Neutral Citation Number: [2023] EWHC 1123 (Comm)

Case No: CL-2022-000530

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

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 11/05/2023

Before :

CHRISTOPHER HANCOCK KC

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Between :

CHIA-HSING WANG	**Claimant**
- and –	
(1) FLOREAT PRIVATE LIMITED	**Defendants**
(2) FLOREAT PRINCIPAL INVESTMENT MANAGEMENT LIMITED	
(3) LV II INVESTMENT MANAGEMENT LIMITED	
(4) FLOREAT INVESTMENT MANAGEMENT LIMITED	
(5) FLOREAT REAL ESTATE LIMITED	

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Charles Béar KC (instructed by **Skadden, Arps, Slate, Meagher & Flom (UK) LLP**) for the **Claimant**
Andrew Hunter KC and **Timothy Lau** (instructed by **Herbert Smith Freehills LLP**) for the **Defendants**

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JUDGMENT ON CONSEQUENTIAL MATTERS

This judgment was handed down by the Judge remotely by circulation to the parties' representatives by email and release to The National Archives. The date and time for hand-down is deemed to be 14:00 on Thursday 11 May 2023.

Christopher Hancock KC:

1. I heard argument in this matter on 13-14 December 2022, and handed down judgment on 13 February 2023. In that judgment I dismissed the Claimant's claim for an interim injunction pending trial of this claim in England. I also however indicated that I thought that the Defendants should give certain undertakings, the gist of which had been offered during the hearing. Following further argument at a consequentials hearing on 30 March 2023, the parties, with a certain amount of assistance from me, agreed the wording of those undertakings on 4 April 2023.

2. Because it was not possible to deal with all of the matters which the consequentials hearing had been listed to deal with on 30 March 2023, and because the parties wished to put in further submissions on costs and permission to appeal over and above those which had been put before me in anticipation of the hearing on 30 March 2023, I gave permission for such further submissions, which were served as follows:

   (1) On 6 April 2023, the Claimant served submissions on costs.

   (2) On 6 April 2023, the Defendants served submissions on permission to appeal.

   (3) On 13 April 2023, the Defendants served responsive submissions in relation to costs.

   (4) On 13 April 2023, the Claimant served reply submissions in relation to permission to appeal.

3. In this judgment, therefore, I now deal with questions of costs and permission to appeal.

Costs.

4. I was asked to determine both entitlement to costs and quantum.

5. As to the question of entitlement, the Defendants argued that I should follow the normal rule, namely that costs follow the event; that here the claim for an interim injunction was a separate event; that the Defendants had succeeded in relation to this event; and that accordingly, the Defendants should be awarded their costs.

6. Conversely, the Claimant's principal submission was that I should reserve costs to the judge hearing the trial of the substantive claim. In this regard, reliance was placed on the decision in *Melford Capital Partners Ltd v Wingfield Digby* [2021] 1 WLR 1553, where the Court of Appeal held that, in a case in which an interim injunction had been continued, the costs of the application should be reserved.

7. In this latter case, the Court of Appeal made the following observations.

   "*35. We were taken to the authorities. As we have noted, the judge referred to Desquenne and Picnic at Ascot. Of these two cases, the editors of Civil Procedure 2020 ("the White Book") at para 44.6.1 say:*
   "Where an interim injunction is granted the court will normally reserve the costs of the application until the determination of the substantive issue (Desquenne ...) However, the court's hands are not tied and if special factors are present an order for costs may be made and those costs summarily assessed (Picnic at Ascot) ..."

36. In our judgment, that short passage accurately represents the law. We were referred by the respondents to cases in which different orders have been made, but we do not consider that those cases undermine the statement of the general rule in the White Book , as decided by the two cases. Meeting a submission by Mr Shepherd that this statement no longer represents the modern practice in the High Court which now required adherence to the "pay as you go" principle, we were also referred by Mr Grant and Mr Munby to a number of cases in which experienced judges had made "costs reserved" orders in interim injunction cases, relying upon the decided cases….

