Claim No: TCD 003/2020

THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE COURT OF FIRST INSTANCE

BETWEEN

(1) NEST INVESTMENTS HOLDING LEBANON S.A.L.
(2) JORDANIAN EXPATRIATES INVESTMENT HOLDING COMPANY
(3) QATAR GENERAL INSURANCE AND REINSURANCE COMPANY P.J.S.C.
(4) GHAZI KAMEL ABDUL RAHMAN ABU NAHL
(5) JAMAL KAMEL ABDUL RAHMAN ABU NAHL
(6) TRUST COMPASS?INSURANCE S.A.L.
(7) TRUST INTERNATIONAL INSURANCE COMPANY (CYPRUS) LIMITED
(8) HIS EXCELLENCY SHEIKH NASSER BIN ALI BIN SAUD AL THANI
(9) FADI GHAZI ABU NAHL
(10) HAMAD GHAZI ABU NAHL
(11) KAMEL GHAZI ABU NAHL

Claimants

and

(1) DELOITTE & TOUCHE (M.E.)
(2) JOSEPH EL FADL

Defendants

ORDER WITH REASONS OF JUSTICE SIR JEREMY COOKE

UPON the Order with Reasons of Justice Sir Jeremy Cooke dated 23 April 2020 requesting, at paragraph 2, the parties to file further written submissions with respect to costs

AND UPON reviewing the parties' written costs submissions filed on 7 May 2020 and 14 May 2020

AND UPON reading the submissions and evidence filed and recorded on the Court file

IT IS HEREBY ORDERED THAT:

The Claimant is to pay USD 245,000 with interest, at 9%, to run from the date of the issue of this order.

Issued by:
Nour Hineidi
Deputy Registrar
Date of issue: 20 May 2020
At: 3.30pm

SCHEDULE OF REASONS

1. On 23 April 2020, the Court ruled that the costs of the Appeal should be paid by the Claimants to the Defendants but that any further submissions, whether as to the basis of assessment or otherwise, should be made in writing, with a timetable for such submissions which has since been extended by agreement between the parties, with the approval of the Registrar. The Claimants and the Defendants each put in written submissions on 7 May and 14 May 2020.

2. It is common ground that the Court should make an immediate assessment and that the standard basis is appropriate for most of the assessment, whilst no issues arise on hourly rates or as to the applicable general principles in awarding costs. Essentially costs generally must follow the event and the Court has already decided that in relation to the Appeal itself, but issues arise in relation both to the CMC where the Preliminary Issues were ordered and to the grant of permission to appeal which was made by the Judicial Officer whose decision was the subject of the appeal, as well as to the costs of the Lebanese Law evidence which the Claimant sought to adduce on appeal and to the quantum of costs to be awarded by the Court under each of the relevant heads.

3. Taking the Appeal itself first, there are two issues here.

3.1 First the question arises as to the basis of costs in relation to the Lebanese Law evidence. As expressed in the Judgment, there was no good reason for any such evidence not being adduced below if it was to be adduced at all. The Ladd v Marshall test could not be met, and in practice, the evidence was of no significance as it did not address the points that mattered. It was always obvious that any preliminary issues would have to proceed on the basis of whatever facts were agreed but otherwise on the basis of the pleas advanced by the Claimants, it being

the Defendants' case that the former could not succeed on the basis pleaded, with such indisputable facts as could be agreed. I take the view that the conduct which led to the advancing of this Lebanese law evidence at the appeal stage only, and in the form which it took, was sufficiently out of the norm to attract indemnity costs. The stance taken was unreasonable to a high degree in failing to adduce foreign law evidence below, if it was considered to be important, in seeking to adduce it at the appeal stage on the basis that it was required, when there was no good reason for not adducing it below, and in seeking to adduce evidence which could not have affected the outcome at either level.

3.2 The second issue is the quantum of costs, both on the indemnity basis in relation to the Lebanese law evidence and on the standard basis in relation to the balance. I deal with quantum later in this Ruling.

