



Neutral Citation Number: [2024] EWHC 2068 (Comm)

Case No: CL-2023-000310

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
KING'S BENCH DIVISION
COMMERCIAL COURT

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 06 August 2024

Before :

MR STEPHEN HOFMEYR KC
(Sitting as a Deputy Judge of the High Court)

Between :

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|-------------------------------|-------------------------|
| Betta Oceanway Company | <u>Claimant</u> |
| - and - | |
| SC Tomini Trading SR | <u>Defendant</u> |

Steven Reed and Harry Samuels (instructed by **Bird & Bird LLP**) for the **Claimant**
Stephanie Thompson (instructed by **Boodle Hatfield LLP**) for the **Defendant**
Georgios Petrochilos KC and Paul Bonner Hughes (instructed by **Three Crowns LLP**) for
the **Intervener**

Hearing dates: **1st and 2nd July 2024**

JUDGMENT ON COSTS

This judgment was handed down remotely at 10.30am on 06 August 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR STEPHEN HOFMEYR KC

Mr STEPHEN HOFMEYR KC (Sitting as a Deputy Judge of the High Court):

1. By an Application Notice dated 18 December 2023, Mr George Vatistas applied in these proceedings for an order pursuant to CPR r 3.1(2)(m) that he be added as a third-party intervenor permitted to make submissions to the Court; alternatively, for an order pursuant to CPR r 19.2(2), that he be added as a Defendant.
2. The application was heard by this court on 1 and 2 July 2024. At the conclusion of the hearing, I gave an ex tempore judgement dismissing both applications. As it was by then already late in the day the parties proposed that all issues in relation to costs be dealt with subsequently on paper, a proposal to which I gave my (reluctant) consent. I was reluctant because oral submissions on costs at the conclusion of a hearing tend to be appropriately focussed and short, whereas subsequent written submissions on costs can become overly detailed and complicated, as they proved to be. I am nevertheless grateful to the parties for their written submissions on the issue of costs.
3. Each party has served written submissions on costs. This was in addition to statements of costs served by each of the Claimant and the Defendant.
 - (1) The Defendant served a statement of costs on 28 June 2024, in advance of the hearing;
 - (2) The Claimant served a statement of costs on 3 July 2024;
 - (3) The Defendant served a revised statement of costs on 4 July 2024;
 - (4) Each of the Claimant and the Defendant served costs submissions on 5 July 2024;
 - (5) The Applicant served costs submissions on 9 July 2024;
 - (6) Each of the Claimant and the Defendant served reply costs submissions on 11 July 2024.
4. The above documents were provided to me 18 July 2024.

Submissions in summary

5. Each of the Claimant and the Defendant seeks its costs of and occasioned by the application to be paid by Mr Vatistas on the standard basis on the ground that it was the successful party and Mr Vatistas was the unsuccessful party.
6. Mr Vatistas contends that he should not be ordered to pay the Claimant's or the Defendant's costs and that the costs should lie where they fall i.e. with Mr Vatistas bearing his own costs and each of the Claimant and Defendant bearing its costs. In the alternative, he contends that the sums sought by the Claimant and the Defendant are unreasonable and disproportionate.

Entitlement to costs

7. In my view both the Claimants and the Defendants are entitled to their costs of and occasioned by Mr Vatistas' applications. My reasons are as follows.

8. First, Mr Vatistas, in his capacity as an applicant – both to intervene in the proceedings between the Claimants and the Defendants, and to be joined as a party to those proceedings – is a party to the applications which he instituted by Application Notice and the court has jurisdiction to make a costs order against him in connection with his applications. The jurisdiction arises because he is a party to the applications. It is unnecessary for the court to invoke the non-party costs order regime set out in CPR r.46.2.
9. Second, there is no merit in Mr Vatistas' contention that the applications were made necessary (or caused) by the Claimant's conduct. Mr Vatistas chose to make the applications to further his own personal interests. He was not obliged to make the applications.
10. Third, each of the Claimant and the Defendant has for the most part acted reasonably and proportionately in relation to the applications. The Claimant consented to the joinder, as it was required to do by Procedural Order No. 5 in the Arbitration, but on the basis that its consent was insufficient on its own and that it would be for the court to exercise an unfettered discretion and decide whether the joinder would be appropriate. The Defendant opposed both applications, as it was entitled to do, and its position was vindicated. The attendance of both parties at the hearing was necessary and each provided assistance to the court on the issues which arose for consideration.
11. Fourth, Mr Vatistas made the applications with his eyes open and it is reasonable to infer that he will have known the likely costs consequences in the event that the applications failed.
12. Fifth, Mr Vatistas succeeded on neither application. He was the unsuccessful party; and the Claimant and the Defendant were each successful parties. The ordinary rule (encapsulated in CPR r.44.2) is that the unsuccessful party should pay costs and there are no reasons peculiar to these applications which require or even suggest that it would be appropriate for the court to depart from the ordinary rule.

Assessment of costs

13. The Claimant invites the court summarily to assess its costs in the sum of £54,450.00 as set out in its Statement of Costs dated 3 July 2024. The Defendant invites the court summarily to assess its costs in the sum of £93,199.68 set out in its Statement of Costs dated 4 July 2024. It contends that the costs were proportionate and reasonable and that Mr Vatistas should be ordered to pay the costs within 14 days.
14. I have summarily assessed the Claimant's costs in the sum of £40,000.00. In reaching this sum, I have made the following adjustments to the amount claimed (with rounding where I consider it appropriate):
 - (1) The hourly rates for Betta's solicitors have been reduced to the London Band 1 guideline rate. A claim for a higher rate is not justified.
 - (2) Nearly all the work conducted by Betta's solicitors was done by Grade A earners. Much of the work could and should have been done by lower Grade earners and adjustments which I consider appropriate have been made.
 - (3) The claim for 4.3 hours on Betta's skeleton argument is disproportionate. No more than 30 minutes was reasonably required.

- (4) Taking these three matters into account, I have reduced the solicitor's costs by about a quarter.
 - (5) It was unnecessary in my view for Betta to be represented at (and in preparation for) the hearing by two counsel and I have disallowed the fees of the second counsel.
15. I have summarily assessed the Defendant's cost in the sum of £70,000.00. In reaching this sum, I have made the following adjustments to the amount claimed (with rounding where I consider it appropriate):
 - (1) 51 hours for attendances on the client for these applications was, in my view, disproportionate. In my view about half these hours would have been reasonable and proportionate.
 - (2) Counsel fees amounting to £36,031.68 for advisory work, drafting and a brief fee are, in my view, disproportionate. A fee of about £25,000 would have been more proportionate and reasonable.
16. Accordingly, that Mr Vastias is ordered to pay, within 14 days, the Claimant's costs in an amount of £40,000 and the Defendant's costs in an amount of £70,000.