



Neutral Citation: [2022] EWHC 2140 (TCC)
IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF
ENGLAND AND WALES
TECHNOLOGY AND CONSTRUCTION COURT
(QBD)

BEFORE The Hon Mrs Justice O'Farrell DBE

BETWEEN:

CLAIM NO: HT-2022-000106

CAMELOT UK LOTTERIES LIMITED

Claimant

- and -

THE GAMBLING COMMISSION

Defendant

- and -

**(1) ALLWYN ENTERTAINMENT LTD
(2) SAZKA GROUP A.S.**

Interested Parties

CLAIM NO: HT-2022-000113

BETWEEN:

**(1) INTERNATIONAL GAME TECHNOLOGY PLC
(2) IGT GLOBAL SERVICES LIMITED
(3) IGT GLOBAL SOLUTIONS CORPORATION
(4) IGT (UK 3) LIMITED
(5) IGT UK INTERACTIVE LIMITED
(6) IGT UK LIMITED**

Claimants

- and -

THE GAMBLING COMMISSION

Defendant

- and -

**(1) ALLWYN ENTERTAINMENT LIMITED
(2) SAZKA GROUP A.S.**

Interested Parties

**JUDGMENT
Hearing date 27 July 2022**

1. **MRS JUSTICE O'FARRELL:** Allwyn, the interested party, seeks an order from the court that the claimants, that is Camelot and IGT, pay Allwyn's costs of the application to lift the suspension, in which it was successful.

2. The starting point is CPR 44.2(1), which states:

"The court has discretion as to –

- (a) whether costs are payable by one party to another;
- (b) the amount of those costs; and
- (c) when they are to be paid."

3. CPR 44.2(2) states:

"If the court decides to make an order about costs –

- (a) the general rule is that the unsuccessful party will be ordered to pay the costs of the successful party; but
- (b) the court may make a different order."

4. CPR 44.2 also provides for circumstances that the court must have regard to, including conduct of the parties, whether a party has succeeded on part or all of the case, offers to settle and conduct before as well as during the proceedings.

5. The CPR gives the court a very broad discretion as to costs orders to be made; that applies to procurement cases, as it does to any others. Indeed, the extract in *Bolton Metropolitan District Council v Secretary of State for the Environment* [1995] 1 WLR 1176 to which I was properly taken, starts with these words by Lord Lloyd of Berwick:

"What then is the proper approach? As in all questions to do with costs, the fundamental rule is that there are no rules. Costs are always in the discretion of the court and the practice, however widespread and longstanding, must never be allowed to harden into a rule."

6. That was in the context of a case that was fought on the substance and, even then, it was said in that case that the developer would not normally be entitled to his costs unless he could show that there was likely to be a separate issue on which he was entitled to be heard or unless he had an interest which required separate representation.

7. In *Bechtel Limited v High Speed Two (HS2) Limited No.2 Costs* [2021] EWHC 640 (TCC), having considered the decision in *Bolton*, Fraser J set out the following principles at [25]:
 1. The court evidently has power to order costs under the statute, and such costs are discretionary. The power must however be exercised in accordance with the Civil Procedure Rules, and in particular CPR Part 44 which deals with costs (and Part 44.2 dealing with the court's discretion as to costs).
 2. Ordinarily, an interested party (who for these purposes will usually be the winning bidder) must be able to show that there is a separate issue on which he was entitled to be heard, that is to say an issue not covered by the contracting authority; or that he has an interest which requires separate representation, in order to recover costs.
 3. The mere fact that a party has won the bid does not automatically entitle him either to become an interested party in the litigation, or indeed, to recovery of his costs if the challenge by the claimant fails.
 4. The court will, for procurement proceedings under the Regulations, when granting a winning bidder the status of interested party, have made an order in this respect. That order will clearly state the extent to which that interested party is entitled to participate. The order formalises the involvement of the interested party in the proceedings. This is a matter of active case-management. Simply because an interested party is involved at one stage of the proceedings does not entitle that party to participate in later stages of the same proceedings.
 5. Simply having been made an interested party by way of such an order does not automatically, of itself, entitle the interested party to its costs.
 6. There may be specific and unusual features of any particular case upon which an interested party may rely when it seeks an order for its costs in these circumstances. There can be no exhaustive list of these prescribed in advance. The court will, when exercising its discretion, take all the relevant factors into account, but the presence of one or more of these unusual features will make it more likely that an interested party can obtain a costs order in its favour.

8. I recognise that, as an interested party, Allwyn is not automatically entitled to its costs, even where it has been granted permission to participate. However, the central issue before the court today is whether Allwyn's involvement in the application to lift the suspension was necessary for a fair determination of that issue; that is whether Allwyn can demonstrate that it had a separate interest in that application that required it to have separate representation and to provide separate evidence.
9. In this case, I am satisfied that it did. Firstly, as Mr Barrett has submitted, Allwyn was entitled to make submissions on the adequacy of damages for Allwyn if the suspension were to be maintained and the terms on which any cross-undertaking should or could be provided by the claimants.
10. Secondly, Allwyn was entitled to put forward evidence and make submissions as to the impact of any delay to the start of the fourth licence, if the court were to maintain the suspension pending a final determination of the substantive issues. Although the defendant submitted that the impact of any delay to the start of the fourth licence was a strong factor in favour of lifting the suspension, Allwyn had its own interest in ensuring that the transition period went ahead as quickly as possible, so as to enable it to commence the fourth licence by the end of January 2024. That was a separate interest to the good causes interest that was relied upon by the defendant. Allwyn was entitled to raise those matters before the court as relevant factors that the court could consider when carrying out the balance of convenience exercise.
11. Thirdly, Allwyn was entitled to submit evidence and make submissions regarding the alternative proposals that were put forward by Camelot and IGT. Allwyn was entitled to set out its position regarding the proposed interim licence; its position was not necessarily the same as that of the defendant because, whilst the defendant would have the benefit of the interim licence (if any), no one suggested that the interim licence would be granted to Allwyn. In particular, Allwyn was entitled to identify the difficulties that it would face on partial implementation or partial lifting of the suspension because it is the company that will have to carry out the transition and make itself ready to operate the fourth licence, subject of course to the final determination of the matters of substance.

12. For all those reason, I am satisfied that Allwyn in this case had a separate interest in providing evidence and making submissions on the application to lift the suspension. Allwyn's submissions on the application were accepted by the court. It can therefore put itself forward as a party who was a successful party and therefore the normal rule should apply, namely that it is entitled to its costs.

13. It was a two-day hearing. There is no schedule of costs before the court. Therefore the court will order a detailed assessment of the costs. I am not going to order an interim payment on account because there is no indication as to the level of Allwyn's costs. That is not material in this case because of the pending appeal. The other parties have already agreed that the defendant should have its costs of the application to lift the suspension, and that an agreed payment on account should be made but it is stayed pending the outcome of the appeal. So I will simply make an order that the Camelot and IGT claimants should pay Allwyn's costs and those costs should be subject to a detailed assessment on the standard basis unless agreed.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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