Neutral Citation Number: [2022] EWHC 3182 (Comm)

Case No: CL-2016-000831

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMMERCIAL COURT (KBD)

The Rolls Building
7 Rolls Buildings
Fetter Lane
London EC4A 1NL

Date: Friday, 9th December 2022

Before:

MR. JUSTICE PICKEN

- -

Between:

(1) VERLOX INTERNATIONAL LIMITED	**Claimants**
(2) IGOR SYCHEV	
- and -	
(1) IGOR ANTOSHIN	**Defendants**
(2) PARMAS CORPORATION	
(3) AVEC LIMITED	
(4) PJSC PHOSAGRO	
(5) ANDREY GIRGORYEVICH GURYEV	

- -

- -

THE 2ND CLAIMANT appeared **In Person**
MR. MICHAEL SWAINSTON KC and MR. RICHARD ESCHWEGE (instructed by **Simmons & Simmons LLP**) for the **1st Defendant**
THE 2ND, 3RD and 5TH DEFENDANTS did not appear and were not represented
MS. HELEN MORTON (instructed by **PCB Byrne LLP**) for the **4th** Defendant

- -

APPROVED JUDGMENT
ON CONSEQUENTIALS

Transcript of the Stenograph Notes of Marten Walsh Cherer Ltd.,
2nd Floor, Quality House, 6-9 Quality Court, Chancery Lane, London WC2A 1HP.
Telephone No: 020 7067 2900. DX 410 LDE
Email: info@martenwalshcherer.com
Web: www.martenwalshcherer.com

MR. JUSTICE PICKEN:

1. This is a matter in which a hearing took place before me on 11 October this year, in which I dealt with two applications: first, an application by the First and Fourth Defendants for security for costs in respect of certain jurisdiction challenges which they had each made and which were due to be heard on 27th March 2023; and, secondly, an application by the Claimants - that is, I should say, the corporate Claimant, Verlox International Limited ('Verlox'), and the personal Claimant, Mr. Igor Sychev - to amend the Claim Form.

2. At the conclusion of that hearing, I indicated my decision, which was to refuse the amendment application and to revoke the order giving leave to serve out, which was made by Teare J on 29 June 2017. The effect of that decision is that the proceedings against the First and Fourth Defendants, Mr. Antoshin and PJSC PhosAgro (represented respectively before me on that occasion by Mr. Swainston KC and Mr. Eschwege, and by Mr. Dudnikov, although today by Ms. Helen Morton) were at an end.

3. I explained that that was my decision at the end of the hearing in order to give clarity to all parties, but in particular bearing in mind that Mr. Sychev appeared before me, as he has done again today, acting as a litigant-in-person. (Strictly speaking, I should say that Mr. Sychev as a litigant-in-person for himself, rather than also for Verlox, given the decision of Mr. Beltrami KC earlier this year, upheld by the Court of Appeal, that he did not have authority to act on behalf of Verlox).

4. I explained, when announcing my decision at the end of the hearing, on 11 October, what would then happen, which was that I would produce a judgment and that would be sent to the parties in draft and, as I put it in the transcript, at page 117, lines 11 and following, that:

   "... when the reasons get sent out in draft, a covering note will say if there are any typing errors or any obvious errors, please identify them."

   I went on to say:

   "It is not, however, an opportunity to re-argue points or to say actually, you know, here are another five pages of submissions on a point. That is not what that is about. It is my decision and it is simply a draft."

I duly produced my 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.

.....

on 17 October, some six days later, and that draft judgment had the standard rubric reflecting what I had indicated it would have when explaining the position to Mr. Sychev, namely the following in the box, specifically the third paragraph of that box.

"The court is likely to wish to hand down its judgment in an approved final form. Counsel should therefore jointly submit and agree a track-changed version of this judgment showing any typing corrections and other obvious errors ...".

5. The course which Mr. Sychev adopted in response to receipt of the draft judgment was to send me a track-changed version of the draft under cover of a letter dated 20 October, which went far further than that indicated by the paragraph I have just read and than I had explained carefully to him at the end of the last hearing. The draft contained substantial revisions seeking, in effect, to re-argue what had already been argued and to lead to the result that the judgment was a judgment in Mr. Sychev and Verlox's favour, rather than, as was the case, and in line with my announced decision, in the First and Fourth Defendants' favour. Nonetheless, I read what I had been sent with care and I then handed down judgment on 25 October, having taken into account what I had read, both from Mr. Sychev and, indeed, from the First and Fourth Defendants. It is that judgment which was then duly published and it is that judgment which has resulted in today's hearing to deal with consequential matters.

