

JERSEY / JUDGMENT

Alpen Partners Limited v Al-Amiri and Ors

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Costs [2020]JRC163 Royal Court (Samedi) 12 August 2020 Before : Advocate Matthew John Thompson, Master of the Royal Court. Between Alpen Partners Limited (In Creditors' Winding Up) First Plaintiff And Samir Al-Amiri First Defendant Rohit Walia Second Defendant Graeme Ross Third Defendant Craig Stewart Fourth Defendant Advocate R. O. B. Gardner for the First Plaintiff. Advocate N. M. Santos-Costa for the First Defendant. Advocate J. J. McCormick for the Second to Fourth Defendants. CONTENTS Paras 1.

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judgment

the MASTER: Introduction and Submissions 1. This judgment contains my decision in respect of the costs of my judgment in this matter dated 6th July 2020 reported at Alpen Partners Limited v Al-Amiri and Ors [2020] JRC 132 dealing with applications for security for costs by the defendants. 2. The plaintiff argued for costs in the cause on the basis that the defendants had recovered security significantly less than the amount they had claimed. The plaintiff was also critical of both sets of defendants for failing to particularise the quantum of their costs sought at an early stage. 3. In relation to the second to fourth defendants the plaintiff also contended they were successful in arguing that the second to fourth defendants were not entitled to recover costs of third party proceedings. 4. This was also not a case where the plaintiff had refused to provide security for costs. Rather at an earlier stage the plaintiffs had conceded that security for costs should be provided in principle. They should not be penalised with an adverse costs order having taken this approach. 5. Both sets of defendants contended they were the clear winner in the dispute because they recovered significant sums in excess of the amounts offered by the plaintiff. The plaintiff was also unsuccessful in trying to limit the provision of security up to the close of discovery. 6. In relation to provision of detailed bills, this occurred in accordance with a timetable determined by the court and the plaintiff had had plenty of opportunity to comment on the amount of costs claimed. The detailed breakdowns were not provided earlier because the plaintiff was seeking to agree a figure for security for costs without argument. Decision 7. In relation to the issue of provision of detailed bills of costs, ordinarily a party seeking security for costs should not on a voluntary basis seek security for costs in principle without identifying the period for which security is required and should provide some indication of the figure sought. If the other party may be willing to provide security by agreement then more detail in respect of

the quantum sought can be asked for and ordinarily, unless parties are too far apart, there should be direct negotiation between the parties before an application is issued. 8. Once an application is issued, while a party seeking security does not have to provide details of the amount of security sought at the time of the summons is issued, the amount of security sought, should be set out to the level of detail required by the Court (see e.g. *Orange Capital (proprietary) Ltd v & Ors v Standard Bank Jersey Ltd & Anor* [2013] JRC 221A and *Geneva Trust Company (GTC) SA v Tchenguiz & Ors* [2019] JRC110A). A party seeking security once a summons has been issued who delays unnecessarily in providing schedules of security to the level required therefore runs the risk of being deprived of some or all of its costs, even if the result of the application means that the applying party is otherwise categorised as the winner. 9. In this case, it was agreed between the parties that the applications for security for costs would be dealt with on the papers. A timetable was therefore set to provide evidence including details of the amount of security sought and an opportunity to respond. I do not therefore think that in this case that the date by which the required detail of the security asked for was provided (although it was sometime after the summons was issued) justifies any adverse costs order.

10. In relation to the other contentions of the parties, the plaintiff in making its offer of £80,000 in an email of 30th April, 2020 stated “If the court orders the security for costs and the amount is equal or less than the £80,000 our client offered yours as security for costs, it will seek its costs in respect of this application from your client”.
11. However, in the main judgment I ordered the plaintiff to provide sums by way of security significantly in excess of this offer. Firstly, I ordered the plaintiff to provide 2 lots of security one for the first defendant and one for the second to fourth defendants in the sum of £160,000 for each group. Secondly, I ordered payments to be made in three tranches albeit in respect of the third tranche for pre-trial and trial preparations the amount of this tranche may be revisited at a further directions hearing. In view of the plaintiff’s email, the position can therefore be succinctly summarised as “he who lives by the sword, dies by the sword”. Had I ordered less security than offered by the plaintiff, the plaintiff no doubt would have sought its costs and with justification. Equally however having ordered security significantly in excess of the sum offered by the plaintiff, the converse in my judgment applies in this case. The defendants were therefore clearly the successful parties on the issues I had to decide.
12. The fact that I did not order the payment of all the security claimed and did make some discount does not alter this conclusion. The plaintiff could have sought to protect its position by a without prejudice save as to costs offer, or could have increased its offer once it saw the details contained the schedules but did not do so. Having stood by its original proposal, I regard it as the unsuccessful party even if I did not order security for the entire amount sought by the defendants.
13. In relation to the issue of third party costs, I accept that these were recoverable in principle but was not willing to award any additional sum for the third party proceedings. This because I concluded that any additional costs incurred primarily related to drafting

pleadings which had already taken place and did not therefore justify any additional award at the time the security was sought. In principle, however, if the defendants are successful at trial, they should ordinarily be able to recover the costs of the third party proceedings, as long as those proceedings were not found to have been brought unreasonably. At this stage, with nothing before me to show that the joinder of the first defendant as a third party by the second and third defendants was nothing other than a reasonable step to take in context of the present dispute.

14. This costs order applies to all costs incurred from 25th November, 2019, being the date when the plaintiff confirmed in principle that security should be provided. It is from this date that the parties were trying to agree quantum and so began to incur costs relevant to the issues I had to decide. Prior to this date costs should be costs in the cause. To hold otherwise would be to penalise the plaintiff when the plaintiff had voluntarily agreed to provide security. That would not be fair.
15. Insofar as to the second to fourth defendants sought costs on the indemnity basis, this was a hard fought case where there was a definite genuine difference of opinion between the parties about the amount of security sought.
16. While I am of the view that the plaintiff's arguments in respect of costs would never have prevailed, the points raised in opposition were not arguments that were vexatious or without an arguable foundation. Accordingly, I do not consider that it would be appropriate to order costs on the indemnity basis as contended for by the second to fourth defendants. The defendants shall therefore recover their costs of their applications on the standard basis Authorities *Alpen Partners Limited v Al-Amiri and Ors* [2020] JRC 132. *Orange Capital (Proprietary) Ltd & Ors v Standard Bank Jersey Ltd & Anor* [2013] JRC 221A. *Geneva Trust Company (GTC) SA v Tchenguiz & Ors*

[2019] JRC110A.

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