

IN THE HIGH COURT OF JUSTICE
COMMERCIAL COURT
QUEENS BENCH DIVISION

Rolls Building
7 Rolls Building
Fetter Lane
London EC4A 1NL

Friday, 24 June 2016

BEFORE:

HIS HONOUR JUDGE WAKSMAN QC
(Sitting as a Judge of the High Court)

BETWEEN:

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- (1) **LOUIS DREYFUS COMMODITIES MEA TRADING DMCC**
(2) **LOUIS DREYFUS COMMODITIES MEA METALS DMCC**

Claimants

- and -

- (1) **CONCORDE POUR L'INDUSTRIE ET L'EXPLOITATION SPRL**
(2) **SHIFT GENERAL TRADING LLC**
(3) **CONCORDE VILLA LIMITED**
(4) **NAIM KHANAFER**

Defendants

MR C SAMEK QC (instructed by Eversheds LLP) appeared on behalf of the Claimant

APPROVED JUDGMENT

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JUDGE WAKSMAN QC:

1. I have before me a hearing to assess damages which have been awarded to the two claimants. They arise in the following circumstances. The first claimant and the second claimant, which is an assignee of some of the claims of the first claimant, had brought claims against four defendants, the first three were corporate entities under the ultimate ownership and control of the individual fourth defendant. They were claims in debt arising from non-payment of sums under loan and supply agreements. The total amount owing there was some \$14.3 million.
2. In breach of an exclusive jurisdiction clause, the defendants commenced proceedings against the claimants in two other jurisdictions, one in Dubai in the United Arab Emirates and secondly in the Democratic Republic of Congo. An initial anti-suit injunction was granted in respect of those matters.
3. The defendants simply disobeyed that order, and the matter came back before Teare J on 6 November 2015. On that occasion he did a number of things. He continued the anti-suit injunction, but he also gave judgment in debt against the first to third defendants, who were the direct contracting parties of the claimants in the sum of about \$14.3 million. The defendants were represented at that stage. He also ordered that the defendants must pay damages to be assessed to the claimant as follows. The first, second and third defendants damages for breach of the loan agreement. That is not being pursued. There is no need because there is already the primary debt judgment. Secondly, the first and second defendants for damages for breach of the supply agreement. Third, against the first and fourth defendants, damages for conspiracy. Finally, fourth, the fourth defendant damages for procuring breach of contract. I should say I was in error, the first head of damages is still relevant for matters to which I shall refer.
4. In addition to that, because the claimants were already intimating a claim to commit the defendants for contempt of court, Teare J also set out in his order a mode of alternative service by numerous email addresses in paragraph 3 of his order. It is not necessary to recite the individual addresses in detail. There were some subsequent hearings by which time the defendants had dispensed with the services of their lawyers. One of

them was on 15 January 2020, before Phillips J who ordered that the application for cross-examination, an order in relation to that could be served by the alternative means prescribed by Teare J.

5. On 2 February 2016, the committal hearing took place. The defendants did not appear. Teare J granted the application to commit by ordering that the claimants have permission for a writ of sequestration to be served against the assets of the first and third defendants. As for the fourth defendant, Mr Khanafer, he was sentenced to an immediate custodial sentence of 12 months concurrent on all counts. Mr Khanafer, of course, is not in the jurisdiction and the contempts have not been purged.
6. What is live for today's purposes is as follows. First of all and as against the fourth defendant only, damages for procuring the breach of contract which was committed by the first to the third corporate defendants. That claim is very simply put in relation to the debts which they have been ordered to pay by way of judgment, on the simple footing that if he had not procured the breaches, the supply and loan agreement would not have been broken and the monies would not have been owing. Together with interest, that claim is now put at \$14,661,214.30.
7. Secondly and in relation to all four defendants by virtue of the award of damages against all of them for conspiracy, there is a claim for costs which arises essentially in two ways. First of all, the costs of the claimants in seeking to enforce certain securities which have been provided by the first to third defendants in support of their debt obligations. Secondly, the costs incurred by the claimants' various legal teams in various places in having to deal with and defend the abusive proceedings abroad in the UAE and in the DRC. There is also some costs in relation to proceedings to allow an auction which they also had to bring.
8. So far as service is concerned, I have before me two affidavits of service. Both made on 23 June by solicitors at the claimants' solicitors here, namely Mr Timothy Smyth and Ms Rosanna Arenare. They both set out in great detail the particular steps that were taken to serve all the papers in relation to today's hearing, including the application notice, the evidence and notice of today's hearing date from the court and a

further set of documents which was served by Ms Arenare on 10 June. In doing all of that, they followed the formula set out in paragraph 3 of Teare J's order of 6 November.

