

Online Case 27 OJSC TNK-BP

v

Lazurenko

[2013] 4 Costs LO 552

*Neutral Citation Number: [2013] EWCA Civ 137
Court of Appeal, Civil Division
21 February 2013*

Before:
Lewison LJ

Headnote

Although para 20(1) provides that in most cases, applications for permission to appeal will be determined without the need for the respondent to file submissions or attend a hearing and that accordingly an order for costs will not normally be made, here a Lord Justice had directed that the application would be referred to a two judge court. As the respondent had received a letter from the Civil Appeals Office that he and his team would at least be entitled to attend and be heard, it was appropriate to award him his costs of dealing with the application under para 20(2).

Judgment

1. **LEWISON LJ:** This is an application for the payment of costs. The application is made by Mr Lazurenko, who is the respondent to an action brought against him by OJSC TNK-BP Holding and another.
2. The action was one in which the claimant sought to restrain Mr Lazurenko from disclosing information about its business activities.

An injunction was granted by Mr Justice Roth, but on an *inter partes* hearing the Chancellor, Sir Andrew Morritt, discharged the injunction and awarded Mr Lazurenko his costs on an indemnity basis.

3. The judgment was handed down on 16 October 2012 and on October 18 TNK filed an appellant's notice seeking permission to appeal against the Chancellor's judgment.

4. In s 9 of the appellant's notice TNK applied for a stay of execution, because:

5. "The claimant's claim is to restrain publication by the defendant of confidential information and such confidence will be lost rendering any appeal nugatory unless the stay in para 7 of the order of 16 October 2012 is continued to abide the outcome of the claimant's appeal."

6. That application, though not the permission application, came before me and on 19 October 2012 I ordered the stay to continue until disposal of the application for permission to appeal or further order.

7. The Chancellor had ordered the payment by TNK of £300,000 as an interim payment on account of costs to be made by October 30. TNK did not comply with that order, but the stay was nevertheless continuing. The matter was referred to Sir Robin Jacob for the purpose of deciding whether or not to grant permission to appeal on the papers. His order provided, as follows:

8. "Adjourned for application to be heard by a two-judge court. Interim order to continue in the meantime, provided that it will lapse at 4 pm on Monday, October 19 if the sum of £300,000 ordered by para 6 of the Chancellor's order has not been paid in full. The oral hearing is to take place as soon as is reasonably practical, but not before Monday, November 19."

9. He also directed the parties to notify the court on or before Tuesday, November 20 as to whether the sum ordered had been paid.

10. Following the making of that order the Civil Appeals Office wrote to Mr Lazurenko's solicitors on 16 October 2012. The letter read as follows:

11. "The application for permission to appeal and an injunction under reference A3/2012/2656 will be heard in a courtroom open to the public, with notice to any other party. The hearing will take place at the Royal Courts of Justice, Strand, London, WC2 on 22 November 2012. You will receive no further notice of that hearing date. If you

require any special provision to attend a court hearing please contact this office as soon as possible so that arrangements can be made.”

12. There were then some information about how to check the cause list. The letter concluded:

13. “The applicant’s solicitor or the applicant, if acting in person, is required to supply you with a copy of the bundles if this has not already been done.”

14. On November 20 Mr Lazurenko’s legal team served a skeleton argument and within a short while after that skeleton argument had been served TNK intimated that the appeal would be withdrawn. In the interim the £300,000 had not been paid, so that the stay had already lapsed.

15. It is in those circumstances that Mr Lazurenko applies for his costs. Paragraph 20 of the practice direction accompanying part 52 provides as follows:

16. “(1) In most cases an application for permission to appeal will be determined without the need for the respondent to file submissions or attend a hearing. In such circumstances an order for costs will not normally be made in favour of a respondent who voluntarily makes submissions or attends a hearing.

17. “(2) If the court directs the respondent to file submissions or attend a hearing it will normally order costs to the respondent if permission is refused.”

18. While this application was proceeding as a paper application only, I do not consider that there was anything to take this application out of the norm. However, in my judgment, once Sir Robin had directed the adjournment of the application to a two-judge court and Mr Lazurenko had received the letter from the Civil Appeals Office plainly contemplating that he and his team would at least be entitled to attend and be heard, this was a case that falls within subparagraph 2 of para 20.

19. I might also add that under CPR part 52.7 an appeal does not operate as a stay of the order of the court below, so that an application for a stay is itself not the normal position. An application for a stay, particularly in an injunction case, takes the case out of the norm.

20. In those circumstances I consider that in principle Mr Lazurenko is entitled to his costs of dealing with the appeal from and including 16 November 2012. I would, however, exclude from that any costs incurred in a potential application for security for costs. Such

an application would not have been necessary unless permission to appeal had been granted –

21. The Chancellor, as I have said, awarded costs on an indemnity basis. I find his reasons compelling and I will order those costs that I have ordered to be paid to be assessed on the indemnity basis.

Mr N Stewart QC and *Mr J Price* (instructed by Bryan Cave LLP) appeared on behalf of the claimant.

Mr N Kitchener QC and *Mr O Draper* (instructed by Mishcon de Reya) appeared on behalf of the defendant.