



ADGM COURTS

سوق أبوظبي العالمي

28 November 2022 10:07 AM



In the name of
His Highness Sheikh Mohamed bin Zayed Al Nahyan
President of the United Arab Emirates/ Ruler of the Emirate of Abu Dhabi

ABU DHABI COMMERCIAL BANK PJSC
Claimant

and

PRASANTH MANGHAT
Defendant

JUDGMENT OF JUSTICE SIR ANDREW SMITH



Neutral Citation:	[2022] ADGMCFI 0011
Before:	Justice Sir Andrew Smith
Decision Date:	28 November 2022
Decision:	1. The Defendant pay the Claimant's costs of and incidental to the freezing order application in the sum of £150,000.
Hearing Date:	30 September 2022
Date of Order:	28 November 2022
Catchwords:	Worldwide Freezing Injunction; Costs; Assessment on standard basis; Summary assessment; Proportionality; Reasonably incurred and reasonable in amount
Cases Cited:	Bravo v Ameseur Resources plc, [2020] EWHC 2279 (QB) PJSC Pharmaceutical Firm "Darsita" v Metabay Import/Export Ltd, [2021] EWHC 1471 (Comm) Kazakstan Kagazy plc v Zhunus, [2015] EWHC 404 (Comm)
Case Number:	ADGMCFI-2022-111
Parties and representation:	Mr Rajesh Pillai KC and Mr Scott Ralston instructed by Holman Fenwick Willan LLP for the Claimant Mr Adam Zellick KC and Mr Daniel Carall-Green instructed by King & Wood Mallesons (MENA) LLP

JUDGMENT

1. In these proceedings, the claimant, Abu Dhabi Commercial Bank PJSC ("**ADCB**"), makes a claim for damages and ancillary relief against the defendant, Mr Prasath Manghat. It claims that it was the victim of a fraud carried out by senior executives of the NMC Group of companies, including Mr Manghat. In its particulars of claim, ADCB pleads that the best particulars of its losses that it can give are that, as at 19 November 2020, they amounted to US\$ 1,003,550,058, which its solicitor, Mr Damian Honey of Holman Fenwick Willan LLP ("**HFW**") describes as being estimated on a *broad-brush approach for the purposes of this stage of the case*".
2. On 30 September 2022, after an inter partes hearing, I granted ADCB's application for a worldwide freezing order with a limit of US\$1 billion and associated relief against Mr Manghat. I gave the parties liberty to apply in relation to costs. On 3 October 2022, I delivered a judgment setting out my reasons. By a letter of 13 October 2022, ADCB restored its application for the costs of the freezing order application and for summary assessment of them. By an order of 14 October 2022, I directed a timetable for written submissions about the costs application. Accordingly:
 - a. ADCB filed submissions dated 21 October 2022 in support of its costs application, together with a statement of its costs;
 - b. Mr Manghat filed submissions in response dated 28 October 2022; and
 - c. ADCB filed submissions in reply dated 4 November 2022.



