



LEGAL BRIEFING

GBM Minerals Engineering Consultants Ltd v GB Minerals Holdings Ltd

[2015] EWHC 3091 (TCC), Mr Justice Fraser

The Facts

Under a contract made in January 2010, GBM Minerals Holdings Ltd ('GBM') engaged GBM Minerals Engineering Consultants Ltd ('GBMMEC') to carry out consultancy services in connection with a project in Africa. During 2014 GBMEC commenced proceedings claiming £500,000 in unpaid fees and GBM counterclaimed £4 million in overpayments and damages.

During 2015 each party issued an application to amend their pleadings which was opposed by the other. On 9 October 2015 both applications were granted and GBMMEC was also ordered to provide certain Further Information. Having subsequently failed to come to agreement on costs the parties returned to court on 28 October for summary assessment.

GBMMEC claimed costs of £8,224 on its own application to amend and GBM claimed £6,386 for opposing that application. GBM sought some £50,693.50 in costs on its application to amend and GBMMEC's costs of opposing that application were £32,153.

GBMMEC submitted that its own amendments should have been agreed but were unreasonably opposed by GBM. GBMMEC also argued that GBM's application to amend the pleadings was made late meaning that the trial date was prejudiced. GBMMEC maintained that it had reasonable grounds to oppose GBM's amendments and that the costs of GBM's application were disproportionate and unreasonable. GBMMEC therefore contended that GBM should pay 50% of GBMMEC's costs, that GBMMEC should pay 25% of GBM's costs and that 25% of each party's costs should be in the case.

GBM's starting position was that its application to amend was successful. GBM also submitted that had the Further Information been provided earlier, GBMMEC need not have applied to amend and that GBMMEC's amendment was only necessary because the relevant statements in the original pleadings were false. GBM therefore contended that GBMMEC should pay 70% of the costs of GBM's application, with all other costs to be in the case.

The issue

What was the appropriate costs order?

The Decision

The Judge observed that in normal circumstances, both GBMMEC and GBM would have been entitled to the costs of their respective applications as they had both succeeded. However, the Judge noted that this was not an ordinary case.

The Judge stated that whilst GBMMEC's amendments did not affect the trial date, the amendments were only required as the 17 variation orders that GBMMEC had purported to rely on were falsely backdated and created with a "strong prima facie case of dishonesty". Therefore, had GBMMEC not relied on false documents, the need for the amendment

application could have been avoided. However, the Judge also noted that GBM had not stated in advance of the hearing on 9 October that it would agree GBMMEC's amendments subject to the provision of the Further Information. Hence, in the Judge's view both parties were to blame to a certain degree.

The Judge did not accept GBM's view that it had been successful in its application describing this as an "*optimistic description of the outcome*" given that GBMMEC had obtained permission to make the amendments opposed by GBM. The Judge also noted that as yet there had been no findings on the new and serious allegations made by GBM against the background of falsely backdated documents so that at this stage these allegations remained unproven.

With reference to the requirement in CPR Part 44.2(4)(a) that the conduct of the parties be taken into consideration the Judge stated that in his view, each party had opposed the other's application in order to gain an opportunistic advantage.

If GBMMEC could no longer rely on falsely backdated documents it would have had no pleaded case to advance at trial which would have amounted to GBM achieving summary judgment by the back door. The Judge said that having realised this, by opposing GBMMEC's application, GBM had sought to trap GBMMEC in a corner and that otherwise, GBM had no good reason to object to GBMMEC's amendments.

The Judge stated that in opposing GBM's amendments GBMMEC was seeking opportunistic advantage and attempting to exclude the serious allegations made by GBM which were backed up by contemporaneous documents.

The Judge concluded that both parties had been trying to obtain a "*litigation advantage*" contrary to the objective of achieving the efficient conduct of litigation. He therefore ordered that each party would bear its own costs of the hearing of each application.

Commentary

The Judge remarked that the parties "... *appeared to be determined to fight bitterly over every possible inch of ground*" and penalised them for this conduct in his costs order. The judgment is a reminder of the importance of acting reasonably and is likely to be frequently cited to discourage unnecessary belligerence amongst litigants.

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