IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURT
OF ENGLAND AND WALES
COMMERCIAL COURT (KBD)

No. CL-2023-000620

[2023] EWHC 3449 (Comm)

Rolls Building
Fetter Lane
London, EC4A 1NL

Tuesday, 19 December 2023

Before:

HIS HONOUR JUDGE PELLING KC
(Sitting as a Judge of the High Court)

B E T W E E N :

CUPREUS SARL

Claimant/Applicant

- and-

WHITESHELL GROUP LTD

Defendant/Respondent

-

MR M GREGOIRE (instructed by Pinsent Masons LLP) appeared on behalf of the Claimant/Applicant.

MISS Z O'SULLIVAN KC (instructed by Norton Rose Fulbright LLP) appeared on behalf of Defendant/Respondent.

J U D G M E N T

(Via Microsoft Teams)

JUDGE PELLING:

1 This is the hearing of an application by the claimant ("Cupreus") for an order continuing an order I made, without notice, on 29 September 2023 by which I restrained the defendant and respondent ("Whiteshell") from pursuing or taking any further steps in proceedings commenced by it before the Rabat Commercial Court in Morocco, bearing the numbers 2/8516/2023, 3/8516/2023 and 919/8103/2023, until after today's hearing. The application is opposed by Whiteshell on the basis that, on proper analysis, the court has no jurisdiction over the defendant, since, on its proper construction, the arbitration agreement on which it relies is of no application to the claims in Morocco and the order sought is not one that should be made in in relation to proceedings not coming within the scope of the arbitration agreement. Whiteshell also maintains that the order should not be continued because of what it maintains is a material non-disclosure. I return to that issue at the end of this judgment to the extent it is necessary to do so.

2 The relevant factual background is straightforward. Cupreus entered into a contract with Whiteshell by which Cupreus agreed to supply copper to Whiteshell for which Whiteshell agreed to make advance payments ("supply agreement"). Cupreus is a Morocco registered company and Whiteshell is a BVI registered company; neither has any connection with England and Wales, other than that established by the governing law in arbitration agreements embedded within the supply agreement at clauses 15 to 16. Clauses 15 to 16 of the supply agreement, respectively, provide as follows:

> "15. Governing law: Dispute Resolution
> This Agreement will be governed by and construed in accordance with the laws of England and Wales. Any dispute between the parties regarding, relating to or arising out of this Agreement will be submitted in the first instance to the designated employees of the respective parties who will meet in good faith to resolve the dispute within seven days of the request of any party. If the case is not resolved, the dispute will be submitted to the general managers of the parties for resolution within an additional seven days after this referral, failing which the case will be finally resolved by arbitration. The arbitration will be conducted under the auspices, rules and regulations of the London Metal Exchange, which rules are deemed to be incorporated by reference into this clause. The Arbitration Tribunal will be composed of three Arbitrators, the place of arbitration will be London, England, and the language will be English. The Arbitrators will not have the power to award damages in violation of clause 20 (limitation of damages). This referral arbitration clause is deemed accepted by both parties.
>
> 16. Jurisdiction and Construction
> This contract shall be construed in accordance with the laws of England and London Court shall have jurisdiction. This Agreement and any questions of law arising during the course of arbitration proceedings shall be constructed in accordance with the laws of England, subject to compliance with Article 15 hereof."

The supply agreement is a personal agreement between the parties with the contract expressly prohibiting assignment, other than with the express consent of the other party.

3 The recitals to the supply agreement recorded an undertaking by Cupreus to provide Whiteshell with some "*Real and personal guarantee as to guarantee the fulfilment of its obligations ... under the purchase contract*." Security is further addressed at clause 9.1 of the supply agreement and consisted of a personal guarantee by Mr Lamdouar and what is described as a real estate mortgage of two parcels of land located in Morocco. The mortgagor, under each of the mortgages, was a third-party landowner and Whiteshell was identified as the beneficiary mortgagee. Each of the relevant mortgages contained an acknowledgement by the parties to the mortgage that the mortgages were being provided "*… as security for the payment of the guaranteed obligations when due under the …*" supply agreement.

4 Article 4 provided that the security was security for the payment of all sums for which Cupreus became liable to Whiteshell under the supply agreement. Cupreus was, or at any rate appears to be, a party to each mortgage, not least because they are signed expressly on its behalf by Mr Lamdouar. Each mortgage appears to be in similar terms insofar as is material.

