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No. CL-2022-000082

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

Rolls Building
Fetter Lane
London, EC4A 1NL

Friday, 10 November 2023

Before:

MR JUSTICE ANDREW BAKER

B E T W E E N :

PARSDOME HOLDINGS LIMITED — Claimant

- and -

PLASTIC ENERGY GLOBAL, S.L. — Defendant

MR T SINGLA KC and MR V JAIN (instructed by Herbert Smith Freehills LLP) appeared on behalf of the Claimant.

MISS L JOHN KC and MISS G HUGHES (instructed by Pallas Partners LLP) appeared on behalf of the Defendant.

J U D G M E N T

(Approved Transcript)

Mr Justice Andrew Baker:

1 In my judgment, this is as straightforward an application for security for costs as one typically encounters, as Mr Singla KC has submitted. Parsdome, the claimant, is a BVI company which has steadfastly declined, to the point at which it can be described as a deliberate refusal, to provide any sensible information, let alone hard evidence, as to its own finances. There is, plainly and obviously as things stand, very real reason to believe that Parsdome is not today, and will not be in the foreseeable future, through to and including the end of the trial that is not that far away, able to meet the sort of costs order that might be made against it if it loses at trial.

2 In those circumstances, the gateway for an order for security for costs is amply met, and (with respect) those instructing Parsdome were doing no more than acting realistically by encouraging it to avoid the need to have that debate at earlier stages, by providing security as it did by payments into court.

3 Considering whether, as a matter of discretion, security should then be ordered, I agree with Mr Singla KC that the approach is to see whether there has been provided or offered security that the court can say, on substantial objective evidence, is substantially equivalent in its practical utility to the defendant to cash in court or a first-class London bank guarantee, which would ordinarily be the form in which security ought to be provided. The position in relation to that is that what has been provided is a growing patchwork of incomplete evidence concerning the possible worth of the company called Blue Oil, purportedly from whom a form of guarantee has been provided to the defendant, and relating to Worth Capital and its seeming shareholding in Petroleos del Sur, said to be a potential source of substantial cash available to Mr Rojas personally but not, except through him, to Parsdome.

3 That information patchwork, incomplete though it is, I acknowledge, gives rise to some real reason for thinking it possible that, at least indirectly, Mr Rojas or eventually Parsdome might have access to funds sufficient to enable Parsdome's potential costs liability in the future to be satisfied, but it has not come close to demonstrating to the court in the fashion ordinarily expected, as indicated in the authorities, that what is on the table is sufficiently close to what would be available to the defendant by way of a payment into court or a first-class bank guarantee that as a matter of discretion I should not order Parsdome to provide security in the normal way.

4 There is, as sometimes occurs in cases of this type, an underlying irony – the elephant in the room almost – that in order to resist the provision by way of security of amounts that are quite modest relative to some of the sums of money said to be potentially indirectly available, it is said that the defendant, which has no direct access to any of the information needed to take a view, should take comfort that all will be well. If that were all sufficiently comforting as is submitted, it renders it only the more inexplicable that Parsdome has not simply accepted the appropriateness, as it did previously, of providing a few hundred thousand pounds at a time by way of security for costs, which it appears to be in a position to do, presumably through those funding it in the litigation.

5 I emphasise, in making that last observation, that at no point in the evidence or the submissions on behalf of Parsdome has it been suggested that an order for security for costs of the size sought (of the order of £300,000 or so) is an order that Parsdome – I envisage through whoever is supporting it and providing funding for the litigation – would not be in a position to meet or would create any risk of stifling the claim.

6 In those circumstances, I am satisfied by a clear margin that this is an appropriate case for an order for security for costs by way of a further tranche to be paid into court or secured by first-class London bank guarantee.

7 Picking up on the discussion with counsel as to the amounts claimed and the arithmetic involved, that will be security in respect of costs incurred up to the exchange of witness statements, taking into account the tranches of security previously provided. Mr Singla KC therefore proposes that if I order security on the basis of 70% of incurred costs, as had been the parties' agreement in relation to the previous tranches, I should order security at this stage of £343,000, being 70% of £490,000. Ms John KC, for the range of reasons she submitted, urges me to be more cautious and to say that anything more than 60% would be more than is reasonably justified. At 60%, I would be ordering £294,000 rather than £343,000, a difference of £49,000.

8 I agree with Mr Singla KC that there is a degree to which, as indicated in the authorities, the court errs within reason on the side of the successful applicant for security for costs, bearing in mind that the relevant prejudice on each side is different in order of magnitude. That is to say the prejudice or injustice to the defendant from a decision at this stage that turns out to be a decision that under-secures it, is that after succeeding at trial, if it does, it fails to recover to a material extent on the costs ultimately awarded in its favour. On the particular facts here, that would be an under-recovery of up to about £50,000. The prejudice or potential injustice on the claimant's side is that whatever will be the marginal cost to the claimant, directly or indirectly, of providing about £50,000 or so more by way of security than would otherwise be ordered, over the next, say, nine months or so (between now and judgment after the trial) will be a cost that could have been avoided if it turns out that the amount of security is greater than any ultimate award of costs in the defendant's favour.

9 I bear in mind all of the observations that have been made about the levels of costs generally being incurred. I do not regard them as being, by nature, submissions that allow me to say that the 70% previously agreed between the parties as reasonable for this case is excessive by way of the provision of security. I also bear in mind in relation to that the recent

experience of the court that even on a standard basis assessment, recoveries of at least 70% are by no means unusual, and that this is a case in which allegations of fraud and dishonesty have been made, which, if they do not succeed, might well be met by an order for costs to be assessed on an indemnity basis.

10 In all those circumstances, I allow the application as made, for the sum sought, and the order, subject to any observations that counsel might have on the precise terms, will be for the provision by way of additional security for costs, in respect of costs up to and including the date of exchange of witness statements, in an amount of £343,000, to be provided by way of payment into court or first-class London bank guarantee. That ought to be provided, unless there are any particular observations about practical difficulties, within 21 days, which takes us to Friday 1 December, so that the parties will know before the pre-trial review whether the order has been complied with.

LATER (as to costs)

11 On the specific point of the use of counsel, it is fair to observe that the silks on both sides have been instructed for today's hearing. That said, the total fees for counsel on the claimant's side are £20,000 (compared to £30,000 on the defendant's side). What I had in mind was that this was a case that ought, realistically and sensibly, to have been capable of being dealt with properly by experienced junior counsel where the fee would be, I would envisage, in the range of £10,000 to £15,000. It is an application that ought not ever to have generated more than £25,000 cost on the part of the solicitors, conducting the matter reasonably and proportionately.

12 The approach that has been adopted if, as I take at face value to have been the case, the number of hours have been spent on the application that are indicated in the costs schedule,

and a decision was made brief leading counsel to the tune of £22,500 with a junior at £7,500, so £30,000 to prepare for and appear at a two-hour Friday list application, is neither reasonable nor proportionate. It is not for me to pry, but I earnestly hope from the defendant's perspective as the litigating party, that if the incurring of that level of costs – I did describe them as "eye watering" for such a straightforward application – was a matter budgeted for and estimated in advance, it came with the prudent advice which ought to have accompanied it that if the plan was to spend £100,000 plus on this application, the client would need to understand that a judge dealing with costs was highly unlikely to award any very substantial percentage of what had been incurred.

13 In my judgment, a reasonable and proportionate level of costs to have incurred on this application does not exceed £40,000, and I will summarily assess the defendant's recoverable costs at that level. Costs will be paid in the sum of £40,000, to be paid within 14 days.

CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

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