

MONDAY 18TH NOVEMBER 2013

IN THE COURT OF APPEAL

ON APPEAL FROM THE CARDIFF CIVIL JUSTICE CENTRE

2CF30125

BEFORE LORD JUSTICE RICHARDS

B E T W E E N

ALYSON AUSTIN

APPELLANT

- and -

MILLER ARGENT (SOUTH WALES) LIMITED

RESPONDENT

ON CONSIDERING the appellant's application for a protective costs order

AND ON CONSIDERING the respondent's submissions thereon

IT IS ORDERED that the application be allowed to the extent indicated at paragraphs 4 and 5 of the attached memorandum

By the Court



Her Majesty's
Court of Appeal

20 NOV 2013

ON PAPER
Application No.

A1/2013/2676(A)



Austin v Miller Argent (South Wales) Limited
(Case No. A1/2013/2676)

RULING ON APPLICATION FOR COSTS PROTECTION

1. I have considered the appellant's application for costs protection, together with supporting submissions and related correspondence and the respondent's observations and the evidence to which they refer. I note that the court has been asked to deal with the matter on the papers.
2. In so far as the respondent contends that the court lacks jurisdiction to make a protective costs order in this case, I reject the contention. I agree that the case does not fall within CPR 52.9A, but the wide case management powers of the court under CPR 3.1 enable provision to be made for costs protection in situations going beyond those cited by the respondent (costs capping under CPR 3.19 ff. and limits on recoverable costs in Aarhus cases under CPR 45.41 ff).
3. A protective costs order is appropriate in this case in order to enable the appeal to proceed, given that the appeal itself concerns the applicability of the Aarhus Convention and whether there should be costs protection in the main proceedings, and given that the judge below granted permission to appeal on the ground that the appeal raises issues of significant public importance.
4. It would not be appropriate, however, for the appellant to have complete costs protection. A reasonable limitation on her liability to costs is £2,500.
5. Equally, it would not be appropriate to limit the appellant's liability without a reciprocal limitation on the respondent's liability, especially bearing in mind that they are both private parties, albeit with greatly differing financial resources. A reasonable limitation on the respondent's liability to costs is £15,000.
6. I am satisfied that an order for reciprocal costs protection in those sums accords with the overriding objective in CPR 1.1. Accordingly, I so order.
7. For the avoidance of doubt, the order is entirely without prejudice to the decision to be made on the substantive appeal.



A handwritten signature in black ink, appearing to read 'Mr Richards', with a horizontal line underneath.

Lord Justice Richards

18 November 2013

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ALYSON AUSTIN

- and -

MILLER ARGENT (SOUTH WALES) LIMITED

ORDER

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* This order was drawn by Mr J Hebden (Associate) to whom all enquiries regarding this order should be made. When communicating with the Court please address correspondence to Mr J Hebden, Civil Appeals Office, Room E307, Royal Courts of Justice, Strand, London WC2A 2LL (DX 44450 Strand) and quote the Court of Appeal reference number. The Associate's telephone number is 020 7947 7896