

IN THE SUPREME COURT OF JUDICATURE
IN THE COURT OF APPEAL, CIVIL DIVISION

ON APPEAL FROM
THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND & WALES
COMMERCIAL COURT (QBD)

BEFORE: LORD JUSTICE PETER JACKSON
LORD JUSTICE MALES
LORD JUSTICE BIRSS

B E T W E E N:

- (1) ATHENA CAPITAL FUND SICAV-FIS S.C.A.**
(2) ATHENA CAPITAL REAL ESTATE AND SPECIAL SITUATIONS
FUND 1
(3) WRM CAPITAL ASSET MANAGEMENT S.A.R.L.
(4) RAFFAELE MINCIONE

Appellants / Claimants

-v-

SECRETARIAT OF STATE OF THE HOLY SEE

Respondent / Defendant

ORDER

UPON hearing Mr Charles Samek Q.C. and Ms Tetyana Nesterchuk for the Appellants and Mr Charles Hollander Q.C., Mr Samar Abbas Kazmi and Mr James Bradford for the Respondent

AND UPON the Appellants' appeal against the Order made by Mr Simon Salzedo QC (sitting as a Judge of the High Court) dated 30 November 2021 and sealed on 2 December 2021 (the "30.11.21 Order") by Notice of Appeal dated 17 December 2021 (the "Appeal")

IT IS ORDERED THAT

1. The Appeal is allowed.
2. Paragraph 4 of the 30.11.21 Order is set aside and the stay of these proceedings imposed by the said paragraph is set aside.

3. As to costs:

- a. The Respondent is to pay the Appellants' costs of the Appeal, such costs to be assessed, if not agreed (the "costs of the Appeal").
- b. The Respondent is to make a payment on account the costs of the Appeal to the Appellants in the sum of £100,000.
- c. Paragraph 5 of the 30.11.21 Order is set aside and the Respondent is to pay the Appellants' costs of and occasioned by (i) the Respondent's application by notice dated 28 April 2021 pursuant to CPR 11(1) for a declaration that the Court has no jurisdiction over the Respondent in relation to the Appellants' claims as set out in the Claim Form and Particulars of Claim or, alternatively, shall not exercise any jurisdiction it may have, and for any consequential relief pursuant to CPR Part 11(6) and (ii) the said Respondent's application as treated by the Court as amended to include an application to stay the Claim under the inherent jurisdiction of the Court on the grounds already set out therein, such costs (including the costs of the consequential hearing on 26th November 2021) to be assessed, if not agreed (together, the "costs of the Respondent's application").
- d. The Respondent is to make a payment on account of the costs of the Respondent's application to the Appellants in the sum of £100,00.
- e. Pursuant to CPR 44.2(6)(g), the Respondent is to pay interest at a rate of 2% above base rate on all amounts paid by the Appellants to their solicitors as costs and disbursements (including Counsels' fees) from the date on which each such payment was made until the date hereof. Thereafter, the rate provided for in s. 17 of the Judgments Act 1838 shall apply.
- f. Payments on account of costs referred to above at paragraphs 3(b) and 3(d) are to be paid within 28 days of the date of this order.

4. The Respondent's application for permission to appeal to the Supreme Court is refused.

Dated 26 July 2022