5 A dispute has developed between Cupreus and Whiteshell. The details do not matter other than to say that Whiteshell alleges Cupreus is liable to it in a sum totalling about US $3 million and Cupreus denies that is so. Cupreus alleges, and Whiteshell does not deny that this dispute is one which is required to be resolved by reference to arbitration under the arbitration agreement embedded in the supply agreement.

6 Notwithstanding this dispute, Whiteshell commenced proceedings in Morocco by reference to the mortgages ("Moroccan proceedings"). The Moroccan proceedings were initially commenced against the mortgagors and Cupreus by Whiteshell. In the proceedings, as they were initially constituted, Whiteshell sought an interim order appointing

> "a chartered accountant to carry out an expert accountancy to determine the value of the royalties due by Cupreus in favour of Whiteshell under the terms of the commercial import/export contract drawn up in English entitled 'Acquisition Contract' dated 9 July 2021, including the value of the payments made by the applicant in its favour, as well as the profits it has committed itself to without honouring its obligations."

and

> "ordering the expert to prepare a report for reference where necessary."

Cupreus asked the Moroccan court to appoint an accountant, in essence to determine the state of account between the parties by valuing Cupreus' claim against Whiteshell and Whiteshell's claim against Cupreus and an order to that effect was made that expressly stated it to be "*without touching the merits*."

7 The expert appointed by the Moroccan court concluded that there was a net balance due to Whiteshell of about US $3.19 million assuming both claims succeeded in full. Cupreus maintains that what should then have happened was that the issues of liability between the parties should have been referred to arbitration to resolve those issues. Miss O'Sullivan KC, who appears on behalf of Whiteshell, makes the point that, notwithstanding that it is Cupreus' case that the liability issue should have been referred to arbitration, in fact, it has

made no attempt to refer that dispute to arbitration and maintains that that is material to this application. I note that no attempt was made by Whiteshell to refer the dispute to arbitration either, even though, apparently, it is the one claiming to be entitled to recover in excess of $3 million.

8 In fact, what happened next was that Whiteshell initiated proceedings in the Moroccan court to enforce the payment of the sum found due as a matter of accounting by the expert appointed by the Moroccan court, even though the judge making that appointment had apparently directed that the accounting was to be without prejudice to the merits of the dispute. Although it is difficult to be certain, it would appear that the purpose of the accounting exercise was to resolve the quantum issues between the parties before turning to the liability issues.

9 In February and March 2023, various orders appear to have been made by the Moroccan court for the seizure of the land the subject of the mortgages and for the fixing of a price for which the land was to be offered for sale by public auction. In April 2023, Cupreus alleged in formal correspondence that the proceedings commenced before the Moroccan court for orders to this effect were commenced in breach of the arbitration agreement. The current state of proceedings in Morocco is that the expert appointed to fix the price has reported on the price question and the next step will be for Whiteshell to apply to the Moroccon court for an order fixing a date for the public auction of the land concerned.

10 It was against that background that Cupreus applied, without notice, for the order that I made on 29 September 2023, which restrained Whiteshell from taking any further steps in the Moroccan proceedings until after the return date.

11 On 24 November 2023, Whiteshell issued an application for an order discharging the without notice order. Aside from the non-disclosure and fair presentation issues, to which I alluded at the start of this judgment, the application was made on the basis that either the court had no jurisdiction to make the order sought or, if it had jurisdiction, I ought not to have granted the order sought as a matter of discretion. Following completion of the argument, I adjourned this application and Cupreus' application for a continuation of the order until today for the purpose of giving this judgment.

12 Miss O'Sullivan's principal submission is that the mortgages are not subject to any arbitration agreement and are between parties, in addition to or other than Cupreus and Whiteshell. She submits that, since the claims are concerned with real estate located in Morocco, the only court that can or should resolve any dispute concerning that land should be the Moroccan court. She submits, therefore, that it cannot be alleged that the Moroccan claims have been brought in breach of the relevant arbitration agreement. She submits that the proceedings in Morocco are against non-parties to the arbitration agreement. In relation to this last point, whilst the position is not entirely clear, it would appear that Cupreus and Whiteshell are parties to the Moroccan proceedings, although, inevitably, so are the mortgagors, thus I would accept that the proceedings in Morocco are against both Cupreus and the mortgagors, though not against the mortgagors, exclusively.

