



Neutral Citation Number: **[2023] EWHC 1223 (Comm)**

Case No: **CL-2022-000037**

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

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

Date: 12 May 2023

Before :

Dame Clare Moulder

Between :

Radisson Hotels ApS Danmark	<u>Claimant</u>
- and -	
Hayat Otel İşletmeciliği Turizm Yatırım Ve Ticaret Anonim Şirketi	<u>Defendant</u>

Ali Malek KC, Can Yeginsu and Calum Mulderrig (instructed by **Quinn Emanuel
Urquhart & Sullivan UK LLP**) for the **Claimant**
Jonathan Dawid and Emilie Gonin (instructed by **Gardner Leader LLP**) for the **Defendant**

Hearing dates: **12th May 2023**

Dame Clare Moulder
(14:56pm)

Friday, 12 May 2023

Ruling by DAME CLARE MOULDER

1. The issue I have to determine is whether the judgment should be anonymised and redacted in order to preserve the confidentiality of the underlying arbitration.
2. This hearing was fixed to allow submissions to be made on the issue and the judgment handed down is currently restricted so that publication cannot take place pending this determination.
3. Radisson contends that the confidentiality of the arbitration should be preserved and therefore the following should be anonymised and redacted: firstly, the identities of the claimant and defendant; secondly, any details which would identify the claimant and defendants, for example names of individuals working for Radisson or Hayat; and, thirdly, the identity of the Tribunal.
4. Radisson submitted that the judgment should be anonymised to protect certain confidential information in the underlying arbitration in accordance with the parties' agreement to determine the underlying dispute in confidential proceedings and to protect the identities of the Tribunal members.
5. It was submitted that the parties' expectation of confidentiality should be given effect to and the public interest can be protected by the publication of the judgment, albeit with anonymisation.
6. Radisson has filed a witness statement from Mr Marsh, a partner in Quinn Emanuel Urquhart & Sullivan UK LLP, dated 3 May 2023, in support of Radisson's request to anonymise the judgment.
7. Hayat submitted that the fact of the arbitration, although not the identity of Hayat, has been referred to in Radisson's accounts and Hayat has no objection to the judgment being published and Hayat being identified.
8. In support of its submission, Hayat filed a witness statement of Mr Felton, a partner at the law firm of Gardner Leader, the firm having conduct of this matter on behalf of Hayat, dated 11 May 2023.
9. It was submitted for Radisson that the principles as to anonymisation are the same as those for publication and referred the court to Mrs Justice Jefford in *Symbion Power LLC v Cenco Intiaz Construction Company* [2017] EWHC 348, where she said that:

"It seems to me that the same principles are broadly applicable to the issue of anonymisation as those in the Court of Appeal in [Economic Department of City of Moscow v Bankers Trust Co [2004] EWCA Civ 314]"

10. The issue has been addressed more recently by Males LJ in the *Manchester City Football Club Ltd v Football Association Premier League Ltd and others* [2021] EWCA Civ 1110 at [62]. Males LJ said:

"As explained in the City of Moscow, when considering whether a judgment on an arbitration claim should be published with or without anonymisation, the court must weigh the factors militating in favour of publicity against the desirability of preserving the confidentiality of the original arbitration and its subject matter. In general, the imperative of open justice, involving as it does the possibility of public scrutiny as a means by which confidence in the courts can be maintained and the administration of justice can be made transparent will require publication where this can be done without disclosing significant confidential information." [emphasis added]

11. At [41] of his judgment in *Manchester City* case, Flaux LJ, quoted the *City of Moscow* case at [34], as follows:

"The consideration that parties have elected to arbitrate confidentially and privately cannot dictate the position in respect of arbitration claims brought to court under CPR rule 62.10. Clause 62.10 therefore only represents a starting point. Such proceedings are no longer consensual. The possibility of pursuing them exists in the public interest. The courts, when called upon to exercise the supervisory role assigned to them under the Arbitration Act 1996, are acting as a branch of the state, not as a mere extension of the consensual arbitral process. Nevertheless, they are acting in the public interest to facilitate the fairness and well-being of a consensual method of dispute resolution, and both the Rule Committee and the courts can still take into account the parties' expectations regarding privacy and confidentiality when agreeing to arbitrate."

12. And then at [42] Flaux LJ said:

"Lord Pannick accepted that the judgment of Lord Justice Mance demonstrates that in each case in considering whether a judgment should be published it is a question of weighing confidentiality and any detriment to the parties from publication against the public interest in publication, particularly where the judgment raises matters of some importance."

13. As noted by Mr Marsh, the challenge was brought by Radisson under section 68 of the 1996 Act, and in particular subsection 68(a). The section 68 challenge was opposed by Hayat on the grounds inter alia that Radisson had waived its right to a challenge by virtue of section 73 of the 1996 Act.
14. Mr Marsh states in his witness statement that by agreement between the parties all materials and information submitted in the ICC arbitration, save for information already in the public domain, or to the extent necessary to enforce either party's rights under the management agreement, are and remain confidential. He also noted that pursuant to the terms of reference the parties have agreed that any award rendered in the ICC arbitration will not be published.
15. However, the court takes note of the fact that, as identified by Mr Felton, the following statement appears in the 2019 accounts of Radisson:

"An arbitration claim for alleged mismanagement has been filed on 3 October 2018 by an owner of a managed hotel. The claim, if successful, will be covered by Radisson's insurance."
16. As also referred to by Mr Felton, it appears that in subsequent accounts the reference to insurance may need updating in the light of Ms Cambré's evidence to the court on this point.
17. The court has to balance the parties' expectation of privacy in arbitral proceedings against the public interest in public judgments. Whilst I acknowledge Radisson's desire to keep the arbitration confidential, there is no specific confidentiality which has been identified which would amount to a specific detriment in this case. No details of the arbitration have been disclosed in the judgment, even if it is published without anonymisation.
18. Given that the fact of the arbitration and a broad description of the nature of the arbitration is included in the accounts and Hayat's position before this court is that it has no objection to it being

identified, it is difficult to see why the expectation of privacy in the arbitration itself can outweigh the public interest in this case.

19. The proposed anonymisation of the parties and the witnesses in my view makes the judgment difficult for a reader to follow. It is in the public interest that judgment should be accessible and readily understood. As Flaux LJ stated at [55] in *Manchester City*:

"There is a public interest in the publication of a judgment determining an application under section 24 of the Arbitration Act because there is a public interest in maintaining appropriate standards of fairness in the conduct of arbitration. This is so even if the judges determining such applications are applying the principles confirmed by Halliburton rather than making new law."

20. This, in my view, is equally applicable in this case under section 68. There is a public interest in understanding how the courts apply the law to maintain fairness in the conduct of arbitrations. That public interest exists whether or not the judgment can be said to raise matters of general importance or novelty.

21. In this case the court has made observations about the main witness for Radisson and the lack of satisfactory explanation for certain documents. Radisson brought this claim alleging serious irregularities in the arbitral process. The reasoning of the court should in my view be matters which are in the public domain.

22. For these reasons, I reject the application for anonymity in relation to the parties and Radisson and Hayat's witnesses.

23. However, there is a further issue as to whether or not the identity of the arbitrators should be kept confidential. They are not parties to these proceedings. Nevertheless, it seems to me only right that I should give the arbitrators an opportunity to make an application as to whether or not their identities should be anonymised. I therefore propose that the judgment will have the names of the arbitrators or former arbitrators redacted until any application is determined or, if no application is made within 14 days, the judgment will be published in full.