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7 Rolls Building
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London, EC4A 1NL
9 June 2023

IN THE HIGH COURT OF JUSTICE
BUSINESS & PROPERTY COURTS OF ENGLAND AND WALES
COMMERCIAL COURT (KBD)
FINANCIAL LIST
Neutral Citation Number: [2023] EWHC 1422 (Comm)

Before

MR JUSTICE PICKEN

BETWEEN:

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(1) PALLADIAN PARTNERS LP
(2) HBK MASTER FUND LP
(3) HIRSH GROUP LLC
(4) VIRTUAL EMERALD INTERNATIONAL LIMITED

Claimants

-v-

(1) THE REPUBLIC OF ARGENTINA
(2) THE BANK OF NEW YORK MELLON (as Trustee)

Defendants

Ms Susan Prevezer KC, Mr Alex Barden and Mr James Shaerf (Instructed by **Quinn Emanuel Urquhart and Sullivan UK LLP**) appeared on behalf of the Claimants
Mr Ben Valentin KC, Ms Tamara Oppenheimer KC, Mr Samuel Ritchie and Ms Francesca Ruddy (Instructed by **Sullivan & Cromwell LLP)** appeared on behalf of the Defendant
Mr Adam Zellick KC and Mr Ian Bergson (Instructed by **Reed Smith LLP)** appeared on behalf of the Defendant

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RULING
(Approved)

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(Official Shorthand Writers to the Court)

1. **MR JUSTICE PICKEN:** Now I have to consider the question of interest on the 2013 Reference Year payment amount, namely the proportion of the approximately Euro1.33 billion that I have decided is due to the Claimants.

2. The point arises because, following on from one of my earlier rulings today, I have determined that it would not be unjust to disapply the various consequences set out where a Part 36 offer has not been accepted in CPR 36.17(4).

3. One of those consequences, as set out in sub-paragraph (a), provides that a claimant is entitled, in such circumstances, to "interest on the whole or part of any sum excluding interest awarded at a rate not exceeding 10 per cent above base rate for some or all of the period starting with the date on which the relevant period expired".

4. It follows that the period with which this matter is concerned will have to be calculated by reference to the expiry of the so-called relevant period for the purposes of the 5 February 2020 offer letter.

5. I should say that, in my judgment at [263], I reached the conclusion that the appropriate primary rate of interest should be 2% above Euribor, and what is therefore now being sought is an uplift from that primary rate of interest of 2% above Euribor.

6. Ms Prevezer's primary position is that the uplift should amount to 5.34%, giving a total uplift above Euribor of 7.34% including my previously referenced 2% above Euribor set out at [263] of the judgment.

7. The rationale for that suggested uplift of 5.34% is Ms Prevezer's reliance on the evidence before me at trial, specifically from Mr Caldwell, one of the experts, that the Republic's usual borrowing costs involved Euribor plus 7.34%. I say, in passing, that that evidence was referenced by me in my judgment at [258].

8. In the alternative, Ms Prevezer refers me to an authority, ***Barnett v Creggy*** [2015] EWHC 1316 (Ch), in which David Richards J (as he then was) decided that it was appropriate to award an uplift of 4% over base rate in that case, noting that Coulson J

(again as he then was) in ***Greenwich Millennium Village v Essex Services Group*** [2014] EWHC 199 (TCC) had adopted a 4% over base rate approach in that case.

9. That alternative position, put forward by Ms Prevezer, would therefore see an overall uplift from Euribor of 2% plus an additional 4%, making a total of 6% above Euribor.

10. It is worth having a little regard to what David Richards J had to say in the ***Barnett*** case. That was a case, as explained at [6] of the judgment, where the total amount due, including interest, was, as the judge put it, "a little over USD 2.3 million". The judge then went on, in considering this uplift question, to refer at [48] to two earlier cases, namely ***Petrotrade v Texaco*** [2001] 4 All ER 853 and ***McPhilemy v Times Newspapers No 2*** [2001] EWCA Civ 933, David Richards J observing that the Court of Appeal had in each case emphasised that the "award of interest under this paragraph is principally to compensate the successful party for the non-financial costs in taking a case to trial, including stress, time, inconvenience and so on".

11. David Richards J went on at [49] to observe that in ***Petrotrade*** Lord Woolf noted that "the amount of the claim is a relevant factor", saying that "if a claim is small, enhanced interest has to be at a higher rate than if the claim is large because the additional advantage for the claimant will not otherwise be achieved".

12. David Richards J noted that in ***Petrotrade*** the sum involved was neither particularly large nor a particularly modest amount, amounting to some £125,000, and the approach of the court in that case was that an uplift of 4% above base rate was appropriate.

13. Then, referring to ***Greenwich Millennium*** and Coulson J's decision to likewise award 4% over base rate, David Richards J went on to describe the amount at issue in the case before him as being "in the context of litigation here [a reference to the Rolls Building] a middling amount". He observed that it was "a great deal less than many rewards made in the Chancery Division but it is certainly more than a modest amount". He therefore concluded, as he explained at [51] and later at [59], that he too should award an uplift of 4% above base rate.

14. Mr Valentin submits that this is a case in which the Republic's borrowing costs are irrelevant, given that the guidance referred to at [48] of David Richards' judgment by reference to ***Petrotrade*** and ***McPhilemy*** suggests that this jurisdiction is concerned with compensation for the successful party for non-financial costs and, in those circumstances, to look to what the Republic would pay to borrow is an irrelevant consideration. I tend to agree.

15. Ms Prevezer submits nonetheless that it is a relevant factor, bearing in mind that in effect the Republic has avoided having to borrow the money to replace the money that has now been found to be due to the claimants. I see some strength in that submission, but ultimately I am not persuaded that it displaces the approach which seems to be implicit in CPR 17(4)(a), namely that what is being looked at is compensation for what the successful claimant has somehow suffered, indeed in a non-financial way so it would appear.

16. I am not therefore persuaded that it is appropriate to have regard to the Euribor plus 7.34% borrowing costs which Ms Prevezer primarily proposes. The question is whether, in the circumstances, it is appropriate to apply the 4% uplift that attracted Coulson J in ***Greenwich Millennium*** and David Richards J in ***Barnett*** and indeed the Court of Appeal in ***Petrotrade***.

17. Mr Valentin submits that, given the vast difference in the amount which I have awarded to the claimants in this case, when compared with the very much more modest amounts in the cases which I have described, it would be wrong to slavishly follow the 4% uplift approach. Ms Prevezer, in contrast, observes that it cannot be right or fair that, simply because a claim is so much bigger, it is to be regarded as inappropriate to award a rate of 4%.

18. Here it seems to me I have a broad discretion. There is unlikely to be an entirely right answer, or an entirely wrong answer. Doing the best I can, however, I am persuaded that there is something in Mr Valentin's submission and that therefore 4% would be too much. However, I am not persuaded that it would be appropriate to go as low as he proposes, which is to say that the uplift should be a mere 1% or, as he puts it, “at most” 2%. I arrive, therefore, at an uplift of 3%.

19. **Epiq Europe Ltd** hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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