13 Miss O'Sullivan submitted that different principles apply, where an anti-suit injunction is sought in respect of proceedings brought against a non-party to either an exclusive jurisdiction or arbitration agreement, applying principles set out in the first instance decision in Clearlake Shipping PTA Ltd v. Xiang Da Cl [2019] EWHC 2284 (Comm). In that case, the judge identified two principal bases on which an anti-suit injunction could be sought,

being (a) that the foreign proceedings constitute a breach, in that case, of an exclusive jurisdiction clause or, on similar principles, an arbitration agreement, or (b) on the basis that the foreign proceedings are otherwise vexatious or oppressive. The issue that arose in that case, as summarised in para.20 of the judgment, was the extent to which an exclusive jurisdiction clause in an agreement between A and B can be enforced by B against A by anti-suit injunction to prevent A continuing tort proceedings against C. The judge concluded that (1) as a matter of construction, whether the jurisdiction clause extended to cover the proceedings brought against the third party was a matter to be resolved applying English law construction principles; (2) if, as a matter of construction, the relevant clause applies, then the contractual basis for seeking an anti-suit injunction applies and, as a result, such an injunction will generally be granted unless there are strong reasons not to do so; but (3), if it does not, then the existence in that case of an exclusive jurisdiction clause may be a relevant factor in granting one of the contracted parties, here Cupreus, an anti-suit injunction against the other, in this case, Whiteshell, on the basis that the foreign proceedings are vexatious and oppressive.

14 The decision in Clearlake (ibid.) was concerned with an exclusive jurisdiction rather than an arbitration agreement. Whilst there are some differences of principle, for present purposes the principles appear to apply with equal force where an anti-suit injunction is sought by reference to either an exclusive jurisdiction clause or an arbitration agreement. As to the construction of the arbitration agreement, the very well-established English law principles of construction apply. They have been summarised in numerous cases over the years and now is not the place or time to set them out again in detail. However, in particular, it is necessary to read the arbitration provision as a whole and in the context set by, and by reference to all of, the terms of the purchase agreement in which it is embedded or for the purposes of asking what the clause would have meant to reasonable people having all the relevant background knowledge reasonably available to both parties at the time the contract was made.

15 In this case, as I have noted, the purchase contract contemplated that Cupreus would procure the grant by the mortgagors of the mortgages. Each mortgage was signed, in one case, on both 9 July and 29 July 2021, by and on behalf of Whiteshell, Cupreus and the mortgagors, and the other appears to have been signed only on 29 July 2021, but the purchase contract was entered into on 9 July 2021 on the basis of a joint understanding that both mortgages would be granted. The purchase agreement expressly acknowledged that the purpose of the mortgages, which as I have explained, were described in the purchase agreement as "*real guarantees*", were to guarantee the fulfilment by Cupreus of its obligations under the purchase agreement. The arbitration agreement itself expressly refers to it applying to any dispute between the parties to the purchase agreement. Although Miss O'Sullivan put considerable emphasis on the inclusion of this phrase in the arbitration agreement, to my mind it adds relatively little, since, generally, an arbitration agreement can, by definition, only apply to disputes between those who are parties to it and, generally, in a contract like the purchase agreement, the parties to the arbitration agreement will be the parties to the substantive agreement and no others.

16 The purchase agreement contains a sole agreement provision at clause 20. It applies, however. "*without prejudice to the terms and conditions of the guarantees*", which includes the mortgages granted by Cupreus to Whiteshell.

17 In my judgment, the purchase agreement is to be construed as forming part of the network of agreements of which the mortgages formed part or, at any rate, on the basis that the parties

clearly contemplated entering into the mortgages in the terms eventually entered into. As I have said, both Cupreus and Whiteshell are, at least realistically arguably, parties to the mortgages since both are signed on its behalf, and both mortgages were expressed to be granted as security for the performance by Cupreus of its obligations under the purchase agreement, principally to pay sums, if any, due under it.