9. There was no application made strictly to cover that service of documents as distinct from the service of prior documents. I indicated to Mr Samek that I was quite satisfied having seen the methods of service used which were identical to the previous methods, that a retrospective order permitting such alternative service should be made. There is no doubt that the court can make such an order retrospectively, see the notes in the White Book Vol. 1 at 6.15.5.
10. As a consequence, I am in a position to proceed to the assessment today. As a second consequence, there is neither any evidence nor submissions from the defendants countering any of the evidence or submissions made by the claimants.
11. I can deal with the fourth defendant very quickly. It follows axiomatically that if the fourth defendant had not procured the breach of contract, then the judgment sums would not have been owing. As a result damages are effectively ordered in the same amount subject to the accrual of further interest in the particular sum that I referred to a moment ago.
12. I then turn to the costs matters. These have been set out again in very considerable and clear detail by what one might refer to as the master witness statement, which is that prepared by Mr Hargrove, it being his fourth, dated 10 June 2016. In order to provide backup evidence in relation to the incurring of costs in respect of the proceedings in the DRC, there is a witness statement also dated 10 June from Mr Urdane Balongano(?) of the law firm used in the DRC for the claimants. So far as the UAE is concerned, a further witness statement of the same date from Mr Sharratt(?) of Eversheds Dubai.
13. The total amount of the costs claimed is €572,222.33. As I say, that is claimed against all defendants because of the conspiracy claim for which the claimants have judgment. Mr Hargrove breaks all of that down but before doing so, in paragraphs 16 and 17 he points out that he has personally reviewed all the individual costs items. That has been supported by similar reviews carried out by Mr Sharratt and Mr Balongano and they attest to that in their own witness statements.

14. Going through those categories very quickly. Enforcement of security is dealt with at paragraph 22 and in the witness statement of Mr Balongano. That is all about the enforcement of DRC security, which necessarily involved the DRC lawyers as well as any other costs. That dealt with enforcement and what was necessary under DRC law up to the initiation of the auction proceedings.
15. Secondly, there were the costs of enforcement incurred by Eversheds Dubai and local UAE counsel in a further €97,000. Again that related to the securities which were made in Dubai and governed by Dubai law. Mr Sharratt has given backup evidence as to all of that.
16. Thirdly Eversheds Geneva of €34,000. They incurred costs because they were the party effectively instructing the DRC and Dubai counsel in relation to the enforcement matters referred to above.
17. Then there was the cost of defending the DRC legal proceedings. Mr Balongano's costs of €163,000 and all the various steps that were taken there. He has provided witness evidence to support all of that.
18. Fifthly, again, Eversheds Geneva involved in the instructions and so there were costs there.
19. Sixthly, there was the cost of Eversheds Paris because it was necessary to consult lawyers who were experts in OHADA law, which was applicable on appeal issues that arose in the DRC proceedings. Again, all of those are set out.
20. Finally, there was the cost of Eversheds Geneva in the Dubai proceedings.
21. All of that has been set out in great detail. All the relevant invoices have been exhibited. In addition to that, I have a very helpful appendix which has been provided by Mr Samek which sets out very clearly what the evidential basis is for each of the separate heads of costs as damages which have been claimed, and I adopt that.
22. There is no objection at all to my dealing with questions of costs when they are claimed simply as damages. Of course, they should be reasonable and having regard to all the

evidence that has been filed, I am satisfied that they are. In those circumstances, I will make a second order which is that the claimants should have judgment against all four defendants jointly and severally in the sum of €572,222.33.

(After further submissions)

23. The defendants have simply failed to engage with the proceedings after the order of Teare J on 6 November. In addition to that, they were in contempt because of their breach of the original injunction which they have made no attempt to purge themselves of. Therefore, the claimants have had to prove every last piece of the claim for damages which they now make.
24. I will make the costs on an indemnity basis. That means proportionality is not a relevant requirement. The burden is on the defendants to prove that any item is unreasonable. They are not here. They could appreciate it if they did come, there would have been an argument about costs, and they have chosen not to take that opportunity. I am satisfied that the costs as claimed are reasonable. I will make an order in that amount.

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

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This transcript has been approved by the Judge