IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
OF ENGLAND AND WALES
LONDON CIRCUIT COMMERCIAL
COURT (QBD)

No.LM-2022-000018

Neutral Citation Number: [2022] EWHC 799 (Comm)

Rolls Building

Friday, 25 February 2022

Before:

HIS HONOUR JUDGE PELLING QC
Sitting as a Judge of the High Court

B E T W E E N :

CHISWICK INTERNATIONAL
HOLDINGS LIMITED — Claimant/Respondent

- and -

OAKVEST LIMITED & Ors — Defendant/Applicant

MR F. CAMPBELL (of Counsel) appeared on behalf of the Claimant/Respondent.

MR D. PETERS (of Counsel) appeared on behalf of the Third Defendant/Applicant.

J U D G M E N T

(v i a M S T e a m s)

JUDGE PELLING:

1 The issue I now have to resolve concerns the cost of and occasioned by an application for security.

2 The circumstances leading to this particular hearing are as follows: These proceedings having been commenced, on 29 December 2021 the third defendant issued an application seeking security for costs, having first requested security earlier in the autumn of 2021, towards the end of September of that year.

3 What happened thereafter was that there was a debate between the parties in which it was suggested on behalf of the third defendant that the application was one which should be withdrawn and/or that it was premature. In the event, the third defendant having pressed its application, on 11 February 2022 the claimant indicated that it was willing in principle to provide appropriate security by reference then to an approved costs budget. What was offered an after the event policy, with a letter of indemnity offered by the after the event insurer, which was to stand in lieu of security.

4 Thereafter, there was a debate between the parties concerning whether or not those who were proposing to sign the relevant documentation had authority to do so. The Deed of Indemnity that was proffered in lieu of security by the claimant was a document which it was intended should be signed on behalf of RenaissanceRe Syndicate 1458, a Lloyds insurance syndicate, by Global Litigation Limited as the Lloyds coverholder and managing general agent under a coverholder binding authority, the number of which I need not refer to but which appears on the Register at Lloyds.

5 There followed then a debate as to the ability of Global Litigation Limited to execute the Deed of Indemnity on behalf of the underwriter. There were queries raised by the third defendant's solicitors which are addressed in correspondence generally but was the subject of an email on 11 February 2022. That required first of all confirmation of the identity of the proposed insurer, it being asserted that RenaissanceRe Syndicate 1458 was not a registered entity and syndicates do not have legal personality to enter contracts of insurance. That was a profoundly bad point, with great respect. Lloyds have conducted insurance business for hundreds of years using unincorporated syndicates as the insurers, such syndicates being groups. Unincorporated associations of individuals execute the policies of insurance that are entered into in their name either by their professional underwriter who represents the syndicate at Lloyds or by cover holders, or by a general managing agent as an alternative. The notion that the syndicate is not then bound as an insurer cuts to the heart of a syndicated insurance market such as Lloyds and is as I have said wrong.

6 There was then a specific request that the claimant provide the coverholder binding authority agreement referred to in the body of the documentation that had been supplied as to which the response – perhaps unsurprisingly – from the claimant's solicitors was as follows:

> "Global have no intention of providing their binding authority agreement which is a commercially sensitive agreement between RenaissanceRe Syndicate 1458 and Global Litigation Limited. A search of Lloyds website will confirm that Global Litigation Limited is an approved and authorised Lloyds coverholder and is approved and authorised by the FCA … Mark Rhoder is the Chief Executive Officer and has been approved as an individual person for many years. To suggest that Global

> Litigation would, as an approved business and managing general agent of RenaissanceRe Syndicate 1458 hold itself out as being able to bind its principal when it does not hold that authority is ludicrous. Global is regulated and obviously so if you search the FCA Register. Third parties are entitled to rely upon it. Global Litigation Limited has terms of business agreements with it leading international brokers of significant repute who are not going to deal with Global if it does not hold the binding authority of its principals".

7 Thereafter, there was further debate between the parties until ultimately, yesterday afternoon, the claimant provided the insurance documentation including principally the Deed of Indemnity which was executed in precisely the draft form that was provided on 11 February and which had been the subject of the debate in correspondence that I am referred to. The third defendant has indicated that he is prepared to accept the Deed of Indemnity in lieu of security and rightly so.

8 The question which remains is how the costs of and occasioned by the security application should be resolved.

9 The third defendant submits that it should have the whole of the costs of and occasioned by the application since it was only yesterday afternoon that a signed document was provided, and it was only then that it could be satisfied that security had been provided. The claimant submits that the correct order in the circumstances is costs in the case down to 11 February and either no order as to costs or perhaps that it should recover its own costs thereafter because of conduct on behalf of the third defendant which was entirely unacceptable.

10 Each court facing an application for costs must decide first who is the successful party and who is not. So far as that is concerned it is plain that the applicant in the circumstances of this case has been successful. It had sought security from the end of September last year. Security had been refused. An application for security was then issued and has succeeded in the event. Therefore in principle it is the successful party and ought in principle to recover its costs of having to issue that application.

11 Some criticism is made of the fact that the application was issued between Christmas and the New Year. There are circumstances in which quite significant criticism can be advanced of parties who issue applications in that period, particularly if there is as a result a very early hearing of the application in circumstances where the respondent to the application has no realistic opportunity of responding to it. That, however, is not this case, as is apparent from the fact that this hearing is taking place on 25 February. Therefore, and in those circumstances, I am entirely satisfied that the applicant should recover its costs down to 11 February.

12 The issue which then arises is whether or not it should recover its costs thereafter. So far as that is concerned, had the applicant accepted as it now has accepted that Mr Rhoder was fully entitled to sign the Deed of Indemnity on behalf of RenaissanceRe Syndicate 1458, on or shortly after 11 February, then much of the cost of this inevitably very expensive application could have been avoided. By the same token I accept the point that it was always open to the respondent to the application (claimant) to do what it did yesterday afternoon which was unilaterally to tender the Deed of Indemnity signed in the way it had been proposed.

13 I consider that the objections that were advanced and the points which were advanced in relation to what was being offered are, to put it no higher, surprising and particularly surprising when they come from an experienced firm of commercial solicitors, well experienced in the conduct of commercial litigation. However, I accept that what might take this slightly outside the general run of Lloyds Insurance business is that what was being signed was a Deed of Indemnity under the policy.

14 In those circumstances, it is necessary to decide how best to dispose of this application. Inevitably, in approaching that question the various alternatives are all imperfect in the outcome.

15 As I have said, I am entirely satisfied that the applicant should have its costs down to 11 February and perhaps two or three days after that in order to digest the documentation. I consider that the appropriate course in relation to the costs that follow thereafter is that which I suggested in the reply submissions, that is to say that the costs should be costs in the case. As I have said, what takes this case slightly away from what would otherwise be a very clear position is that what was being offered for signature was a Deed of Indemnity rather than a policy, and I accept that there are various different ways in which after the event insurance can be made available in lieu of a security application.

16 I am satisfied that an order for costs in those terms represents a fair solution to an unattractive position, and subject to any further submissions concerning the timing around 11 February, I propose to direct that the successful claimant should recover its costs down to 15 February and that costs of this application thereafter should be costs in the case.

CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

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