3. The proceedings and the application for a freezing order are unusual in that ADCB first brought a claim against Mr Manghat and others on 2 December 2000 in the English High Court, and was granted permission to serve Mr Manghat out of the jurisdiction. The English court made a freezing order against Mr Manghat and other defendants. However, Mr Manghat and others successfully challenged the jurisdiction of the English Court, and the English proceedings were stayed against him. ADCB then brought these proceedings against Mr Manghat. By agreement between the parties, the English freezing order against Mr Manghat was extended until the determination of ADCB's application to this Court for a freezing order, and in the event it was then replaced by my order.
4. Rule 195 of the Court Procedure Rules ("CPR") provides:
 - "(1) The Court may make such orders as it considers just in respect of any application hearing, trial, appeal or other proceeding before the Court.*
 - (2) The Court's powers to make an order for costs may be exercised either in the course of the proceeding or at or after its final determination".*
5. ADCB submits that I should not defer the question of costs of the freezing order application but make an immediate order that Mr Manghat pay its costs. Mr Manghat submits that I should order either that costs be in the case or that they be reserved. Both parties were able to cite previous decisions in support of their contention, but the issue depends on what is just on the specific facts of this case, and, to my mind, there is no established practice, either of this Court or of common law jurisdictions generally, that glosses the statutory test in Rule 195. I agree with the observation of Martin Spencer J in *Bravo v Ameseur Resources plc*, [2020] EWHC 2279 (QB) at para 5 that different considerations apply to freezing orders from those relevant to other interlocutory injunctions which are governed by the question where the balance of convenience lies. It is of some interest that, as Sir Michael Burton said in *PJSC Pharmaceutical Firm "Darsita" v Metabay Import/Export Ltd*, [2021] EWHC 1471 (Comm), in the Bravo case, like this one, there was apparently no ex parte hearing before the inter partes hearing of the freezing order application.
6. In my judgment, ADCB identified powerful arguments in support of its application, including these:
 - a. First, ADCB's case that Mr Manghat was party to the fraud is one of inference, which is unsurprising given the nature of alleged wrongdoing. It has pleaded its case in considerable detail and with clarity, and Mr Manghat and his advisers had adequate time to assess its strength. Given that it is well established that the applicant for a freezing order has to establish no more than a good arguable case, which is not a particularly onerous requirement, he should have been aware that ADCB was likely to succeed in doing so, and that, a sufficient case of dishonesty against Mr Manghat being shown, the Court was likely to make a freezing order against him. This point is the stronger because the English Court had concluded in 2020 that there was a sufficient case for a freezing order against Mr Manghat, and made one.
 - b. Secondly, I consider that Mr Manghat's conduct in relation to the freezing order application relevant. By an order of 13 June 2022, I had given procedural directions designed to ensure orderly preparation for the hearing. However, firstly, Mr Manghat advanced at the hearing an argument based on an allegation of delay, which had not been mentioned in his evidence and was raised only in counsels' skeleton argument shortly before the hearing. Further, Mr Manghat sought to introduce at the hearing a report of J S Held Middle East Claimants Services LLC in breach of proper procedure: see paragraph 68 of my judgment of 3 October 2022.
7. I conclude that, in the circumstances of this case, I should order that Mr Manghat pay the ADCB's costs of and incidental to the freezing order application.



8. Rule 200(1) of the CPR provides that, “*Where the Court orders a party to pay costs to another party (other than fixed costs) it either will make a summary assessment of the costs or order a detailed assessment*”. ADCB seeks summary assessment; Mr Manghat contends that there should be a detailed assessment.
9. ADCB’s principal arguments are that I have the necessary information to make an assessment, and the freezing order application is (relatively) fresh in mind; that I am familiar with the application; and the delay and additional cost of a detailed assessment would be disproportionate. I am persuaded by the first of these arguments: I consider that, since I have the information that I need to make an assessment, there is no good reason to delay it.
10. Mr Manghat’s opposition to summary assessment relies on (i) the amount of ADCB’s statement of costs, £292,420.76, and (ii) an argument that the overlap between issues argued in England and those on the freezing order application means that detailed analysis of ADCB’s lawyers’ work is required to ascertain what is properly attributed to the freezing order application. I reject the first reason: the amount of costs in itself does not rule out summary assessment if the recoverable amount can properly be determined summarily. I am not persuaded by the second argument because, as I shall explain, my summary assessment is governed by my view about what costs are proportionate to the matters in issue, and the overlap argument does not bear upon that. I shall therefore assess ADCB’s costs summarily.
11. Mr Honey has certified that the costs of £292,420.76 do not exceed the costs which ADCB is liable to pay in respect of the work to which the statement related. Mr Manghat queries whether two items, for which a total of £4,585.74 is claimed, might partly relate to work on the particulars of claim rather than the application, but, in view of my other conclusions, this is of no significance. Otherwise, there is no reason to doubt Mr Honey’s certificate.
12. ADCB does not contend that it should be awarded costs on the indemnity basis, and I assess them on the standard basis. Accordingly, I allow only costs which “*are proportionate to the matters in issue and are reasonably incurred and are reasonable in amount*”: Rule 198 of the CPR. As Leggatt J said in *Kazakstan Kagazy plc v Zhunus*, [2015] EWHC 404 (Comm) at para 13: “*What is reasonable and proportionate in that context must be judged objectively. The touchstone is not the amount of costs which it was in a party’s best interests to incur but the lowest amount which it could reasonably have been expected to spend in order to have its case conducted and presented proficiently, having regard to all the relevant circumstances. Expenditure over and above this level should be for a party’s own account and not recoverable from the other party*”. It implies no criticism of a party that its recoverable costs are assessed to be far less than it decided to incur.
13. First, I consider proportionality. Practice Direction 9.20 provides as follows:
- “In relation to the standard basis, costs incurred are proportionate if they bear a reasonable relationship to:*
- (a) the sums in issue in the proceedings;*
 - (b) the value of any non-monetary relief in issue in the proceedings;*
 - (c) the complexity of the litigation;*
 - (d) the additional work generated by the conduct of the paying party;*
 - (e) any wider factors involved in the proceedings, such as reputation or public importance;*
and
 - (f) the indicative hourly rates set out in Annexure 1 to this Practice Direction which are designed to provide guidance to parties on charge out rates that are likely to be acceptable to the Court”.*



