



Neutral Citation Number: [2021] EWHC 730 (Comm)

Case No: CL-2020-000576

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

**IN THE MATTER OF AN ARBITRATION CLAIM**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 22/03/2021

**Before :**

**MR JUSTICE JACOBS**

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**Between :**

- (1) QUADRA COMMODITIES S.A.  
(2) IFCHOR (SWITZERLAND) SA  
(formerly named Ifchor S.A.)  
(3) AMAGGI S.A.

**Claimant**

- and -

INTERNATIONAL BANK OF ST-PETERSBURG  
(JOINT-STOCK COMPANY) (IN LIQUIDATION)

**Defendant**

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**Jawdat Khurshid QC and Sushma Ananda for the Claimant**  
**David Allen QC and Jason Robinson for the Defendant**

Hearing dates: 12<sup>th</sup> March 2021  
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**JUDGMENT**

**“Covid-19 Protocol: This judgment will be handed down by the judge remotely by circulation to the parties’ representatives by email. The date for hand-down will be deemed Monday 22<sup>nd</sup> March 2021”**

1. This judgment is concerned with a number of consequential matters, principally issues concerning costs, arising from my earlier judgments in this case on 22 January 2021 and 12 March 2021. Both parties were agreeable to costs being the subject of written submissions and determination on the documents. I have therefore considered the costs issues addressed in the Defendant's original skeleton argument for the 12 March 2021 hearing, together with two rounds of further submissions from the Claimants and Defendant. A further issue developed between the parties relating to publication of the 12 March 2021 judgment, and this was the subject of written submissions in e-mails from the parties.

*Costs of the 22 January hearing*

2. The Claimants were ordered to pay the Defendant's costs of the 22 January 2021 hearing, excluding certain costs which I disallowed. The amount claimed is £ 78,426.68 plus Russian VAT for a total of £ 94,112.01.
3. Whilst I agree that the hearing was of considerable importance to the Defendant, I agree with the Claimants' submissions that the Defendant's costs are extraordinarily high. The hearing was ultimately a half-day hearing concerned with whether or not the Defendant should be debarred from making submissions at a further hearing. It was not the substantive hearing of the application. I accept that the hearing raised issues which were not altogether straightforward. I also accept that to some extent costs may have been increased because of the Claimants' successful application for there to be a hearing of the debarring issue separate from the main application. I also accept that, in order to prepare properly for the debarring order hearing, it was necessary for the Defendant's legal team to understand the arbitral background to the application, and also the nature of the substantive application. Nevertheless, the costs remain extraordinarily high.
4. Apart from those general observations, I consider that the Claimants should not reasonably be expected to pay for: the high rates of Linklaters, even allowing for the fact that the existing Grade rates are out of date; the attendance at the hearing of four fee earners from Linklaters, together with two counsel; the very significant amount of work on documents, in circumstances where certain costs are not claimable pursuant to my order. The fact that, as the Defendant says, it has excluded those irrecoverable costs serves to demonstrate the very high nature of the costs that are claimed.
5. It may be that, as the Defendant suggests, the Claimants themselves incurred similar levels of costs in respect of that hearing. But even if I make that assumption, it does not follow that the costs claimed by the Defendant are reasonable and proportionate, and should be paid by the Claimants on a summary assessment.
6. The Claimants suggest that £ 30,000 is reasonable. I consider that this is on the low side. Taking all the above matters in the round, I summarily assess the Defendant's costs of that hearing at £ 45,000.

*Costs of the 12 March 2021 hearing*

7. I consider that the Defendant was the successful party on the Claimants' application. The Claimants made the application, which was the subject of the 12 March hearing, in order to obtain the relief set out in the order attached to their original application notice. The formulation there was consistent with the way in which the Claimants had

interpreted the effect of the relevant undertaking and proviso in their letter of 21 October 2020. That letter was sent prior to the 22 October 2020 letter from the Defendant's solicitors, on which the Claimants have placed reliance as the reason for the present application. Furthermore, the formulation in the letter dated 21 October 2020, and later in the application notice, is also consistent with the way in which the case, as to the meaning of the undertaking and proviso, was advanced to the arbitrators. I have not accepted the Claimants' case as to the effect of the undertaking and its proviso. The order ultimately made is some very considerable distance from the Claimants' case originally formulated in October/ November 2020 and then revised in March 2021.

8. Overall, I agree with the Defendant's submission that the significant reason for the application was to obtain relief which would have given the Claimants a significant advantage in the arbitration, and that this result has not been achieved. Whilst it may be that the Defendant's case as advanced in correspondence has been modified to a degree, I do not consider that this warrants any alteration of the general rule that the unsuccessful party should pay the successful party's costs.
9. The Claimants should therefore pay the Defendant's costs. Whilst it may be that the Defendant's case as advanced in correspondence has been modified to a degree, I do not consider that this warrants any alteration of the general rule that the unsuccessful party should pay the successful party's costs. The fact remains that the Claimants' core case, which the Defendant was entitled to resist, did not succeed.
10. The sum claimed is £ 76,278.21 inclusive of VAT. This is marginally more than the Claimants' costs of £ 74,295 (such costs not being subject to VAT).
11. As for summary assessment, I consider that this should take into account the fact that significant costs were incurred (and to some extent have been awarded) for the hearing on 22 January 2021. This should have served to reduce the costs for the later hearing, bearing in mind that (as the Defendant submitted) some work would have been required for the 22 January in order to understand the application itself and its background.
12. I also accept the Claimants' points as to charge-out rates, attendance on each other (a relatively small point), attendance on others, and the attendance of 6 people at the hearing.
13. Taking these matters into account, I award £ 50,000, which is around 2/3rds of the costs claimed.
14. In considering the figures to be awarded, I have also stood back and considered the overall figure in the round. I consider that the overall figure for both applications, is reasonable and proportionate, and that any higher overall figure would be excessive.