4. As to the costs of the application for permission to appeal, in my judgment the right course is to make no order as to costs. It was extremely unfortunate that no reasons were given by the Judicial Officer which meant that, in a case of this kind, however much one might infer what her reasons were, it was almost inevitable that an appeal would follow. If she had not given permission herself, any reviewing judge would have done so. This is, regrettably, one of the vicissitudes of litigation, where an approach adopted by the Court leads to additional expense on both sides. However, it ought to have been plain to the Defendants that permission would be granted because of the absence of reasons and the impossibility of an appeal Tribunal being able to exercise an ordinary review function of the decision taken, because it was not reasoned. Whilst, as I have previously indicated, there are Case Management decisions which speak for themselves and need no detailed, nor in some cases, any, reasons, this decision plainly did not fall into that category. I consider that the Defendants, in those circumstances, are not entitled to an order for their costs of resisting the application for permission and the Defendants rightly do not claim their costs, because they lost on the appeal. They will be costs in the case.

5. Turning to the costs of the CMC and the order for Preliminary Issues, it is common ground that the Claimants are not entitled to the costs of the CMC which would have been incurred regardless of the dispute as to whether there should be Preliminary Issues. In their Reply Submissions, the Claimants maintained for the first time that the costs claimed, which amounted to just under $70,000 and included Counsels' fees of $49,738.85, were all incurred on the Preliminary Issues Application and not in work for the CMC generally (such as the Case Memorandum and List of Issues). That statement runs counter to the Defendants' submissions on costs dated 7 May 2020 which referred to the cost of the CMC at which the Preliminary Issues Application was heard and argued that the hearing was mostly devoted to the latter, by reference to 47 of 71 pages of transcript of the hearing. It was also said that Leading Counsel would not have needed to attend if there had been no argument about Preliminary Issues.

6. It is however a general principle that leading advocates are expected to be present at a CMC and I am unpersuaded that the costs claimed do not cover matters which would have arisen in any event at the CMC, which would have been the subject of an order for costs in the case. Doing the best that I can on this, with the limited information put before me, I conclude that only approximately two thirds of the costs claimed are truly costs of arguing the point on Preliminary Issues and that, allowing for the discount that happens on any assessment of recoverable costs (often resulting in no more than 70% of the sums claimed), the appropriate figure that the Defendants should recover under this head of costs is $35,000, which includes Counsels' fees attributable to this element. The balance will be costs in the case.

7. Next, I have to determine the appropriate figure for recovery of costs on the Appeal itself.

7.1 The costs claimed on the indemnity basis amount to $80,613 .94, of which $42,450 is represented by the fees of the lawyer instructed. It is clear to me that much of the work done, both by the Lebanese lawyer, solicitors and Counsel in relation to Lebanese Law, serves a dual purpose, because the work done at this stage will play its part in relation to the Preliminary Issues themselves. Once again it is hard to make any clear determination of the percentage of work which falls into this category, but I consider that somewhere between one third and one half is the appropriate level which will inure to the benefit of the Claimant for the determination of the Preliminary Issues and will therefore be costs in the case. The figure which I now award as Indemnity costs is $50,000.

7.2 The claim on the standard basis is for $182,433 .70, where Counsels' fees constitute just under $53,000. The Claimants contend that $145, 540 represents costs reasonably incurred. Taking a broad- brush approach but allowing Counsels' fees in full, that figure represents nearly 70% of the profit costs. The criticisms made by the Claimants in relation to attendance on others, to work carried out in relation to the statement of costs and work done on documents are partially justified, but I consider that taking everything into account I would not be ungenerous in awarding $150,000.

8. There remains a further figure of $29,259 claimed for the costs of the submissions on costs. I regard this as excessive. 23 pages of Submissions with annexed Schedules and 6 pages in reply is over- egging the pudding. I am not prepared to award more than $10,000 as a proportionate figure for this work.

9. As to interest, which is claimed, there has been limited time between the incurring of the costs and this order. I do not consider that the award of interest for any earlier period is appropriate in the absence of any evidence of the dates when payment of these costs was made and I therefore order that interest shall run on such costs only from the date of the issue of this order at the judgment rate of 9%.

10. The total of the sums I award by way of costs is therefore $245,000 with interest at 9% to run from the date of the issue of this order.