18 I agree with, and accept, Miss O'Sullivan's submission that the arbitration agreement in this case applies to any disputes between Cupreus and Whiteshell and does not apply to claims, by either against the mortgagors. However, I accept (indeed it is not in dispute) that the mortgages are enforceable only in respect of sums due under the purchase agreement from Cupreus to Whiteshell that have not been paid: a point expressly accepted by the Moroccan expert lawyer retained by Whiteshell to give evidence in this case - see para.13(b) of his report. This is common ground as is apparent from the opinion of the Moroccan expert lawyer retained by Cupreus - see para.13 of her second report. In my judgment, whether or not Whiteshell is entitled to initiate enforcement proceedings under the mortgages is a dispute between it and Cupreus that comes squarely within the scope of the arbitration agreement. The parties have agreed that whether a debt or other sum has fallen due, if disputed, shall be resolved in accordance with the arbitration agreement. It is at least realistically arguable that, to seek to enforce the mortgage, where the debt is in dispute, is a breach both of the arbitration agreement and/or the express or implied terms of the substantive agreement, because it was expressly agreed that the guarantees, including, therefore, the mortgages, were to be obtained or procured by Cupreus, exclusively for the purpose of guaranteeing the fulfilment by Cupreus of its obligations, including any obligations to pay sums due under the purchase agreement. That is so is apparent from simply looking at the purchase agreement - see, for example, the recital noted earlier - but it becomes all the more apparent when the terms of the mortgages are considered, as they must be, given that they were in contemplation of the parties to the purchase agreement at the time that agreement was entered into. .

19 Returning to the legal analysis set out above, the clause extends to any dispute between the parties as to whether Whiteshell is entitled to enforce the mortgages, if there is a dispute to that effect. To construe the agreement between the parties in any other way would be to defeat the agreement of the parties, because it would mean that a dispute as to whether any sum was, in reality, due from Cupreus would otherwise be resolved by the Moroccan court, notwithstanding the agreement of the parties that it would be resolved by reference to arbitration, in accordance with the arbitration as set out in clause 15 of the purchase agreement. As I have already said, clause 15 expressly applies to "… *any dispute ... relating to or arising out of this Agreement* …" On that basis, the injunction was, as I conclude, correctly granted and Whiteshell's submission that Cupreus was guilty for material non-disclosure, by failing to refer to the case law applicable to claims against third parties, must necessarily fail. No question of a lack of personal jurisdiction would arise because, on any view, the question whether or not there is a sum due or owing from Cupreus to Whiteshell is one within the scope of the arbitration agreement. In those circumstances, it is not necessary for me to consider whether the English court would have jurisdiction to grant an anti-suit injunction other than on a contractual basis.

20 So far as that is concerned, however, I would conclude that it is vexatious, and obviously so, for Whiteshell to seek to enforce the mortgages in Morocco without first resolving whether there is a debt that is due and owing applying the arbitration agreement between the parties.

21 I do not agree with the proposition that Cupreus has lost the right to have its dispute with Whiteshell resolved by arbitration, because it has not referred the dispute to arbitration. The injunction is sought, under section 37 of the Senior Courts Act 1981, to enforce Whiteshell's negative promise not to bring foreign proceedings to resolve a dispute that it has agreed should be referred to arbitration. In any event, the point is without substance. If the position is, as Whiteshell apparently alleges, that it is owed in excess of $3 million, then it was it who ought, at least equally with Cupreus, to have commenced arbitration proceedings.

22 I do not accept that Cupreus is guilty of a want of fair presentation or a lack of full and frank disclosure by reference to the criminal proceedings in Morocco. First, the fact that criminal proceedings have been instituted was disclosed - see para.26 of Mr Gregoire's skeleton used at the without prejudice notice application; secondly, although he did not say in terms that it was alleged in those proceedings that Cupreus has fraudulently over valued the land, he did say that the basis of the allegation was that the value of the land had been overstated. In my judgment, it is difficult to see how it could be thought that the allegation was anything other than that the value had been dishonestly overstated, given that what was being disclosed arose in the context of criminal proceedings. Finally, and, in any event, the criminal proceedings are not material to the dispute I was, and am, considering.

23 In the result, I conclude that I should grant or continue the order sought by Cupreus and dismiss Whiteshell's application to discharge.

LATER

24 The issue I now have to determine is whether the costs of and occasioned by the application should be paid by the defendant on an indemnity or a standard basis. No one has suggested, and it is difficult to see how it could be suggested that the defendant, having lost, would not have to pay the costs, but the debate is whether the costs it must pay should be assessed on the standard or indemnity basis.

