



Neutral Citation Number: [2022] EWCA Civ 1061

Case No: CA-2021-003257, CA-2021-003257-A

**IN THE COURT OF APPEAL (CIVIL DIVISION)**  
**ON APPEAL FROM THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**  
**COMMERCIAL COURT (QBD)**  
**Simon Salzedo QC (sitting as a Judge of the High Court)**  
**[2021] EWHC 3166 (Comm)**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 26/07/2022

Before:

**LORD JUSTICE PETER JACKSON**  
**LORD JUSTICE MALES**

and

**LORD JUSTICE BIRSS**

Between:

(1) ATHENA CAPITAL FUND SICAV-FIS S.C.A. **Appellants/**  
(2) ATHENA CAPITAL REAL ESTATE AND SPECIAL **Claimants**  
SITUATIONS FUND 1  
(3) WRM CAPITAL ASSET MANAGEMENT S.A.R.L.  
(4) RAFFAELE MINCIONE

- and -

SECRETARIAT OF STATE FOR THE HOLY SEE **Respondent**  
**/Defendant**

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Charles Samek QC & Tetyana Nesterchuk (instructed by Withers LLP) for the Appellants  
Charles Hollander QC, Samar Abbas Kazmi & James Bradford (instructed by Hill  
Dickinson LLP) for the Respondent

Written submissions

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**Approved Judgment**  
**(COSTS)**

*Remote hand-down:* This judgment was handed down remotely at 10.30am on 26 July 2022 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

## Lord Justice Males:

1. We are today allowing an appeal in which we hold that the judge, Simon Salzedo QC sitting as a Deputy High Court Judge, was wrong to impose a case management stay of these proceedings. Although there are six grounds of appeal, only one of which proved decisive, I would not make a split order for costs as requested by the respondents. The successful appellants are therefore entitled to their costs of the appeal, to be assessed on the standard basis.
2. We are invited to make an order for a payment on account. This judgment deals with that issue.
3. The hearing before the judge took place over two days, but included numerous issues which formed no part of the appeal. The hearing of the appeal was listed for one and a half days but, in the event, was concluded in one day.
4. It therefore came as something of a surprise that according to the statements of costs filed by the parties, the total costs of the appeal amounted to over £730,000. The appellants' costs amounted to some £380,000, while the respondent's costs amounted to some £350,000, including some £30,000 in translation fees.
5. Breaking these costs down, and in round figures, the appellants' solicitors' costs comprised £175,000 (including hourly rates charged well in excess of the guideline rates set out in Appendix 2 to the "Summary Assessment of Costs" guide published in the White Book), while the fees of leading and junior counsel exceeded £200,000. The respondent's solicitors' costs were £100,000, while counsel's fees (leading and two junior counsel) were £215,000.
6. This court has recently held that, in the case of solicitors' fees, if a rate in excess of the guideline rate is to be charged to the paying party, a clear and compelling justification must be provided: *Samsung Electronics Co Ltd v LG Display Co Ltd* [2022] EWCA Civ 466. No such justification has been advanced in this case.
7. Counsel's fees are not subject to guideline rates in the same way that solicitors' fees are, but it is nevertheless important to stress that, whatever clients may be prepared to pay their own counsel, only a reasonable and proportionate fee may be recovered from the other side. While acknowledging the valuable assistance which we received from counsel on both sides, the fees charged in this case are well above that level. The only issue was whether the judge had exercised his discretion wrongly in granting a case management stay. It would be highly regrettable if a one day appeal to this court, even in a commercial case involving international parties and some degree of complexity, could not be conducted without incurring the risk of liability for lawyers' fees on this scale.
8. It is a striking feature of the present situation, that although almost every possible point has been taken on both sides in the course of this appeal, there has been no challenge either to the appellants' solicitors' hourly rates or to the brief fees and other fees charged by their counsel. However, the costs payable by the losing party on the standard basis are limited to those which are reasonable and proportionate. Where the costs of the paying party are also disproportionately high, that can make no difference. In any event

the court will scrutinise cost schedules in order to keep levels of recovery within reasonable bounds.

9. Taking these matters into account, I would make an order for payment on account of £100,000.

**Lord Justice Birss:**

10. I agree. It may be worth emphasising one aspect. In my experience there has been a view that the previous set of Guideline Hourly Rates (before 2021) were not directed to the heaviest work such as takes place in the Business and Property Courts. In part no doubt this was because they were so out of date. Whatever the position was or was thought to be, it changed in the current set of Guideline Hourly Rates, which were approved by the Master of the Rolls in August 2021. As my Lord pointed out in *Samsung v LG*, the current set includes a band called “London 1” which is a set of rates directed expressly to very heavy commercial and corporate work by centrally London based firms. I would add that the London 1 rates band in the current Guideline Hourly Rates is based on evidence from the Business and Property Courts themselves (see the Civil Justice Council’s Final Report of April 2021). Therefore the London 1 band is directly applicable to this case and so a justification for the much higher rates was needed.

**Lord Justice Peter Jackson:**

11. I agree with both judgments.