position is that the first round statements are now due on 13 March 2020 as a result of various agreed and ordered extensions. Reply statements are due on 24 April 2020.

- 6 The claimants accept the defendants are entitled to security in relation to preparation of reply statements but contend that to provide security in relation to the first round of statements would be repetitious. The defendants respond that, as things have transpired, there is a lot more work than was originally anticipated at the time of the earlier security for costs order in relation to preparation of evidence. This includes statements for entirely new witnesses and additional work with existing witnesses, substantially created by the amendments made to the claim in November last year.
- 7 The defendants have confirmed, with the benefit of a statement of truth, that the amount estimated to be spent on witnesses overall has been, and will be, spent on the preparation of witness statements. The case has been substantially repleaded, and the current schedule includes reply statements which, although not perhaps the bulk of the work, is by no means a *de minimis* part of it.
- 8 The claimants suggest the defendants should have isolated the costs going forward, which are covered by – in the sense they were anticipated by – the estimates in relation to the earlier security for costs order, and separated those out from wholly new work. That is likely to be a difficult and I think unnecessarily detailed task in this case. Many witnesses will no doubt cross the divide between those two categories, and the preparation and finalisation of statements is likely to be undertaken as a seamless whole.
- 9 Given that I start with a statement of truth justifying that the work has been done, and will be done, on witness statements, I am not in a position to cut this down for some specific reason. I am, however, left with a concern that, although the work will be and has been done, an element of that work, on a detailed assessment, will be found to have been done unnecessarily or is an unnecessary duplication. I will therefore order a reduction from the otherwise standard percentage of 60 per cent, and I will order that the security for these costs will be provided at 50 per cent of the amount claimed.
- 10 Similar points arise in relation to the amended defence. It is suggested that the defendants' solicitors' fees, which are estimated at just short of £600,000, are excessive. The work in relation to pleadings extended over a 12-week period. The defendants say, I think credibly, that the fact that solicitors had to do a substantial amount of work is not surprising in this case given a great detail of investigation needed to be carried out in order to enable counsel to carry out their task of drafting the pleading. Nevertheless, I do think that the hours spent

by the solicitors are very high in the circumstances. The claimants point out that in the relevant 12-week period the amounts claimed required very substantial hours to be spent by the Partner and Senior Associates – in some cases it looks like most of their time must have been spent on the pleading. Again, I therefore propose to order only 50 per cent of these costs to be provided by way of security.

- 11 So far as brief fees are concerned, the sole point is whether it is appropriate to order security, now, for brief fees or whether those sums should be ordered nearer to trial. I am told by Mr Pilbrow, and have no reason to doubt this, that although it appeared on the schedule that counsel are being paid brief fees in addition to being paid for the work done otherwise on the case between now and the trial, that is not the case. They are instead being paid a retainer for any work done since 1 January 2020. Amounts appearing in the schedule of costs relating to other categories (e.g. evidence of fact, statements of case and disclosure) are for work done prior to that date.
- 12 The relevant question is, if the case does not proceed beyond the end of April, would it be reasonable that the fees incurred during this period on the retainer basis rather than by reference to actual hours spent should be paid by the claimants? If they were being paid solely for the preparation relevant to trial there would be much force in the claimants' objection. Given, however, they are being paid on the basis of the estimate of the work they will do on all aspects of the case in these three months I do not think that objection holds water. I do not propose, therefore, to reduce the amount of security relating to brief fees by any further amount. Accordingly, I order that security be provided in the amount of 60 per cent of the sums claimed under this heading.

CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

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This transcript has been approved by the Judge.