48. As we have said, we consider that the judge erred here in failing to have proper regard to Desquenne [2001] FSR 1 as authoritative in a case where he was expressly deciding that he could not resolve the underlying disputes between the parties. We find that it was wrong to try to identify a winner or loser in these interim proceedings. We consider that he should have regarded the pragmatic approach adopted by the appellant, both before the application on short notice to Trower J and before the later hearing as very strong grounds on which to reserve the costs.
49. In the light of what we find to be important errors by the learned judge, in the very difficult circumstances before him, it falls to us to exercise our own discretion as to these costs. We are clearly of the view, as Morritt LJ and Morison J were in Desquenne, that the decision here was unjust in all the circumstances. In this hotly disputed case, in which the underlying issues were impossible to determine at the interim stage, it is right to follow the normal rule emerging from Desquenne . We find no special factors indicating a contrary decision.
50. We would add that it is likely to be helpful to parties endeavouring to make sensible arrangements in cases such as this pending trial that they should know that costs are likely to be reserved. We also think that Mr Grant made a telling point for the appellant when he pointed out that the transcript shows that the argument on costs covers between six and seven pages only of 42 pages for the hearing as a whole. On that very short argument, at the end of a difficult hearing, submits Mr Grant, his client potentially became liable to pay over £277,000 in costs. We agree that such a liability needed rather wider consideration than could be given to it on that day and was another pointer towards ordering that the costs be reserved."

8. In my judgment, the Claimant is right in saying that, where, as here, I have decided, not that their claim is ill-founded, but that there is no good ground for an interim form of relief, the appropriate order is that costs should be reserved to the trial judge, who will be in a better position to determine whether or not the Claimant has, in truth, established his right to an injunction in the longer term. Accordingly, in my judgment, the appropriate order is that costs should be reserved.

9. Accordingly, it is unnecessary for me to consider the quantum of the Defendants' costs. I would not in any event have been willing to consider and determine this on a summary basis in relation to a two day hearing involving very substantial costs.

Permission to appeal.

10. I turn to the question of permission to appeal.

11. The parties are agreed as to the appropriate test, which is whether the Claimant has a real, as opposed to fanciful, prospect of success in overturning my decision.

12. The Claimant says that it does have a real prospect of success on appeal, for the following reasons:

    (1) The Claimant submits that I took a "radical short cut" in deciding not to grant the injunction on discretionary grounds, and that I should have grappled with the merits of the claim.

    (2) Secondly, it is said that the suggestion in my judgment that it would not be appropriate to cut across foreign proceedings in the way suggested by the Claimant confused the Court's original jurisdiction (ie to protect causes of action) with its supervisory jurisdiction.

    (3) Third, it was argued that there was no sufficient basis for the conclusion that the injunction would in fact interfere with the orderly disposal of the various other proceedings. In fact, the Claimant argued, what has in fact happened since the hearing shows that the decision not to intervene has led to difficulties in those foreign proceedings.

13. For their part, the Defendants deny each of the submissions set out above.

    (1) First, they say that my decision to deal with the matter as a question of discretion, concluding that I was not prepared to grant the injunction sought irrespective of the merits of the claim, was entirely orthodox and correct. Reliance was placed in this connection on *Autostore v Ocado* [2022] 1 WLR 561.

    (2) Secondly, they submitted that, contrary to the Claimant's submission, set out above, I was not exercising a supervisory jurisdiction but was simply reaching a conclusion based on the desire not to arrogate a decision-making power to myself which is best left to the foreign court or arbitral tribunal.

    (3) Thirdly, they submitted that there clearly was a sufficient basis for the factual conclusion that the injunction would indeed interfere with the orderly disposal of the various other proceedings.

14. I have concluded that the Defendants' submissions are to be preferred, for the following reasons:

    (1) My reasons for refusing the relief claimed (which was the only relief with which I was concerned) were discretionary. I do not think that there is any real prospect that the Court of Appeal will interfere with such an exercise of discretion.

    (2) In my judgment, there clearly was a sufficient factual basis for my conclusion, and I do not think that the Court of Appeal would wish to entertain a challenge to a factual conclusion.

    (3) The suggestion that what has happened since the hearing in front of me suggests that comity would have been better served by interfering with the course of the other proceedings is one that is wholly unevidenced, and contrary to principle. If there are problems in those proceedings – and I do not know whether the assertion to this effect

is well founded – then I take the view that it is for the foreign court or tribunal to deal with those, and not a matter for me.

(4) Finally, the suggestion that there was a confusion in my judgment between the Court's supervisory jurisdiction and the Court's original jurisdiction is not one that I understand. The jurisdiction that I was exercising was the jurisdiction to grant (or refuse) an interim injunction in support of the right alleged to exist. I concluded that, whether or not the right existed, this was not an appropriate case for the grant of such interim relief. As I have said, this conclusion was one based on discretionary considerations, and I do not think that the Court of Appeal would interfere with this conclusion.