Case No: CL-2014-000251/SC-2024-BTP-000068
Neutral Citation Number **[2024] EWHC 3566 (SCCO)**

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

The Royal Courts of Justice
Strand
London WC2A 2LL

Thursday, 8 August 2024

BEFORE:

COSTS JUDGE LEONARD

BETWEEN:

(1) VIOREL MICULA
(2) IOAN MICULA
(3) SC EUROPEAN FOOD SA
(4) SC STARMILL SRL
(5) SC MULTIPACK SRL

Claimants

- and -

ROMANIA

Defendant

MS E BEDFORD (instructed by Croft Solicitors) appeared on behalf of the Claimants
MR CARPENTER KC (instructed by Thrings Solicitors) appeared on behalf of the Defendant

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JUDGMENT
(Approved)

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1. THE COSTS JUDGE: On the issue of hourly rates the appropriate starting point for present purposes is CPR 44.4. I am looking at all the circumstances, including in particular those factors which are emphasised at 44.4(3). I will run quickly through those.

2. Conduct and efforts to resolve are mentioned. I do not think that they are very significant features for present purposes. Each party in this litigation was fighting to protect themselves against potentially significant economic harm, so it was not unfair to describe the litigation as hard-fought. That is not a criticism. That is just the way it was. Judging from what I have seen, and given the pressure, for example, on the paying party from other quarters, the likelihood of a settlement that could be lived with by both parties must have been remote.

3. More to the point is value. We have an ICSID award at the centre of the dispute. It is valued at the relevant time by the paying parties at £182 million and by the receiving parties at in the region of twice that. As Ms Bedford reminded me yesterday, I have previously observed that once we get to that scale, the exact value hardly matters. It is a very substantial dispute, the underlying value of which has a bearing upon these High Court proceedings as well as in the higher courts.

4. I am sure that Mr Carpenter is right in saying that the Commercial Court sees a number of cases, possibly many cases, for even larger figures, but that does mean that £182 million (with interest continuing to accrue in this particular case at quite a high rate) is not a huge figure. It is.

5. The importance to both parties seems to me to have been, as Ms Bedford said yesterday, at the highest level. The receiving party's trading entities faced financial ruin, with the loss of thousands of jobs that had been created in Romania, thanks to the receiving parties' investment. The paying party was caught between its obligations under the ICSID award and its obligations to the European Union, and itself faced very severe potential financial consequences if its obligations to the European Union were found to have been breached. The Romanian prime minister himself recognised the substantial political and financial ramifications of this dispute in a public forum and laws were passed in an effort to try and alleviate or avoid those consequences.

6. Then we have the intervention of the European Commission, which appears, on the evidence I have seen, to have regarded the underlying dispute between the parties as an opportunity to test conflicts between European competition law and bilateral investment treaties of the kind which underlies this dispute. So it was a test case with implications of some significance both within and outside the European Union.

7. I am aware that these proceedings form only a part of the overall international litigation, but I think it is significant that the Commission saw fit to seek permission to intervene in and attend these proceedings. It is evident that the Commission's interest in the wider ramifications of the dispute extended to the High Court litigation.

8. With regard to complexity, difficulty and novelty, I am not persuaded by the paying party's efforts to distinguish between these High Court proceedings and the wider underlying dispute and the multi-jurisdictional litigation that arose from it, nor by the suggestion that the real complexity, such as it was, lay in purely legal issues to be addressed by counsel.

9. That is for a number of reasons. First of all, logically, if not inevitably, the receiving party's solicitors in this jurisdiction were part of a larger international team at Shearman & Sterling which had the capacity and expertise to handle this multi-jurisdictional dispute.

10. It is also because the distinction drawn between counsel and solicitors in large-scale complex litigation of this kind is one I have never been able to accept. The solicitors bore just as much responsibility as counsel for the outcome of the litigation, and they had the same duty to understand and address the issues, both factual and legal.

11. There are a number of factors to which I have been referred, in particular by Ms Bedford, which to my mind highlight the real complexity of this High Court litigation. We have the sheer volume of papers before Blair J; the amount of reading in he was expected to undertake before hearing the case; his request to the parties, after hearing the case, for a list of the issues to be determined; his own identification of the issues; and his answers to those issues in an admirably succinct 37-page judgment which struck a careful balance between conflicting international legal obligations.

12. I have assessed the parties' costs in the Supreme Court. It is a very complex case with substantial international elements which in the Supreme Court, as Ms Bedford reminds me, I characterised as being at the top end of the scale for commercial litigation. I am quite satisfied that that description applies equally to the proceedings in the High Court. The consequence is that the skill and effort offered and the responsibility undertaken by the receiving party's solicitors was again at the top end of the scale, even for City of London commercial litigation.

