Neutral Citation Number: [2015] EWHC 3049 (Ch)

Case No: HC-2014-000497

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

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

Date: 18th September 2015

Before :

Mr Justice Birss

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Between :

PEAK HOTELS AND RESORTS LIMITED	**Claimant**
- and -	
(1) TAREK INVESTMENTS LIMITED **(2) PEAK HOTELS AND RESORTS GROUP LIMITED** **(3) SHERWAY GROUP LIMITED** **(4) CARL JOHAN ELIASCH** **(5) PONTWELLY HOLDING COMPANY LIMITED** **(6) VLADISLAV DORONIN** **(7) AH OVERSEAS LIMITED**	**Defendants**
- and -	
(1) PHRL HOLDINGS LIMITED **(2) OMAR SHARIF AMANAT** **(3) LALIT MODI**	**Third Parties**

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John Brisby QC and **Alexander Cook** (instructed by **Candey LLP**) for the **Claimant**
Mark Howard QC and **David Caplan** (instructed by **Herbert Smith Freehills LLP**) for the **First, Fifth, Sixth and Seventh Defendants**
Brian Doctor QC (instructed by **Berwin Leighton Paisner LLP**) for the **Third and Fourth Defendants**

Hearing dates: 17th and 18th September 2015

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APPROVED RULINGS

Mr Justice Birss Thursday, 18th September 2015

Ruling 1 by MR JUSTICE BIRSS

1. I now have to decide a question relating to costs which arose before Mr Justice Warren. The position is this. The application which came before Mr Justice Warren on 20 August 2015 was issued by the claimant on 13 August. The claimant believed that the shares in Silverlink which the claimant thought were held by ARGL were going to be the subject of a public auction which was due to take place on around 25 August. This means that the claimant issued its application 11 days in advance of the supposed auction.
2. So on 14th August the claimant served a substantial application for injunctive relief on the Doronin defendants. Those defendants are not germane to what I have to deal with. The application was also served on the third and fourth defendants that to say Sherway and Mr Eliasch, or their solicitors.
3. It turned out that in fact the shares in Silverlink had already been transferred out of ARGL. However Mr Brisby who appears for the claimant submits that this fact was not something that was known to claimant at the time of serving the application. When the claimant found out various allegations had to be recast. In particular it meant that the injunction which had been sought against Mr Eliasch and Sherway, essentially to compel them to make sure as best they could that ARGL paid the interest that it owed to Pontwelly, was pointless because the foreclosure had already taken place.
4. Once the claimant's advisers understood this from the correspondence from the defendants' solicitors, they told Berwin Leighton, who act for Mr Eliasch and Sherway, that the claimant were no longer pursuing the injunction against those parties.
5. On behalf of Sherway and Mr Eliasch, Mr Doctor submits that I should make an order for the costs which were incurred in dealing with that application in the period between the time it was served and the time it was dropped. That is a period of four or five days. The statement of those

costs amounts to £32,109. This is a large sum but Mr Doctor submits that it is what was spent and that such a sum, in the context of this kind of litigation, is proportionate and reasonable in the overall scheme of things. Although he does not use these words, that is the essence of his submission.

6. Mr Brisby submits that I should not make an order for these costs and that if I do, I should not award a sum of anything like that. He submits first, that I should not make the order because essentially the claimant behaved in a reasonable way on the basis of what they understood at the time, that they cannot be blamed for seeking the injunction that they sought, and they were not to know that in fact the shares had already left ARGL so that an injunction against Mr Eliasch and Sherway was pointless. Therefore I should not make a costs order against them.

7. Second, he submits that this level of costs must indicate a level of duplication with not only the injunction issue but the underlying merits of the dispute. If I am prepared to make any kind of costs order what I should do is make an interim award of the value of something of the order of £2,500, being about half of what Mr Brisby submits would be a rational sum for the costs of the injunction, as opposed to the costs of the underlying merits. The costs related to the injunction should be something of the order of £4,000 to £5,000.

8. Turning first to the incidence of costs, the principles are clear. The primary principle is that the losing party pays the winning party's costs unless the court is satisfied it should make some other order. Another matter to take into account is conduct.

9. In my judgment, the fact that the claimant may have had reasonable grounds for bringing the application, while relevant, is not sufficient in this case to justify departing from the usual approach, which is that the losing party should pay the winning party's costs. Therefore I will make an order that the claimant pays the third and fourth defendant's costs of the application. The question is what I should do about assessing the costs.

10. There is force in Mr Brisby's submission. I appreciate Mr Doctor submits that these are the costs of the injunction but they are extremely high. Given the obvious risk of overlap of costs relating to the underlying merits of this dispute which are tied up with the questions arising on the injunction, I am not going to summarily assess the costs because I am not satisfied that I am in a position to do so. I will make an interim award. I am not satisfied that Mr Brisby's calculation of what an interim award should be would be fair. I bear in mind the principle that is applicable, which is Rule 44(2)(viii):

> "Where the court makes an order for a party to pay costs subject to a detailed assessment it will order that party to make it pay a reasonable sum on account unless there was a good reason not to."

11. A reasonable sum on account, in my judgment, would be £10,000 and that is what I will require.

Mr Justice Birss Thursday, 18th September 2015

Ruling 2 by MR JUSTICE BIRSS

1. Mr Caplan, I am going to refuse permission to appeal. My reason is because I have not shut you out from making all the same arguments at trial. It seems to me the Court of Appeal can give you permission to appeal if they wish.