



Neutral Citation Number: [2023] EWHC 145 (Comm)

Case No: CL-2020-000796

**IN THE HIGH COURT OF JUSTICE**  
**KING'S BENCH DIVISION**  
**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**  
**COMMERCIAL COURT**

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

Date: 27/01/2023

**Before :**

**CHRISTOPHER HANCOCK KC**

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**Between :**

<b>NAVIG8 CHEMICALS POOL INC</b>	<b><u>Claimant</u></b>
<b>- and -</b>	
<b>AETURNUM ENERGY INTERNATIONAL PTE LTD</b>	<b><u>Defendant</u></b>

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**JUDGMENT ON CONSEQUENTIAL MATTERS**

**This judgment was handed down by the Judge remotely by circulation to the parties' representatives by email and release to The National Archives. The date and time for hand-down is deemed to be 10:30 on Friday 27<sup>th</sup> January 2023.**

**Christopher Hancock KC (sitting as a judge of the high court) :**

1. I deal in this judgment with the following matters:
  - a. Costs.
  - b. The form of the order.
  - c. The release of the cross undertaking.

*Costs*

2. The Claimant submits that it has been the successful party in these proceedings, and that accordingly there is no reason to depart from the general rule in CPR r. 44.2(2)(a) that the unsuccessful party (here the Defendant) will be ordered to pay the costs of the successful party. I accept that submission.
3. The Commercial Court Guide (“CCG”) provides in relation to Trials at **J 13.2** that “*the summary assessment procedure provided for in CPR Part 44 and PD 44 also applies to trials lasting one day or less.*” The trial in the present proceedings was set down for one day on 9 November 2021 and lasted a little less than half a day. By the 22 December Order, the proceedings were adjourned, and a further hearing of the Claimant’s claim for declaratory relief was subsequently listed for half a day on 9 December 2022 and lasted for about one hour. The Claimant submits that it follows that summary assessment is appropriate in the present case. Again, I agree with this.
4. Next, the Claimant submits that I should assess costs on the indemnity basis. Essentially, the reason for that submission is that I ordered costs to be paid on the indemnity basis at the last hearing, because the Defendant had chosen to disengage with the proceedings and, the Claimant said, that remained the case.
5. However, in this regard, I do not accept the Claimant’s submissions, although I think that this, in the event, makes no real difference to the outcome. Whilst engaging and then choosing to disengage is, in my view, unreasonable, the continued disengagement does not justify a further award of indemnity costs. However, what the lack of engagement has meant is that the Claimant has been put to extra cost in order to keep track of what was happening in Singapore and in order to inform the Court of this. It follows, in my view, that the reasonable costs of taking these steps is recoverable.
6. I turn therefore to the quantum of costs, which since the trial on 9 November 2021 is £46,697.50<sup>1</sup>. The Claimant submitted that this is a reasonable and proportionate total having regard to (i) the complexity of the litigation (including its interconnectedness with parallel proceedings in Singapore; viz. the Arrest Proceedings and the Defendant’s insolvency proceedings), (ii) the value of the non-monetary relief in issue in the proceedings, and (iii) the additional work generated by the Defendant’s disengagement from the proceedings.

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<sup>1</sup> The Claimant does not claim its costs of participating in the Defendant’s liquidation and/or following the Arrest Proceedings even though they have been incurred as a consequence of the Defendant’s breach of its obligations under the LOI. The total costs incurred up to the date of the judgment are of the order of £66,000.

7. The Claimant pointed out that when the Claimant's costs of the proceedings were assessed following the trial, the claimed costs were £161,496.30, which was approximately £150,000 less than the Approved Budget lodged by way of amended Precedent H dated 14 May 2021. Once allowances were made for the abridged trial estimate and fact that expert evidence was not required, it was still approximately £100,000 less than the budgeted costs. Accordingly, even though the Claimant has incurred a further £46,697.50 in the proceedings over the preceding year dealing with its adjourned claim for declaratory relief, its costs remain substantially under budget.
8. The Claimant also pointed out that the bulk of the work at HFW was performed by a newly qualified solicitor, Rebekah Halkett (Grade D), under the supervision of a single Partner of the firm, Michael Ritter (Grade A), with some support from various other trainee solicitors and paralegals (Grade D), as well as the necessary input of costs draftsmen. The hourly rates charged are appropriate for a "London 1" firm of HFW's standing.
9. The Claimant also sought to recover Counsel's fees incurred in the proceedings since the trial on 9 November 2021 as these did not form part of the Claimant's costs assessed previously by the Court. I have been provided with a detailed narrative of these various costs.
10. I have concluded that, taking all of the above into account, the costs claimed are both reasonable and proportionate. Accordingly, I summarily assess the costs of this further hearing at £46,697.50, ie the full sum claimed.

*The form of the Order*

11. The Claimant has inserted some additional wording in paragraph 1 of the draft order so that it differed slightly from the declaratory relief claimed at paragraph 20(1) of the Amended Particulars of Claim. It was explained that this was intended to take account of the fact that matters have moved on since the claim was pleaded. In particular, the facts that:
  - a. There has now been a judgment in the Arrest Proceedings that determines that the Head Owners are liable for the misdelivery of the cargo, with damages to be assessed.
  - b. A finalised judgment of the Singapore Court for an ascertained amount will be forthcoming this year; and
  - c. In the words of the Court, it is "*overwhelmingly likely*" that a claim for the amount of that judgment will be passed on by Head Owners to the Claimant.
12. It follows that the *nature* of the liability in respect of which the Claimant will seek to be indemnified by the Defendant is now known: it will be such sums the Claimant is obliged to pay Head Owners in respect of their liability to ING in the Arrest Proceedings. All that is unknown is the quantum of those sums. I accept the submission that the Court's order should reflect this, particularly because an order in these specific terms is more likely to enable the Claimant to submit an acceptable proof of debt in Singapore following payment to Head Owners of the ascertained sums, thereby avoiding the need to trouble this

Court again, which was a central reason for my conclusion that the declaratory relief had utility.

*Release of the Claimant's cross-undertaking in damages*

13. In return for the Court granting the interim injunction, the Claimant gave the usual cross-undertaking in damages, fortified by the payment of USD100,000 into HFW's USD client account, as set out in Schedule A to the Court's Orders dated 9 and 18 December 2020. That security sum remains in HFW's client account and the cross-undertaking remains in place.
14. Following the trial in these proceedings, the Claimant was granted a final mandatory injunction under the 22 December Order. That final order has not been appealed, and the time for doing so is long past. It follows that there is no need for the cross-undertaking in damages. The Claimant has succeeded, and the final injunction is the relief to which it has been adjudged entitled: Fenner v Wilson [1893] 2 Ch. 656. That cross undertaking should therefore be released along with the sum in HFW's client account, and I so order.