6. In the lead-up to today's hearing, Mr. Sychev has engaged in not insubstantial correspondence, not only with the solicitors acting for the First and Fourth Defendants, but also with the Court. He has, amongst other things, expressed displeasure and wonderment as to why it is that the draft judgment did not, when published, on 25 October, reflect the changes he had put forward. He has asked for confirmation that the judge, that is me, has read the various exchanges which he has had with the Court. That confirmation has been given and I give it again expressly now. His position, coming into today's hearing is that the sole focus of today's hearing ought to be my revising of the judgment of 25 October and that nothing else should be dealt with, including, therefore, the issues of costs and, indeed, form of order to reflect my decision.

7. I have listed this hearing for 9.00 am today in order to accommodate the parties as speedily as is possible, bearing in mind the other commitments that the parties have and, indeed, the Court has. It is now approaching 10.25 am. Substantial time has been spent, since 9.00 am, with my listening to Mr. Sychev make his submissions. I have given him every opportunity, as I did on 11 October, to say what he wants to say. I have pressed him, on more than one occasion, to explain to me on what basis he considers it appropriate that I should re-open my judgment. Nothing that he has said to me has even approached an explanation, still less a justification for why I should do so.

8. Indeed, the most that Mr. Sychev has been able to do is to refer me to two provisions of the CPR, namely CPR 3.1(2)(l), which is the power of the court to *"... dismiss or give judgment on a claim after a decision on a preliminary issue"*, and CPR 3.1(7), namely: *"A power of the court under these Rules to make an order includes a power to vary or revoke the order."*

9. To be clear, CPR 3.1(2)(l) has absolutely no application to the present case. This is not a case in which there has been a determination of a preliminary issue. It is a case in which, on 11 October and in my subsequent judgment, I dealt with two applications: first, as I say, for security for costs by the First and Fourth Defendants; and, secondly, by the Claimants to amend the Claim Form. Sub-paragraph (l), therefore, is inapplicable.

10. As to paragraph (7) of CPR 3.1, in fact, on analysis, Mr. Sychev's submissions today have been directed towards the suggestion that the Court should vary or revoke not the order which I will be making as a result of my judgment of 25 October, but instead the order made by Mr. Beltrami KC, sitting as a Deputy High Court Judge on 27 May this year. That is an order which, in essence, declared that Mr. Sychev did not have authority to act on behalf of Verlox. It is an order which was upheld in the sense that permission to appeal against it was refused, on paper, by Bean LJ. The suggestion that I should today be revoking or varying that order is new. In any event, it has no bearing on Mr. Sychev's primary position that I should be modifying or revising the judgment, which I produced in draft in October, and which was handed down in final form on 25 October this year.

11. In short, despite everything that Mr. Sychev has had to say, and I confirm expressly, so that he is in no doubt about it at all, I have read everything that he has had to say, including in the two skeleton arguments produced for the purposes of today's hearing, there is absolutely no basis at all in law, practice or fact why I should be revising the judgment which I handed down on 25 October. I will not be doing so.

12. This then brings me to two other aspects, which are strictly consequential upon that judgment.

13. First, there is the question of permission to appeal. Mr. Sychev has indicated no prior intention to appeal my judgment and yet I felt, in fairness to him, given that he is representing himself, that I should raise with him expressly this morning whether or not he intends to do so. In doing so, Mr. Sychev demonstrated a knowledge of the relevant rules concerning appeal and, in particular, the fact that he has 21 days in which to lodge an appeal from my decision with the Court of Appeal.

14. He was not, it would appear, intending to ask me for permission to appeal, but was instead intending to go directly to the Court of Appeal to do so, if at all. In discussion, however, and aided by Mr. Eschwege reminding me as to the relevant provisions contained in CPR 52, it has been pointed out to Mr. Sychev that, whilst he is under no obligation to ask me, as the first instance judge, for permission to appeal, and so he can, therefore, instead go straight to the Court of Appeal to seek permission to appeal, nonetheless, as the notes to the White Book demonstrate, it is probably advisable that he asks me along the way.

15. On that basis, and independently, in fact, after Mr. Sychev made some researches on his iPhone during the course of the hearing, Mr. Sychev has asked me for permission to appeal. I have made it clear that permission is refused. I have indicated to him that, in the usual way, I will complete the relevant form explaining briefly, I stress briefly, why permission to appeal is refused and on that basis he will have the usual timescale of 21 days to renew his application, if he sees fit to do so.

16. I, then, come to the final strictly consequential matter, namely the question of costs. Both the First Defendant, represented, as I say, by Mr. Swainston, and the Fourth Defendant, again represented, as I say, by Ms. Morton, seek their costs.

17. The costs that they seek, are the costs of the proceedings because, as I have indicated, the upshot of my decision on 25 October is that the proceedings against the First and Fourth Defendants are now at an end. They seek costs of those proceedings on a

standard basis up until 1 September 2021, and thereafter, on an indemnity basis. They seek, in addition to costs orders in those terms, interim payments in not insubstantial amounts.