14. Considerations (a) and (f) present no difficulty to ADCB: its claim in the proceedings is enormous, and the hourly rates charged for HFW's time are within the indicative rates. With regard to consideration (b), the limit of the freezing order corresponds to the damages claimed, and so was likewise enormous. I do not accept that Mr Manghat's conduct significantly aggravated the work required or the costs: it is said on ADCB's behalf that "*time and resource*" were unnecessarily spent because he did not assist in identifying the issues on the freezing order application, but no details of how much additional work is said to have been required on this account. I am sceptical that this complaint about Mr Manghat much increased the work of HFW or increased counsels' fees. Nor am I persuaded that ADCB is assisted by consideration (e): it might be that, as ADCB submits, that the case involves a serious challenge to Mr Manghat's reputation and raises matters of considerable public importance in the United Arab Emirates, but it is not claimed that the freezing order application did so.
15. I consider that the important consideration here is (c), and in my judgment the focus here should be on the complexity of the freezing order application, rather than of the litigation as a whole. That is to say, I must consider what costs are proportionate to the freezing order application, which, essentially, involved the continuation, or more accurately, the reiteration, of the English freezing order. Any complex investigations or analysis were, or certainly should have been, carried out before the proceedings were brought in this Court: the recoverable costs are only those proportionate to the relatively limited additional work required to re-present the English application here. An assessment of proportionality is, of course, largely a matter of impression formed on the basis of experience: although ADCB bring a very large damages claim and the corresponding limit on the freezing order, I am unable to accept that in these circumstances costs of more than £150,000 are proportionate.
16. I therefore come to the question whether costs capped at £150,000 were "*reasonably incurred and are reasonable in amount*". I can deal with this shortly. I recognise that Mr Manghat has limited information on a summary assessment of this kind to challenge the reasonableness of the costs sought by ADCB. I also accept his points that the costs sought for attendance at the hearing and for the time spent on documents might be excessive. However, it would be most unusual for a statement of costs certified by an experienced solicitor to be reduced on grounds of reasonableness by almost half. Having reduced the recoverable costs to £150,000 on the basis of proportionality, I am satisfied that this reduced sum also meets the requirements of reasonableness.
17. I therefore order that Mr Mangat pay ADCB costs of and incidental to the freezing order application in the sum of £150,000.



Issued by:

Linda Fitz-Alan
Registrar, ADGM Courts
28 November 2022