25 For these purposes, the claimant has taken me to some correspondence which has passed between the parties' respective solicitors prior to the hearing. The correspondence starts with a letter of 16 November from Norton Rose on behalf of the defendant, to Pinsent Masons on behalf of the claimant. At paras.2 and 3 of that letter, Norton Rose says as follows:

> "Having had an opportunity to discuss the matter with our client and considered the terms of the agreement, we are instructed that our client will not be applying for the discharge of the injunction and agrees to be subject to and bound by its terms until further order. In the circumstances, your client is invited to pursue its claims by way of arbitration without delay. As to your claim for 'a declaration that the arbitration clause contained in clause 15 … is validly incorporated into the contract dated 9 July 2021 … our client invites the claimant to withdraw this claim on the basis our client agrees that there is a valid arbitration clause within the purchase contract entered into by the parties and dated 9 July 2021'."

Pausing there, one could be forgiven for asking – indeed as I asked in the course of the argument – why it is that the better part of two hours or more was taken up in arguing whether or not an injunction should be continued, or not, in the light of this indication.

26 The correspondence which came in response to that came from Pinsent Masons in which they said, as follows,

> "1. We note that your client will not be applying for the discharge of the injunction and agrees to be subject to and bound by its terms on a permanent basis until further order.
>
> 2. We also note that your client agrees that the arbitration clause contained in clause 15 of the Purchase Contract entered into by the parties and dated 9 July 2021 is valid and binding upon it.
>
> 3 … in the circumstances … your client should bear the costs incurred by our client in that regard for an amount of £54,241.03 as of today's date.
>
> 4. Please confirm your agreement to the above and send us a draft consent order for your consideration."

27 The response to that from Norton Rose suggested that the appropriate order as to costs would be that there be no order as to costs and various reasons were set out as to why that was said to be appropriate. That was responded to by Pinsent Masons, who, at para.2 of the letter dated 22 November, expressed disagreement with all the points that were being made as to why there should be no order as to costs, culminating with para.4 of that letter in which Pinsent Masons said this,

> "In circumstances where your client has belatedly accepted, one, the valid and binding nature of the Arbitration Agreement and, two, that it should be subject to and bound by an injunction on a permanent basis until further order, our client's primary position remains that it is entitled to its costs in full. However, without prejudice to that position, with a view to settling this issue amicably, our clients are content to accept £45,000 in full and final settlement of its costs if this can be agreed without the need for a hearing."

28 There was then some inconsequential emails which I need not take up time describing, save to say that, by a letter of 1 December, Pinsent Masons asked Norton Rose to confirm their understanding that the defendant's position remains as set forth in the letter of 21 November. Then there came an email from Pinsent Masons of 5 December in which Pinsent Masons said on behalf of the claimant:

> "Whilst our client's primary position remains that it is entitled to its costs in full, without prejudice to that position and with a view to settling this issue amicably, our client is prepared to consent to the terms of the attached consent order."

The attached consent order sought, essentially, continuation of the injunction coupled with there being no order as to costs (see in that regard para.3 of the draft order attached to the letter).

29 That is all changed on 6 December 2023, however, when Norton Rose wrote to Pinsent Masons, in a letter uncaptioned, "*Without prejudice to costs*". There is then some history set out that I need not take up time describing, with a summary of the various proposals and counter proposals which were made, culminating at para.10 with this,

> "Our client is, however, prepared to agree that the terms of the injunction be varied as set out below and should remain in place until further order of the court, subject to your client agreeing to the following:
>
> (a) The injunction will not apply to case 38516/2023 and any other case which concerns the enforcement of the residential mortgage dated 29 July 2021 … Cupreus will pay legal costs and expenses incurred by Whiteshell from 16 November to 6 December which amounts to £$53,717.20."

30 No issue of principle is identified as to why it will be appropriate to exclude the residential mortgage from the scope of the injunction. Paragraph 10(a) of the letter appears to run entirely contrary to the indication given in the correspondence only a few days earlier. The instructions of the defendant were to consent to the continuation of the injunction and to acknowledge that the arbitration agreement was binding between the parties.

31 This leads to a submission, on behalf of the claimant, that they should have their costs of and occasioned by the application. As I have said, Miss O'Sullivan KC, on behalf of the defendant, does not oppose an order in those terms, acknowledging that she had an arguable case on the merits, that case was fought and lost and the normal consequence is, therefore, costs on the standard basis. She however submitted that assessment on the indemnity as opposed to the standard basis was not appropriate because the indemnity basis is about the conduct not merits. That is generally so, although there is some authority (see *Three Rovers,* the judgment of Tomlinson J, as he then was), which recognises that in some, admittedly, extreme circumstances, merits issues can be an appropriate basis for awarding indemnity costs. That said, I accept that, generally speaking, the test for whether indemnity costs should be awarded is whether or not the conduct of the paying party is to be regarded as outside the norm.

