



Case No: CL-2022-000307

Neutral Citation Number: [2023] EWHC 2448 (Comm)

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

The Rolls Building
7 Rolls Building
Fetter Lane
London EC4A 1NL

Monday, 10 July 2023

BEFORE:

MR JUSTICE BRIGHT

BETWEEN:

THE CZECH REPUBLIC

Claimant

- and -

(1) DIAG HUMAN SE
(2) JOSEF STAVA

Defendants

MR BASTIN KC (instructed Arnold & Porter LLP) appeared on behalf of the Claimant
MR RICHES KC (instructed by Mishcon de Reya LLP) appeared on behalf of the
Defendants

JUDGMENT
(Approved)

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1. MR JUSTICE BRIGHT: I am going to deal with costs summarily, it seems to me wasteful not to. That means applying a broad brush, as cliché has it, but that is a tool judges are well used to using.
2. I am happy that the defendants won on security for costs, albeit losing on security for the award. In relation to security for costs, the defendants have actually come away more secured than they hoped to because they had an undertaking which Mr Bastin would presumably would say, and I certainly accept, is as good as money but which is unlimited in value. That should be of some comfort to the defendants.
3. So in a sense, it is a one all draw. The defendants' costs are, according to their statement, much higher than the claimants', but I regard the defendants' costs as absurdly high, as I suggested in fact in my judgment, even in relation to the costs of this application. If it had been necessary to go into the detail of the amounts on each side, the upshot would have been that I would have assessed the reasonable costs on both sides as approximately the same.
4. I would also say that as regards the split between security for costs and the application for security for the award, I do regard a 50/50 split as about fair. Much more time was spent on security for costs in submissions, much more reading time was spent on security for the award by me preparing, and I am sure by the claimant as well, but the reality is that there is a reasonably substantial factual overlap. Many of the submissions Mr Riches made to me in the course of the hearing to do with previous conduct on the part of the claimant, as the defendants saw it, were then adopted by Mr Green in the context of his application for security of award. So I think a 50/50 split is probably fair.
5. All of that having been said, if other things were equal, I would therefore regard costs on one side as balancing out costs on the other side, but I do not regard all things being equal. That is for two reasons.
6. The first is that the submissions made to me in the context of security for the award were, in my view, substantially wrong on some important factual matters. Specifically, two things have been highlighted to me by Mr Bastin, but I have to admit they would

have been working on my mind in any event. One is in relation to the effect of the judgment of Mr Justice Burton, and the other is in relation to the position in respect of costs in Luxembourg: submissions were made to me which were simply unjustifiable on the facts and in my view they should not have been made.

7. The second factor that has been working on me is that I agree with Mr Bastin that the application for costs for security of the award is one that should not have been made. Mr Riches puts a brave face on things, but it did not escape my attention at the hearing that before me, having been reminded of the amount of time available and the allocation that was necessary, the defendants chose – I assume deliberately – to allocate nearly all of their time to the application for security for costs and hardly any of it to the application for security for the award. I am certain, albeit this is only an inference, that that is because they had concluded that one had some prospect of succeeding and the other very little.
8. I don't know when that view might have been come to or what advice might have been given, but it seems to me that that was a view that should and could have been reached, and advice that should have been given, and possibly was given, long before the hearing started. So it does seem to me that it was a doomed application.
9. For those two reasons, it seems to me that in fact the needle swings in favour of the claimants in terms of costs. I have to deal with this in a rough and ready way. On that basis, I am going to order that the defendants pay £50,000 to the claimants, which seems to me to be about as fair an assessment as I can come to, given the information I have.
10. So now I will briefly hear submissions on how long there should be for payment of that not very enormous sum.

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Unit 1 Blenheim Court, Beaufort Business Park, Bristol BS32 4NE

Email: civil@epiqglobal.co.uk

This transcript has been approved by the Judge