

Neutral Citation Number: 2024] EWHC 789 (Comm)

Case No: CL-2024-000040

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
COMMERCIAL COURT

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

Date: 27 March 2024

Before :

His Honour Judge Pelling KC

Between :

Airbus Canada Limited Partnership	<u>Claimant</u>
- and -	
Joint Stock Company Ilyushin Finance Co.	<u>Defendant</u>

Louise Hutton KC and Owen Lloyd (instructed by **Freshfields Bruckhaus Deringer LLP**)
for the **Claimant**

Hearing dates: **27th March 2024**

JUDGMENT 3

His Honour Judge Pelling KC
(10:52am)

Wednesday, 27 March 2024

Judgment by **HIS HONOUR JUDGE PELLING KC**

1. The issue I now have to determine concerns what order concerning the costs of and occasioned by this arbitration claim I should make. The claimant seeks an order that I direct that the costs of and occasioned by the claim, including the various interlocutory applications that have preceded this hearing should be reserved pending completion of the LCIA arbitration with liberty to apply on seven days' notice. There are two reasons advanced for this. The first is that it is submitted that there may be a more generous element of recovery if costs are sought as part of the damages in the arbitration than would be assessed even on an indemnity basis by the court. The second point which is made is that if costs are awarded as part of the damages due for breach of the arbitration agreement, then the award that results could be enforced internationally using the New York Convention procedure available in most countries around the world, and that is likely to be more effective than seeking to enforce an English state court order concerning the recovery of costs.
2. So far as the first of these points is concerned, I am sceptical as to whether the claimants will be entitled to recover any greater sum by way of damages in respect of the costs of these proceedings than would be recoverable following an assessment by the court on the indemnity basis, since to permit any greater recovery would by definition be to permit the recovery of costs in excess of those that were reasonably incurred or were reasonable in amount, but I accept that if and to the extent costs are not sought in these proceedings, at any rate at present, there's no reason why the tribunal could not, in principle at least, assess as damages for breach of the arbitration agreement the costs which have been incurred. I accept that if that is what the arbitral tribunal does, then the resulting award will be more easily and effectively enforced around the world using the New York Convention procedures than would be the case with a conventional English court costs order. In those circumstances, and exclusively for the second of the two reasons which are relied upon, I'm prepared to make the order sought.