

Case No: HC-2014-002047

Neutral Citation Number: [2018] EWHC 1820 (Ch)

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
COMPANIES COURT

Royal Courts of Justice

Rolls Building

Fetter lane

London

EC4A 1NL

Date: 17/07/2018

Before :

SIR NICHOLAS WARREN

Between :

(1) TIMES TRAVEL UK LIMITED

(2) NOTTINGHAM TRAVEL LIMITED

- and -

PAKISTAN INTERNATIONAL AIRLINE CORPORATION

Philip Shepherd QC and Heather Murphy (instructed by **Invictus Law LLP**) for the **Claimant**

Thomas Bell (instructed by **Farani Taylor Solicitors**) for the **Defendant**

Hearing dates: 9TH JULY 2018

Judgment

Sir Nicholas Warren :

DECISIONS on

(i)

the basis of quantum meruit in the TT account

(ii)

directions in the TT account

Sir Nicholas Warren

1.

As before, I adopt the same definitions as in my main written judgment and in my subsequent oral judgments delivered on 8 December 2017 and 21 March 2018.

2.

The matter has now come back before me to deal with (1) directions in the taking of the accounts which I have ordered following my main judgment and (2) an application by the Claimants to vary my order for costs in the main action. In this decision I deal with the first of those matters. I will deal separately with the Claimants' application.

Directions in the accounts

3.

The Claimants have produced a draft order for directions in the taking of the accounts. There are two issues of contention which arise in relation to the TT account. The first is whether further action in the TT account should be postponed, as PIA suggests, until after the hearing of TT's appeal against my decision that it could avoid the New Agreement (as it has elected to do) on the basis of economic duress, an appeal which, I understand is to be heard in October or November of this year. The second area of contention relates to the basis on which the quantum meruit to which TT is entitled is to be ascertained, although if PIA is successful in its appeal, then the issue of quantum meruit does not arise because TT will then be bound by the New Agreement and its position will be the same as that of NT.

4.

I do not consider that the taking of the TT account should be postponed as PIA suggests. This is so for at least three reasons. First, there has been no application (either to the Court of Appeal or to me) by PIA to stay my orders pending appeal. Ordinarily, a successful litigant is entitled to pursue his remedies and a stay will not be granted. In appropriate circumstances a stay will be granted but an application must be made for a stay and good grounds must be shown. The practical effect of postponing the taking of the account is precisely the same as a stay. I do not consider that PIA should be able to achieve a stay of my order by the back door in this way.

5.

The second reason is that whether an account is to be taken on the basis of a quantum meruit or under the New Agreement there will be a considerable overlap in the basic data which needs to be established. Thus it will need to be established what tickets TT sold in each relevant period, the amount for which it acquired each ticket from PIA and the amount for which PIA itself sold the same type of ticket to passengers. That information is necessary if PIA's appeal succeeds so that TT's entitlement is to be ascertained under the New Agreement. That same information will be relevant if the appeal is unsuccessful and if the quantum meruit is to be assessed in the way for which TT contends (which I will come to in a moment). If some other approach to quantum meruit were to be adopted, it seems highly likely to me that it would be necessary to have that same data although other information might also be required. It does not seem to me, therefore, that it is at all likely that there would be waste of time and effort in proceeding with an account as soon as possible.

6.

The third reason is that an account of commission for the earlier period will be necessary in any event. It is not right that the taking of that part of the account should be postponed and it is undesirable for the taking of the account to be compartmentalised with different periods being dealt with at different times.

7.

So far as the correct approach to the quantum meruit is concerned, I did not, in my main judgment or subsequently, make any decision or ruling in relation to the matter, although I did make some observations at paragraph 265. In my order dated 14 June 2017 I included provisions relating to

expert evidence. It was thought at that time, when nothing had been agreed about the basis of the quantum meruit, that expert evidence relating to practice in the airline industry might be relevant. As Mr Bell observes, the provision in that order for expert evidence in relation to travel agents' remuneration could only have been to assist the court in assessing an appropriate quantum meruit payment.