18. Mr. Sychev makes two primary submissions in relation to the costs aspects as a matter of principle. First, he observes that whatever costs order is made against him in favour of the First and Fourth Defendants, he is in no position to pay the costs concerned. He says, and this is his second and, in fact, primary point, that the reason for that is the First and Fourth Defendants' own conduct towards him. He says, indeed, that that conduct is such, and so reprehensible, as to mean that no costs order should be made at all. The conduct, he observes, is conduct which has put him into the position that he is in where, as he would suggest at least, he has no money.

19. In this respect, I have, I repeat, read the repeated descriptions by Mr. Sychev in various correspondence and in various skeleton arguments and witness statements, including most recently his 26th witness statement, and in his skeleton argument produced yesterday, in which he sets out, as he puts it, *"six facts"* which he suggests need to be taken into account concerning the First and Fourth Defendants' conduct when it comes to, amongst other things, costs. I have taken all of those matters into account. However, nothing that I have read causes me to reach a conclusion that the First and Fourth Defendants should be deprived of their costs. I remind myself that the applications that were before me on 11 October were narrow in their ambit. I dealt with them on their own merits and in their own narrow terms. Mr. Sychev plainly feels very strongly that he has been badly treated by the First and Fourth Defendants, but ultimately none of that matters in relation to the applications which were before me and which I dealt with on 11 October this year. I had to deal with those applications on their own terms. I reached my decision in the way that I did. The consequence is that the proceedings must come to an end because, as I explained in my judgment, the basis on which permission to serve out was obtained in 2017 is no longer extant and the consequence is, on a technical basis, the proceedings can no longer be on foot. Nothing that is said about the First and Fourth Defendants' alleged conduct in this context is of relevance. All that is relevant is that the proceedings are now no longer in being, given the change in position as described in detail and comprehensively in my judgment. It follows that there is no basis here at all on which I could sensibly or fairly deprive the First and Fourth Defendants of their costs and I am not going to do so. There will, therefore, be a costs order in favour of the First and Fourth Defendants against both Claimants.

20. As to the basis on which those costs orders should be made, I agree both with Mr. Swainston and Ms. Morton that the appropriate order is one that would see costs paid on a standard basis up to 1 September 2021 and, thereafter, on the indemnity basis. I say that having reached the very clear conclusion that this is, indeed, a case which sensibly attracts the indemnity basis. I have been referred to various authorities in this respect. I need not set them out in detail, but I have taken them into account, in particular, ***Excelsior Commercial and Industrial Holdings*** [2002] EWCA Civ. 879 in which Waller LJ framed the relevant question at paragraph 39 as being whether there is:

"... something in the conduct of the action or the circumstances of the case which takes the case out of the norm in a way which justifies an order for indemnity costs."

21. That phrase, *"out of the norm"*, was considered again by Waller LJ in a subsequent case, namely ***Esure Services v Quarcoo*** [2009] EWCA Civ 595. He noted, at paragraph 25, that:

> *"... the word 'norm' was not intended to reflect whether what occurred was something that happened often so that in one sense it might be seen as 'normal' but was intended to reflect something outside the ordinary and reasonable conduct of proceedings."*

22. That is the position in this case, I am quite clear and I take into account in this respect the dictum of Sir Anthony Colman in ***National Westminster Bank v Rabobank Nederland*** [2009] 2 Costs LR 396 at paragraph 28, that the requirement must be viewed in its widest sense in relation to the parties' pre-litigation dealing with the winning party or the commencement or conduct of the litigation. The conduct criticised must be looked at in the context of the entire litigation.

23. This is a case which, on any view, has, since September of last year, reached the status of 'out of the norm' so as to justify indemnity costs. The Claimants, through Mr. Sychev, have, since 1 September last year, been acting as litigants-in-person, having, on that date, ceased to be represented by their fourth firm of solicitors, namely Candey LLP, who came off the record. The reason why Candey came off the record is long and detailed, but, in essence, it appears to have entailed their unwillingness to advance a witness statement running to some 400 pages containing allegations of dishonesty, not only against the various Defendants in these proceedings, but also against solicitors and expert witnesses. Indeed, it is fair to point out that this is a case in which not only has Mr. Sychev levelled allegations of bias against Mr. Beltrami as a result of the hearing which took place in front of him at the end of May this year, but that he has also levelled similar allegations against Bean LJ and, indeed, against Robin Knowles J, who presided over a directions hearing on 11 October.

24. Mr. Sychev has filed, as I say, some 26 witness statements in his name and has made something like six applications. One of those witness statements, as I have indicated, contrary to the advice apparently given to him by Candey, totalled some 450 pages and had some 3,255 pages-worth of exhibits, which Jacobs J on a previous occasion described as *"clearly something which is out-of-the-ordinary"*. In addition to that, Mr. Sychev has made allegations of bias and collusion against not only against the three judges to whom I have referred, but various legal firms acting for him (and, indeed, against him) and expert witnesses who have been instructed.

