

Major Litigation Success for Voisin

Voisin has recently recorded a significant success in the case of *Pirrwitz -v- AI Airports International Limited ("AI") and PI Power International Limited ("PI")*. The action concerned a claim for non-payment of contractual exit fees on behalf of Mr Bjorn Pirrwitz, a Director of AI and PI.

By way of background, AI invested in airports and airport related businesses in Europe and PI concentrated on power generating assets, with a particular focus on renewable energy across Europe. The combined value of assets under the management of the companies was estimated at €1.3 billion.

Mr Pirrwitz, together with other individuals were appointed to the Boards of Directors in 2008, following a financial scandal involving Meindl Bank of Austria. The claim against the two companies amounted to €1.3 million. AI counterclaimed for €1.7 million based upon allegations that Mr Pirrwitz had failed to deal with a claim on behalf of AI insofar as it concerned the management of certain Italian litigation relating to the company's ownership of Parma Airport. The counterclaim was defended on the basis that it was entirely spurious as a matter of fact and law.

Following a two week trial before the Royal Court, which involved witnesses from Jersey, the United States, Germany and Switzerland together with experts in Italian law as well as in the field of executive remuneration, the Plaintiff was entirely successful. The award made was for the entire sum claimed together with interest and costs and the counterclaim was dismissed as having been without merit, so much so that the Court awarded costs on the higher indemnity basis for that aspect of the proceedings.

The AI and PI websites announced on 24 January that the Boards of Directors were "disappointed with this outcome and consider[ed] it entirely inconsistent with all advice ... received". In fact, the decision was entirely consistent with the advice given to Mr Pirrwitz. Whilst there were issues concerning the construction of articles and the enforcement of contractual obligations all of which were resolved in his favour, the case was fundamentally decided on the basis of witness evidence and an analysis of contemporaneous documentation. The evidence of Mr Pirrwitz and of the third party, Mr Wolfgang Vilsmeier, was preferred to that of the Directors relied upon by AI and PI. In the case of the evidence given by two of the Jersey Directors of AI and PI, the Court commented that they gave evidence "of what they would have liked the Board to have done rather than what it actually did".

In contrast the Court described Mr Pirrwitz and Mr Vilsmeier as "careful witnesses who gave their evidence credibly and well".

The judgement represents a considerable success for the client and for the team at Voisin. The case was managed from the initial instructions in 2009 by Dexter Flynn and the trial was conducted by Mike Preston, appearing before the Deputy Bailiff sitting with two Jurats.

Commenting on a successful result Mike said: *"As commercial trials go in this jurisdiction this was one of the longer actions lasting as it did for 2 weeks and with the judgement running to fifty-seven pages. It was complicated by the fact that the Defendants involved a third party, who was himself entirely successful at trial. The counterclaim was brought only shortly before the trial which had been due to take place in November 2010. As a result, the trial was delayed for some two years and the issues were made far more complex both factually and legally with the introduction of a foreign law aspect and substantially more documentation. Overall, to achieve such a successful result for our client in a hard-fought case was very satisfying"*.

For further information on the case or if you should have an enquiry about litigation in Jersey please contact either Mike Preston or Dexter Flynn of Voisin.