8.

However, since that time, quantum meruit has been addressed in the pleadings in the account.

9.

In paragraph 3 of their Particulars of Claim ("the Account PoC") in the account, the Claimants set out the meaning of NSR in accordance with PIA's defence in the action and reflecting the meaning which I adopted by way of definition of NSR in my main judgment. It is quite clear that, in referring to NSR throughout the Account PoC, the Claimants are referring to NSR as so defined and are not referring to the Revised NSR which I have discussed previously. In relation to the period after 1 November 2012, paragraph 26 of the Account PoC, correctly in my view, asserts that TT is entitled to a quantum meruit. Paragraph 27 then pleads that the reasonable price for the services rendered include the provision of NSR, that is to say NSR as defined, not Revised NSR.

10.

Paragraph 5 of PIA's defence to the Account PoC in relation to TT ("the Account Defence") responds to paragraph 3 of the Account PoC by stating that PIA did switch "its remuneration of [TT] to Net Sale Remuneration" and goes on to describe "Net Sale Remuneration" in a way corresponding to Revised NSR, in contrast with NSR as defined in the Account PoC. Paragraph 26 of the Account Defence then states: "The defendant admits paragraph 27 of the particulars of claim....". This can only be read as an admission that TT is entitled to the quantum meruit asserted in paragraph 27 of the Account PoC, namely NSR. This means that the account is to be taken on the footing that TT was obliged to pay to PIA as the price of a ticket the amount ascertained in accordance with NSR (as defined in the account PoC) so that, if it in fact paid more, the account will show a sum due to TT. As a matter of construction of the Account Defence, I can see no argument that PIA has not admitted that NSR (as defined in the Account PoC) is the appropriate basis on which to ascertain the quantum meruit. The fact that the Reply to the Account Defence goes into some detail about the inconsistency between NSR as defined in the Account PoC and Net Sale Remuneration as described in the Account Defence is, in my view, irrelevant to what has been admitted. It is also irrelevant that my direction concerning expert evidence was stayed by my order dated 8 December 2017: that was simply a result of the order barring PIA from defending the account.

11.

This is not simply a technical pleading point. The whole point of the pleadings in the account is to clarify the issues between the parties. TT has carefully and fully put forward its case on quantum meruit. That case was admitted; and even now, PIA has not articulated what its case on this aspect is, although Mr Bell did, in his submissions, suggest that Revised NSR might be the appropriate basis on which to assess TT's compensation. Mr Bell also suggested that the appropriate level of remuneration would be a matter for expert evidence. That may well be so in the absence of the admission which PIA has made. But such an admission has been made and expert evidence as to agents' remuneration is not relevant.

12.

Further, if PIA had challenged TT's approach in the Account Defence it ought also to have put forward its positive case about the level of the quantum meruit. It did not do so, and it has not put forward a positive case since then other than in Mr Bell's oral submission as I have just mentioned. It is no answer now to say that the appropriate level of quantum meruit is a matter for expert evidence. At the very least, that assertion should have been pleaded.

13.

There is no application to amend the Account Defence by removing the admission made in paragraph 26. In my judgment, the account in relation to TT should now proceed in the basis that TT is entitled to the benefit of NSR for the period after 1 November 2012.

14.

I am therefore prepared to make an order for directions on that basis. I was left with the impression that, subject to resolution of the points dealt with in this decision, the form of the draft order prepared on behalf of the Claimants was agreed at the hearing. I ask counsel now to agree and finalise the form of the order. I will resolve any disagreements (I do hope there will be none) on paper without a further hearing.

15.

I only add, so far as concerns amendment, that it is not at all obvious to me that any application for an amendment would be allowed. In any case, I would expect such an application to explain the basis on which PIA now says that the quantum meruit should be ascertained; and if it is said that that turns on expert evidence, the Court would want to know in outline what the expert conclusion are.