25. I observe along the way that such allegations appear to have been repeated not only in correspondence with the solicitors acting for the First and Fourth Defendants and more recently with the Court, but also have found an airing in an online petition which Mr. Sychev has set up in which he has sought to level serious criticisms against, amongst others, Mr. Beltrami.

26. Mr. Sychev, indeed, in his 26th witness statement, produced for the purposes of today's hearing, says, amongst other things, at paragraph 33:

> *"I would like to emphasise once again that I had no illusions about the outcome of Picken J's decision. Nor do I have any illusions about the future conduct of event. I lost these illusions when the Defendants directly warned, threatened me, that they would bribe the judges."*

He goes on in paragraph 21 to say that:

"The Defendants have stolen those years of my life and the English judges have stolen my future and my faith in justice."

27. Mr. Sychev has, it can be seen from this brief summary of events since September last year, conducted himself in a way which, at a minimum, can be described as being 'out of the norm'. I am quite clear, in those circumstances, that both Mr. Swainston and Ms. Morton are entirely right when they suggest that that conduct should attract an indemnity costs order from 1 September 2021. The costs order, therefore, which will be made, will be on a standard basis up until that date and thereafter on an indemnity basis. There will need to be a detailed assessment in the usual way.

28. I must then come on to deal with the associated applications made by Mr. Swainston and Ms. Morton respectively for payment on account of those costs orders. Mr. Swainston, on behalf of the First Defendant, draws my attention to the fact that Mr. Crosse, the solicitor at Simmons & Simmons instructing him, has, in his witness statement for the purposes of today's hearing, set out the detail of the costs which have been incurred and which are sought to be recovered.

29. Mr. Swainston, reminds me, as does Ms. Morton, that the approach I should adopt in deciding what level of interim payment to order, is to order an amount that is a reasonable sum on account of costs, namely a reasonable sum being an estimate of the likely level of recovery, subject to an appropriate margin to allow for error. As Leggatt J put it in ***Dana Gas v Dana Gas Sudek*** [2018] EWHC 332 (Comm) at paragraph 6:

"The logical approach is to start by estimating the amount of costs likely to be recovered on a detailed assessment and then to discount this figure by an appropriate margin to allow for error in the estimation."

30. I am clear that the right approach in this case, bearing in mind that this standard costs order, prior to 1 September last year, would likely see a recovery on a detailed assessment in the order of 60%, whereas an indemnity costs recovery on a detailed assessment would be more in the region of 75%, would be to stand back and take an overall percentage to cover the entirety of the costs of 70%, so somewhere between 60% and 75%; bearing in mind, in that context, the scale of the costs which would have been incurred since September last year dealing with the multitudinous witness statements and correspondence which Mr. Sychev has produced. The level of interim payment, therefore, will be based on a 70% figure.

31. So far as the Fourth Defendant is concerned, the position is straightforward. PhosAgro's costs as at 1 November this year totalled £921,125.63. 70% of that figure, I am told, amounts to £644,787.94 and so that will be the level of interim payment or payment on account ordered in relation to them.

32. As for the First Defendant, the position is not quite so straightforward, in this sense. The total costs incurred by Simmons & Simmons for the First Defendant are calculated on the basis of hourly rates which are in excess of the Guideline Rates. Specifically 70% of the total cost, the Simmons & Simmons' rate cost, rather than Guideline Rates, amounts to £1,312,871.85, whereas, taking the Guideline Rates, that figure's equivalent

would be a lesser amount, namely £1,182,563.77. Mr. Swainston nonetheless submits that it is appropriate in this case not to scale down to the Guideline Rates, given two matters, really: first, that the costs do not include the costs of instructing certain experts - in other words, the costs are not actually the total costs; and, secondly, he makes the point that this is substantial litigation involving a very substantial claim and very serious allegations, including serious allegations levelled against a partner at Simmons & Simmons, Mr. Crosse - indeed, he reminds me that (a matter I shall come on to) there are extant contempt proceedings against Mr. Crosse which Mr. Sychev and Verlox have put forward.

33. On that basis, Mr. Swainston submits that there is a very good reason why the rates are higher and he reminds me in this context of ***Samsung Electronics v LG Display*** [2022] EWCA Civ 466. I agree with Mr. Swainston about this. This is an exceptional case and I think it would be inappropriate, in the circumstances, to trim the costs to Guideline Rates. It follows that the 70% figure to be paid on account or by way of interim payment in respect of Simmons & Simmons' costs will be £1,312,871.85.

(For continuation of proceedings: please see separate transcript)

\- - - - - - - - - - -