



ABU DHABI GLOBAL MARKET COURTS
محاكم سوق أبوظبي العالمي

COURT OF FIRST INSTANCE
CIVIL DIVISION

BETWEEN

A3

CLAIMANT

and

B3

DEFENDANT

JUDGMENT OF JUSTICE SIR ANDREW SMITH



Neutral Citation:	[2019] ADGMCFI 0006
Before:	His Honour Justice Sir Andrew Smith
Decision Date:	25 August 2019
Decision:	The Claimant's application that costs be assessed on an indemnity basis is refused. The Claimant's costs be assessed on a standard basis. Costs awarded in favour of the Claimant in the sum of US \$44,234.06.
Hearing Date(s):	No hearing
Date of Order:	25 August 2019
Catchwords:	Costs; application for costs on an indemnity basis; summary assessment
Legislation Cited:	ADGM Court Procedure Rules 2016
Case Number:	ADGMCFI-2019-007
Parties and Representation:	Norton Rose Fulbright (Middle East) LLP for the Claimant No appearance for the Defendant

JUDGMENT:

1. By an order of 4 July 2019, I declared that there is a valid and binding agreement between the Claimant and the Defendant that certain disputes are subject to arbitration under the International Chamber of Commerce ("ICC") rules. I directed that any application for costs be made after the judgment with written reasons had been handed down and dealt with on paper, unless otherwise ordered.
2. The Claimant has made an application for costs dated 8 August 2019 and set out reasons in support of it by a letter of the same date from its solicitors, Norton Rose Fulbright ("the letter").
3. The Defendant did not file an acknowledgement of service in these proceedings and has taken no part in them.
4. The Court has power under rule 195 of the ADGM Court Procedure Rules 2016 to make such orders as it considers just in respect of the costs of the proceedings. By rule 197, I may order that costs be assessed on the standard basis or on the indemnity basis. By rule 200, I may make a summary assessment of the costs or order an assessment of the costs by a costs officer.



5. I consider it just that the Defendant pay the Claimant's costs of and incidental to these proceedings. The Claimant was successful in its claim for a declaration, and the Court's general approach is to make an order for costs in favour of the successful party against the unsuccessful party. In this, its practice reflects the "general rule" as to costs adopted by the Courts of England and Wales and set out in their Civil Procedures Rules, 1998 at rule 44.3(2).
6. The Claimant seeks an order that its costs be assessed at US\$41,655.00 plus disbursements by way of Court fees of US\$2,579.06, a total of US\$44,234.06. A threshold question is whether the Claimant should be awarded costs in US dollars, rather than in UAE dirhams. Prima facie, courts will generally award costs in the local currency of the jurisdiction. Practice Direction 9, which is about costs, sets out at Annexure 2 "indicative hourly legal charges" that are to be considered a guideline as to rates likely to be acceptable to the Courts when assessing costs, and these are expressed in dirhams: They include an average hourly rate of AED 1,450 for lawyers from trainees to five years' standing, of AED 2,050 for lawyers of six to ten years standing, and of AED 2,800 for partners.
7. However, there is nothing in the Court Procedural Rules or the Practice Direction that provides that costs must be awarded in dirhams: on the contrary, the Practice Direction sets out amounts in US dollars which will be allowed in specified circumstances. Further, court fees are charged in US dollars, the amounts in some cases being determined by the value of the claim in US dollars.
8. In this case, the Claimant was charged fees in US dollars by its legal representative, as Norton Rose Fulbright informed the Court by email dated 22 August 2019, and it incurred disbursements in US dollars. Moreover, the claim was ancillary to an ICC reference, pursuant to an arbitration agreement to which, as I have concluded, the Defendant was party; and ICC arbitration fees are charged in US dollars. In my judgment, the Claimant is entitled to costs in US dollars in this case.
9. The Claimant has applied for an order that its costs be assessed on the indemnity basis. It argued that it has conducted itself properly throughout the proceedings, including assisting the Court by identifying arguments that might have been raised against its claim had the Defendant participated in the proceedings; and that the Defendant, in breach of its obligations under the lease, has failed to take part either in these proceedings or in the arbitration proceedings that gave rise to them.
10. I refuse this application. The Court will not normally award costs on the indemnity basis in the absence of either misconduct or unreasonable conduct of such a high degree that it is just to depart from the normal basis of assessment. There is no sufficient basis so to criticise the Defendant's conduct.



11. I therefore order that the costs be assessed on the standard basis.
12. I consider it right to make a summary assessment of the costs. I have been given the information to enable me to do so, and it would be disproportionate to order a detailed assessment.
13. An assessment on the standard basis requires me to consider (i) what costs are proportionate to the matters in issue, and (ii) what costs were reasonably incurred and are reasonable in amount.
14. The underlying dispute between the Claimant and the Defendant concerns the termination after about a year of a five years' lease of a commercial property on Al Maryah Island. The information before me is that, leaving aside the costs associated with the arbitral reference, the value of claim is over US\$900,000. The matter immediately in issue in the proceedings was the validity of an arbitration agreement. The Court of the ICC had decided that a reference to arbitration made by the Claimant should not proceed, and (as is usual) did not give reasons for so deciding. The issue of the validity of the arbitration agreement therefore involved consideration of the various reasons that the Court might have so held, and therefore required consideration of a number of different legal principles.
15. I recognise that these proceedings are not about the substantive dispute between the parties, but about the proper machinery for resolving it. Nevertheless, in view of the apparent importance of the underlying dispute and the multi-faceted issue about the validity of the arbitration agreement, in my judgment the amount of costs sought by the Claimant is proportionate to the matters in issue.
16. I have scrutinised the detailed bill of costs annexed to the letter. The work to which the costs relate are described in appropriate detail, and I can see no basis for concluding that any of them were unreasonably incurred. I have considered, in particular, the time spent in preparing the witness statement, a total of ten hours for Mr Ben Mellet, plus a further three hours of Mr Paul Stothard's time. This is rather more time than I would have expected, but, having examined the statement, I have concluded that it was within the range of what was reasonable.
17. I also consider that the costs, and in particular the hourly rates, are reasonable in amount. In particular, (i) the work appears to have been done by lawyers of appropriate seniority and experience, and (ii) while the hourly rate for Mr Mellet was more than the guideline amount for a trainee of up to five years, the nature of the work that he did justifies the rate of AED 525.



ABU DHABI GLOBAL MARKET COURTS
محاكم سوق أبوظبي العالمي

18. Therefore, having assessed on the standard basis the amount claimed by the Claimant, I award it costs in the sum of US \$44,234.06.

Issued by:



Linda Fitz-Alan
Registrar, ADGM Courts
27 August 2019