13. Time spent: I do not think that this factor is helpful in the context of assessing hourly rates. Time spent will be considered separately and allowed insofar as it is reasonable.

14. As to the place and the circumstances in which the work was done, I have described the circumstances. It is common ground that this is suitable work for City of London commercial solicitors. So, insofar as the guideline hourly rates have any bearing on this case, the appropriate reference point would be the London 1 rate.

15. The work covered by this bill, as I was reminded yesterday, was actually performed between October 2014 and February 2017. The guideline hourly rates had not at that time been updated since 2010. It was becoming quite obvious that over time they were of less and less value as a starting point in any context, much less on a detailed assessment.

16. The Guideline Rates were updated in 2021. The paying party has offered rates at 10 per cent above the 2010 rates, said to represent roughly a mid-point between the 2010 and 2021 guideline hourly rates. As to the relevance of those guideline rates, Mr Carpenter reminded me kindly yesterday of the judgment of Choudhury J in *Harlow District Council v Powerrapid* [2023] EWHC 586 (KB), which I reviewed in the course of preparing this decision.

17. Choudhury J in *Powerrapid* referred to the guidance of the Master of the Rolls which appeared with the 2021 guideline rates. The MR emphasised that the rates were no more than guidance and a starting point for judges undertaking summary assessment, and a possible helpful starting point on detailed assessment.

18. He also said that even in what we are now referring to as London 1, City of London work, very heavy commercial and corporate work, there will be degrees of complexity. Factors such as international elements, value, importance, and so on, may justify significantly higher rates. Choudhury J himself accepted that whether the guideline hourly rates are helpful as a starting point is a matter for the costs judge, having regard to the relevant circumstances.

19. Bearing that guidance in mind, it seems to me that the weakness in the paying party's position is that it reduces in effect to a very familiar refrain in the SCCO: "we are offering the guideline rates, which are appropriate to the case". I do not think that they can be.

20. The guideline rates here are necessarily of limited assistance. The appropriate starting point, as I have indicated, is actually CPR 44.3, and the specific criteria to which I have already referred. In my view, they justify the conclusion that insofar as one can identify notional guideline hourly rates between 2014 and 2017, something substantially in excess of those notional guideline hourly rates would be justified.

21. The guideline rates are useful in this way: they illustrate the evolution of the rates between 2010 and 2021, and they offer some context for the decisions I have to make. Having come up with figures which seemed to me to be appropriate and undertaking a cross-check against a notional mid-point guideline hourly rate for 2014 to 2017, to see how the figures I had in mind compared, I fell back -- purely as a cross-check -- on the old A and B factors. There I was assisted by Ms Bedford's reference to *Loveday v Renton* and its 125 per cent B factor for a test case.

22. But my primary approach has been, as we discussed yesterday, to identify a maximum recoverable hourly rate for each grade of fee earner across the entire bill as a whole, subject to what is actually claimed, and to the issues of discounting and exchange rates which have yet to be determined.

23. I also keep in mind what was said yesterday about much of the work being undertaken by the chief fee earner in this jurisdiction, Mr Cohen, then a Grade B fee earner, between October 2015 and January 2017. I bear in mind that the great majority of the

work was undertaken at grades B and C, where in my view the receiving party could have justified a much higher level of grade A involvement. There is some force in Ms Bedford's submission that the grade B and C fee earners were punching above their weight and displaying the level of expertise that was required for this case.

24. I also bear in mind however Mr Carpenter's point that during the later periods in the Receiving Parties' bill, the hourly rates claimed climb steeply to a level which is beyond what I could regard as recoverable as a maximum hourly rate.

25. Those are the considerations I have taken into account when coming to the following conclusions.

26. As to Shearman & Sterling, I am allowing grade A rates at a maximum of £700 per hour. For grade B, it is £500. For grade C, it is £380. For grade D, it is £200 per hour. At grade D, there is less responsibility and less expertise, but one must look at the grade D rate in the context of this very substantial litigation. Even the grade D fee earners had a certain burden to bear.

27. As to Crofts' costs of preparing the bill, their costs have been structured as between solicitor and client in a very different way. Ms Bedford reminds me that in the Supreme Court, I accepted a blended rate of £275 per hour across the entire bill, including the cost of preparation of the bill by costs professionals. The context, however, was that it was as a blended rate of £275 per hour for all fee earners of whatever seniority. In that context it was a reasonable rate, which could be allowed throughout.

28. When we come to the Court of Appeal bill, subject to whatever submissions I hear, I may take the same view. But that is not what we have in the High Court. In that context the receiving party is claiming, and I am allowing, hourly rates well in excess of the blended rate. I have to be consistent with my decisions on this High Court bill. For that reason, and also because I am aware of some problems in the preparation of the bill, it seems to me right to allow the grade D rate of £200 per hour for bill preparation offered by Crofts.

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(This judgment has been approved by the judge)