

JERSEY / JUDGMENT

Incat -v- Luba [2008] JRC 160 (23 September 2008)

[2008] JRC 160

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judgment

commissioner: 1. Further to the judgment of the Court on this matter handed down on 21 st August 2008 (JRC140), I sat on 21 st August 2008 to hear argument as to costs. I adopt the same definitions as in the

judgment.

2. The summons of the Incat group was dismissed (paragraph 53) and therefore, on the face of it, Luba was the successful party. However, there were a number of issues in this case and it would be a mistake in my view to regard Luba as being the successful party in all of them. 3. The three issues were:- (i) Are the Incat group bound by the offer letter? (ii) If so, what, if any, terms should be implied into the offer letter? (iii) Was the amount of the Incat debt agreed between the parties in the e-mail exchange of April 2007? 4. Luba was successful on issues (i) and (iii). In relation to issue (ii), however, the Incat group submitted that the Court should imply a term that Luba was under an obligation to obtain bank debt financing. Luba accepted that the Court was likely to imply such a term, although it did not formally concede the point. The Incat group went further to submit that the Court should imply a reasonable time for bank debt financing to be obtained, following which the offer letter would expire, namely twelve months from the date of completion (i.e. expiring prior to the hearing). 5. Luba submitted that there was no necessity for the Court to imply any time by which Luba should discharge its obligation to seek bank debt financing as the offer letter would expire on its own accord when it became clear that Luba had exhausted all possible applications to obtain bank debt financing in the market, applications which the Court observed were entirely under Luba's control. The Court found in favour of the Incat group but determined that the time should be three years from the date of completion (i.e. expiring after the hearing). It is fair to say that the Incat group have been successful in part on this issue to the extent that they have had implied into the offer letter terms which will bring it to an end in the foreseeable future, if bank debt financing is not obtained in the meantime. 6. Mr Gleeson, for Luba, sought indemnity costs in relation to issues (i) and (iii) but I agree with Mr Goulborn, for the Incat Group, that there were no special or unusual features or conduct close to abuse which would justify such an order. 7. My overriding objective in considering

costs is to do justice between the parties and I conclude that Luba should have its costs on the first and third issues on the standard basis but that there should be no order for costs in relation to the second issue and I so order. No Authorities Page Last Updated: 06 Jun 2015
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