



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

CAUSE NO: FSD 289 of 2023 (DDJ)

BETWEEN:

MYF MAXIMUS LIMITED

Plaintiff

AND

- (1) DNB BANK ASA**
- (2) SWEDBANK AB (PUBL)**
- (3) NIBC BANK N.V.**
- (4) EKSPORTFINANSIERING NORGE**
- (5) NM SHIPHOLDING AS**
- (6) MAXIMUS LIMITED**

Defendants

Before: The Hon. Justice David Doyle

Heard: On the papers

**Draft Judgment
Circulated:** 27 June 2024

Judgment delivered: 5 July 2024

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Determination of costs

JUDGMENT

Introduction

1. On 11 June 2024 I made an order dismissing a summons of the First to Fifth Defendants dated 6 February 2024 for the reasons stated in a judgment I delivered on 3 June 2024. I adopt the terms as defined in that judgment.
2. In the Set Aside Application the Overseas Defendants applied to set aside the December 2023 Service Out Order and in the alternative for an order that the proceedings be stayed until the final determination of the Norwegian Appeal.
3. I dismissed the Set Aside Application although I did hold that (1) the Plaintiff had failed to inform the court about its Norwegian Appeal before or at the *ex parte* hearing in respect of the Service Out Application; (2) the existence and the content of the Norwegian Appeal was a relevant factor to take account of in the determination of the Service Out Application but it was not a fact of any real crucial significance; (3) the failure to disclose the existence and content of the Norwegian Appeal could properly be categorised as “innocent”.

Submissions

4. I have considered:
 - (1) the Plaintiff’s written submissions on costs dated 18 June 2024; and
 - (2) the written submissions on behalf of the Overseas Defendants dated 18 June 2024.

Determination

5. Costs are in the discretion of the court but normally costs would follow the event and the unsuccessful party would be ordered to pay the successful party’s costs.

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6. There can be no reasonable doubt that in respect of the Set Aside Application the Overseas Defendants were unsuccessful.
7. However, the court held that the Plaintiff was guilty of an innocent non-disclosure.
8. In my judgment it is appropriate and just to mark the court's disapproval of that non-disclosure and to underline the public interest in proper disclosure and to deter such conduct in the future, by depriving the Plaintiff of some of the costs it would normally be expected to recover as a successful party.
9. I order that the Overseas Defendants pay 60% of the Plaintiff's costs of and incidental to the Set Aside Application such costs to be taxed on the standard basis in default of agreement.
10. Counsel to provide a draft order within the next 7 days for my approval.

David Doyle

THE HON. JUSTICE DAVID DOYLE
JUDGE OF THE GRAND COURT