



**IN THE GRAND COURT OF THE CAYMAN ISLANDS  
FINANCIAL SERVICES DIVISION**

**FSD 282 of 2022 (RPJ)**

**IN THE MATTER OF THE FOREIGN ARBITRAL AWARD ENFORCEMENT ACT (1997  
REVISION) AND GCR O.73, r.31**

**BETWEEN**

**AAA**

**Applicant**

**- and -**

**BBB**

**Respondent**

**Before:** The Hon. Raj Parker

**Appearances:** Collas Crill on behalf of the Applicant  
Nelsons on behalf of the Respondent

**Heard:** On the papers on the basis of written submissions

**Date of decision:** 12 October 2023

**Draft Ruling circulated:** 13 October 2023

**Ruling delivered:** 18 October 2023

***HEADNOTE***

*Recognition and enforcement of ICC arbitration Award-costs of late withdrawal of application to set aside award-indemnity costs-summary assessment-pre judgment interest on costs of arbitration proceedings*

## RULING

### *Introduction*

1. The Applicant (“AAA”) seeks orders in relation to consequential issues following the Respondent's (“BBB”) decision to withdraw its summons dated 19 May 2023, by which it applied to set aside the *ex parte* Order dated 16 March 2023 allowing recognition and enforcement of an ICC Award dated 31 August 2022 (“Summons”).
2. AAA seeks an order requiring the Respondent to pay its costs of and occasioned by the withdrawn Summons on an indemnity basis, summarily assessed, and requiring the Respondent to pay interest on the costs of the Arbitration Proceedings awarded by the Tribunal in amounts calculated as at the date of the hearing on the papers, and then continuing until payment or further order.
3. The Arbitral Tribunal awarded to AAA costs of the Arbitration Proceedings in the sum of US\$729,000, plus legal costs in the amounts of CHF694,167.80, EUR 315,715.70 and GBP 119,756.85 (“Costs”).
4. Interest on costs was not sought from the Tribunal, nor was it addressed by AAA, during the Arbitration Proceedings.
5. At the Leave Hearing, although the Court was not prepared to make an order for pre-judgment interest on Costs, it indicated that such an application could be renewed at an *inter partes* hearing. The Court treats this application as such a hearing, albeit determined on the basis of written submissions on the papers.

### *Indemnity costs*

6. The Respondent's explanation for its late withdrawal of the Summons is that it did so for its own ‘commercial reasons’.
7. That did not occur until less than 3 business days before skeleton arguments were due to be filed; 9 days before the hearing; and almost 4 months after the Summons was filed.
8. In the result of the withdrawal, the hearing did not take place.
9. GCR O.62 r.4(11) does not restrict the Court's ability to order the payment of costs on the indemnity basis before a hearing has concluded.

10. The Court has a wide discretion.

*"(11) The Court may make an inter partes order for costs to be taxed on the indemnity basis only if it is satisfied that the paying party has conducted the proceedings, or that part of the proceedings to which the order relates, improperly, unreasonably or negligently."*  
*(emphasis added)*

11. However, the Court is not persuaded that in all the circumstances of this case it would be just to order costs to be taxed on the indemnity basis.

12. There is no unreasonable or improper conduct to the high degree necessary to earn a 'mark of disapproval' by the Court in the award of indemnity costs. The Court is not persuaded on the available material that a manifestly hopeless case was advanced which was known to be hopeless.

13. There is also in the Court's view no need for a summary assessment.

14. If the costs are not agreed, they are to be taxed on the standard basis.

#### ***Pre judgment interest on costs***

15. AAA submits that it would be inequitable for the Respondent to be relieved from the obligation to pay interest on costs which form part of the Award where the Respondent has ignored AAA's demands for payment.

16. However, this was not applied for from the Tribunal although it appears to be common ground that had interest on costs been applied for, the Tribunal could have awarded it.

17. The Court is not persuaded that in the circumstances of this case, even if the Court had jurisdiction to do so <sup>1</sup>, it would be just to award pre judgment interest on costs in circumstances when that could have been applied for and was not applied for at the relevant time from the Tribunal.

18. The Court takes into account that AAA successfully claimed interest on the principal sums awarded to it by the Tribunal, which compensated AAA in respect of any delays in securing the principal sums awarded to it by the Arbitral tribunal.

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<sup>1</sup> *Yukos Capital Sarl v OJSC Oil Co Rosneft [2014] EWHC 2188 (Comm) and section 34(1)(b) of the Judicature Act (2021 Revision) (Judicature Act). No Cayman Islands authority was relied on in the written submissions which addresses the application of these provisions to the enforcement of an arbitration award.*

19. The Award was issued on 31 August 2022. The delay in recovering the sums awarded by the Tribunal is not, in light of the challenges to the Award, very great.
20. The Court, assuming it had jurisdiction to do so, in its discretion refuses to award pre judgment interest on costs.



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**THE HON. MR JUSTICE RAJ PARKER**  
**JUDGE OF THE GRAND COURT**