



In The Supreme Court of Bermuda

CIVIL JURISDICTION

2024: No. 112

BETWEEN:

AFINITI, LTD

Plaintiff

-AND-

MUHAMMED ZIAULAH KHAN CHISHTI

Defendant

EX TEMPORE RULING

(In Chambers)

Ex parte application for leave to appeal against the Costs Order

Date of Hearing: 20 March 2025

Date of Ruling: 21 March 2025

Appearances: *Lilla Zuill (LZ)* of Zuill & Co for Mr. Chishti

RULING of MARTIN J

This is an application for leave to appeal against the Court's decision refusing to grant Mr. Chishti his costs of the proceedings. Mr. Chishti lost the proceedings but relied upon the terms

of an Indemnity Agreement dated 1 January 2020 which he says gives him a right of indemnity that overrides the Court’s discretionary powers to award costs in the usual way.

However, on analysis, the Indemnity Agreement does no such thing. The Indemnity Agreement extends only to costs of proceedings which arise **by reason of** Mr. Chishti’s actions or omissions as a director or officer of Afiniti Ltd (or its affiliates).

The present proceedings did not arise out of his actions as a director or officer of Afiniti Ltd or its affiliates and Mr Chishti was not a director or officer of Afiniti Ltd (or its affiliates) when he took the actions that precipitated the proceedings being brought against him. Therefore, his claim for costs cannot fall within the limits of costs incurred “by reason of” his actions or omissions as a director or officer which are contained in the Indemnity Agreement. The Court gave a detailed analysis of the interpretation of the relevant clauses of the Indemnity Agreement which support this interpretation in the Costs Ruling itself.

The terms of the Indemnity Agreement are clear and unambiguous (at least in this respect). It follows that an appeal against the Court’s Costs Ruling based on the terms of the Indemnity Agreement is unsustainable and has no realistic prospect of success and/or is “doomed to fail”.

In the Costs Ruling the Court also considered Mr. Chishti’s alternative arguments on interpretation of the Indemnity Agreement which were also rejected, but it is not necessary to repeat those reasons here, save to say that those alternative arguments all have the same result, namely that Mr. Chishti has no contractual claim to the recovery of his costs.

Therefore, leave to appeal must be refused.

Dated this 21st day of March 2025



THE HON. JUSTICE MR. ANDREW MARTIN

PUISNE JUDGE