32 Down to the 5 or 6 December, when the without prejudice, save as to costs, letter is concerned, the correspondence disclosed what would one expect in most cases where an application for an anti-suit injunction was being made and there was a recognition on the part of the defendant as to the realities. There was an attempt to obtain agreement that there would be no order as to costs. That was initially resisted by Pinsent Masons, for fairly obvious reasons, but, in the interests of saving cost and inconvenience to all concerned, ultimately, Pinsent Masons were willing to agree no order as to costs - see the consent order that they drafted and attached to their letter.

33 Where, in my view, things passed from what I regard as the normal cut and thrust of English commercial litigation came on 6 December when Norton Rose sent their letter in which, for the first time, they indicated that their client was not prepared to be bound by the terms of the

injunction that had originally been granted, sought a carve-out in respect of the residential mortgage without identifying what the basis of that carve-out was and seeking itself to recover the legal costs and expenses of the proceedings to enforce the injunction.

34 I do not accept that it was unnecessary to commence these proceedings in the first place. If the proceedings had not been commenced, then the claimant would have been left vulnerable to the continuation of proceedings in Morocco and, ultimately, to the sale by public auction of all the land the subject of the mortgages. I do not accept that there was or is any basis for carving out an exception in relation to the residential mortgage and I note that that was not the basis on which the application was resisted even in the alternative to the points of general principle. Given, therefore, that it is accepted that the cost of the application must be paid by the defendant, albeit on the standard basis, it is difficult to see how the proposition that Cupreus should pay the legal costs of Whiteshell from 16 November to 6 December could be justified either.

35 In the result, a hearing took up the better part of half a day of valuable court time, at a time when the court was incredibly busy with applications which required to be resolved on their merits. The notion that half a day of court time should be taken up in arguing about an application which, at any rate at the outset, was conceded on instructions to be an appropriate application to have been made is taking things beyond the norm. Whilst I am prepared to accept, that the conduct of the parties down to 6 November was what was to be expected, I suppose, in the cut and thrust of commercial litigation, what came in the letter of 6 November certainly was not and that, in combination with the end result, leads me to conclude that the costs of this application should be paid by the defendant on a standard basis, save and except for costs incurred as and from 7 December 2023, which should be assessed on the standard basis.

LATER

36 This is a summary assessment of the claimant's costs of and occasioned by this application. I have already directed that the costs be assessed on an indemnity basis from and after 6 December last, for reasons I gave in the judgment delivered just a moment ago. Obviously, the schedule of costs has been prepared on the basis of all the costs incurred in relation to the application, so a degree of adjustment is required to take account of that fact.

37 Miss O'Sullivan KC, on behalf of the defendant, submits that I should take a broad-brush approach and that should lead to the conclusion that I should allow overall 70 per cent of the costs which are claimed by the claimant. I reject that submission, not because a broad-brush is inappropriate, on the contrary, broad brushes are very often appropriate on a summary assessment, but because an element of this has been awarded on an indemnity basis and 70 per cent overall would be appropriate in circumstances where I was assessing the costs on a standard basis throughout. In my judgment, therefore, there should be a split approach to the costs which are being claimed.

38 What I propose to do is to direct that the claimant should recover the sum of £2,100, which is attributable to attendance at the hearing on 15 December, the brief fee, as asked, in the sum of £7,000, being Mr Gregoire's brief fee for attending the hearing on the 15th, and in the schedule of work on documents, items 14 through to 18 should be recovered, likewise, as asked.

39 So far as the balance of the sums claimed, I do not regard this case as justifying an approach which is different from any more of the general run-of-the-mill commercial court applications

that are heard on a regular basis and anti-suit injunctions are indeed heard on a regular basis. Taking account of the fact that the hourly rates are in excess, albeit marginally in excess, of the guideline rates as they will apply from January 2024, taking account of the sort of adjustments which will generally be made when looking at work on a proportionality basis, I have come to the conclusion that the appropriate course would be to assess the balance of the costs, that is after allowing those which I have said specifically should be allowed in the figures I have identified, as 75 per cent of the total.

CERTIFICATE

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This transcript has been approved by the Judge.