



Neutral Citation Number: [2020] EWHC 1555 (Ch)

Case No: CR-2020-000220

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES LIST (ChD)

Date: 16/06/2020

Before :

JOANNE WICKS QC

Between :

COLT TECHNOLOGY SERVICES

Claimant

- and -

SG GLOBAL GROUP SRL

Defendant

Mr W Willson (instructed by **Baker McKenzie LLP**) for the **Applicant**
Mr D Lewis (instructed by **Giambrone & Partners**) for the **Respondent**

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....
JOANNE WICKS QC

JOANNE WICKS QC sitting as a Judge of the High Court:

1. I handed down judgment in this application on 3 June 2020. SGG now seeks permission to appeal and a stay of enforcement of an order for payment of Colt UK's costs.
2. I refuse permission to appeal on the grounds that I do not consider that the appeal would have a real prospect of success nor is there any other compelling reason for the appeal to be heard. The first proposed ground of appeal is that the invoices were sufficient notification to Colt UK for the purposes of clauses 4.6 and 9.1. That is not consistent with the express provisions relating to notification in clause 9.1, which are not negated or excluded by the fact that clause 10.2 appoints Colt Italy to be SGG's "*point of contact*". The second proposed ground of appeal is that the Agreement did not require that it be performed unlawfully, since there was nothing in the Agreement that required participation in a missing trader fraud. This is a misapplication of the *Ralli Bros* principle. The principle does not require the contract to specify that something shall be done illegally: it applies where the contract requires (expressly or impliedly) some act of performance which, if done, would be illegal in another jurisdiction. For the reasons given in my judgment, I consider that the Agreement requires payment in Italy in circumstances where such payment may be illegal under Italian law. There was no undisputed expert evidence to support the contention that SGG's offer of 24 March 2020 removed any risk of illegality. The third proposed ground of appeal is a challenge to my findings of fact on the evidence. I do not consider that there is a real prospect of SGG demonstrating that I applied the wrong test to the evidence or was otherwise wrong in this regard.
3. SGG's application for a stay of execution of the costs order is based on the submission that the payment of costs now would frustrate any appeal, since Colt UK's refusal to pay the invoices has left SGG without any funds. This submission is wholly unsupported by any evidence and sits uneasily with the picture of an active trading company which Mr Johnston sought to give in his witness statement. By CPR 52.16, an appeal shall not operate as a stay of any order or decision of mine unless I (or the appeal court) order otherwise. In the absence of any evidence there is no basis for the exercise of my discretion under this provision.
4. I shall make the order in the form put forward by Colt UK, subject to one small change in the phraseology of paragraph 2 and adding the information required by CPR 40.2(4) into paragraph 4.