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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 1426 (Comm)

Before
MR JUSTICE PICKEN
BETWEEN:

(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

RULING
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1. **MR JUSTICE PICKEN:** I am now dealing with the uplift for the purposes of CPR 36.17(4)(a) in respect not of the payment amount for reference year 2013 (I have addressed that already), but in respect of the orders for specific performance in relation to reference years starting with 2014.
2. I remind myself that the draft order, which I have been presented with and which we have already resolved, provides at paragraph 20(b)(iii) that, where the payment conditions are met and a payment amount is due, the Republic should make a payment. The draft order then goes on in sub-paragraph (iv) to say that the Republic should then pay interest on such a payment at a rate of 2% above Euribor and so on, consistent with [263] of my judgment.
3. Notwithstanding those references, Mr Valentin has taken me to the Particulars of Claim and has suggested, somewhat belatedly, the point not having been raised previously, that the claimants cannot now seek to recover the uplift by way of interest because there is no pleaded claim for interest.
4. That is a bad point. The pleadings demonstrate that there was a claim for interest. The fact that that claim for interest in the prayer comes before the reference to the claim for specific performance I consider to be neither here nor there. The fact that it is neither here nor there is further borne out when reference is made to the Claim Form, which refers in sub-paragraph (iv) to a claim being made for "interest on any damages and/or other sums awarded to the claimants pursuant to Section 35(a) of the Senior Courts Act 1981".
5. But the lack of attraction to the point is perhaps most amply demonstrated by what I have read from the draft order, namely an acceptance on the part of the Republic that interest is indeed due. If there was a pleading point properly to be taken, it is surprising that the draft order contains express acceptance of the obligation to pay interest and it is surprising also that the point has not been taken earlier, including at trial, when the point was not taken either.
6. So much for the pleading point.

7. Mr Valentin, also, however, takes what might be described as a jurisdictional point by reference to the wording of CPR 36.17(4)(a) itself. He highlights how that provision refers to the claimant being entitled to "interest on the whole or part of any sum of money excluding interest awarded" He says that, in circumstances where what has been sought is specific performance, it cannot rightly be said that the court has, as a result, awarded any sum of money to be paid.
8. The short answer to that point, despite its ingenuity, is that the draft order involves, as I have explained by reciting it, an obligation to specifically perform, which includes an obligation to pay a payment amount if, as a result of the specific performance tasks, a payment amount is found to be due.
9. The order therefore contains an award for the payment of a sum and so it seems to me that the case comes squarely within CPR 36.17(4)(a).
10. If I had had to approach the matter on the basis that the order only referred to an obligation to specifically perform and did not refer in terms to an obligation to make payment of a payment amount, I would have been reluctant, even then, to have acceded to Mr Valentin's submission, although it is plain to me that the intention and import of CPR 36.17(4)(a) is to achieve a sensible position in relation to the consideration of Part 36 offers, to accept or not to accept, and if not to accept, then to suffer the consequences, including in this context the award of an uplift of interest.
11. But I do not found my decision on this basis, because as I say, the order I have made, therefore the award I am making, involves the payment of a sum and it follows from that that the uplift is appropriate.

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