#### *Publication*

15. Subsequent to the hearing, an issue arose as to whether it was appropriate for my judgment on 12 March 2021 to be published. This was not a matter raised at the conclusion of the hearing, but (contrary to the Claimants' submissions) I see no reason why it cannot be raised at this stage.

16. The leading decision on publication of judgments is *City of Moscow v. Bankers Trust Co* [2004] EWCA Civ 314; [2005] QB 207. That case has recently been considered in a judgment of HHJ Pelling QC: *Newcastle United FC Ltd v The Football Association Premier League Ltd. and others* [2021] EWHC 450 (Comm). Paragraph [8] of HHJ Pelling’s judgment contains a convenient and accurate summary of the leading judgment of Mance LJ in *City of Moscow*, and I gratefully adopt that summary here:
- i) The starting point in relation to a hearing, although relevant to determining what should be done in respect of a judgment, is not determinative and there is a clear distinction to be maintained between the considerations governing a hearing and those governing the resulting judgment or order – see *City of Moscow v. Bankers Trust Co (ibid. ) per Mance LJ* at paragraph 37 - because a reasoned judgment following a hearing in private of an arbitration claim stands at a different point in the spectrum to the hearing itself (as to which see (iv) below) and so raises different considerations – see *City of Moscow v. Bankers Trust Co (ibid.) per Mance LJ* at paragraph 43 and the Vice Chancellor's judgment at paragraphs 56-57;
  - ii) The judgment should be given in public where this can be done without disclosing significant confidential information or can be done so by suitable anonymisation and/or redaction - see *City of Moscow v. Bankers Trust Co (ibid. ) per Mance LJ* at paragraph 39 and 40;
  - iii) The desirability of a public judgment is particularly present where a judgment involves points of law or practice which may offer future guidance to lawyers or practitioners or where the judgment concerns a claim under s.68 of the Arbitration Act 1996 because of the public interest engaged in such cases of maintaining appropriate standards of fairness in the conduct of arbitrations - see *City of Moscow v. Bankers Trust Co (ibid. ) per Mance LJ* at paragraph 39;
  - iv) A party seeking to maintain privacy in the context of an arbitration claim does not have to prove positive detriment beyond the undermining of its expectation that the subject matter would be confidential - see *City of Moscow v. Bankers Trust Co (ibid. ) per Mance LJ* at paragraph 46;
  - v) The factors militating in favour of publicity have to be weighed together with the desirability of preserving the confidentiality of the original arbitration and its subject matter bearing in mind the spectrum between the arbitration itself at one end and a reasoned judgment

under s.68 at the other - see *City of Moscow v. Bankers Trust Co (ibid.)* per Mance LJ at paragraph 40; and

- vi) When weighing the factors, a judge has to consider primarily the interests of the parties in the litigation under consideration, and the concerns and fears of other parties cannot be the dominant consideration – see *City of Moscow v. Bankers Trust Co (ibid.)* per Mance LJ at paragraph 41.
17. In addition, HHJ Pelling drew attention (in paragraph [7]) to two aspects of the judgment of the Vice Chancellor in *City of Moscow*: a greater need for imposing a requirement for confidentiality must be shown before it is decided not to publish a judgment, as compared to holding the original hearing in private; and the weight of the onus resting on the party seeking to keep from the public the judge's reasons for the order he has made is a heavy one.
  18. Applying these principles, I consider that it is appropriate for my 12 March 2021 judgment to be published.
  19. First, the Claimants' application, which was the subject of that judgment, arose from a successful application for an anti-suit injunction to restrain proceedings in Russia. The issue was how to interpret an undertaking given to the court when the anti-suit injunction was granted. The application was therefore ancillary to the anti-injunction application. Judgments given on anti-suit injunction cases (such as the *Riverrock* decision relied upon in this case) are regularly published without redaction or anonymity, even where they are sought in aid of existing or future arbitration proceedings which will be confidential. It is in the nature of such an application that the English court is being asked to injunct what will usually be public court proceedings in a different jurisdiction, and accordingly confidentiality issues are not likely to be significantly engaged.
  20. Secondly, I accept the Defendant's submission that where the issue raised by the application concerns an undertaking given to the court in relation to anti-suit injunction previously granted by the court, the public interest in the fairness of the Commercial Court process for granting anti-suit injunctions is engaged. It is therefore appropriate, all other things being equal, for a public judgment to be given.
  21. Thirdly and critically in my view, the judgment given on 12 March 2021 can be made public without disclosing significant confidential information. My earlier judgment given on 22 January 2021 is already in the public domain, having been published by Westlaw and Bailii. That earlier judgment was concerned with the question of whether or not the Defendant should be permitted to make representations at the hearing which was ultimately held on 12 March, or whether it should be debarred from doing because of a failure to pay an earlier costs order. I do not consider that there is anything in the 12 March 2021 judgment which goes beyond information already in the 22 January 2021 judgment.
  22. The Claimants have raised questions as to whether the 22 January 2021 should have been made public. Those questions were not raised at the 12 March 2021 hearing. In my view, it is not necessary to engage with that issue; because the fact is that the 22

January 2021 judgment is in the public domain. But in any event, I do not think that there is anything in the 12 March 2021 judgment which discloses significant confidential or sensitive information, even absent the 22 January 2021 judgment. In any event, I think that it is appropriate for the 12 March 2021 judgment to be publicly available, essentially for the same reasons as set out above.