

IN THE COURT OF APPEAL (CIVIL DIVISION)

Appeal Ref. A4/2020/0884

Before The Rt. Hon. Lord Justice Lewison

The Rt. Hon. Lord Justice Males

And The Rt. Hon Lady Justice Rose

ON APPEAL FROM THE HIGH COURT OF JUSTICE

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

COMMERCIAL COURT (OBD)

The Honourable Mr Justice Jacobs [2020] EWHC 980 (Comm)

BETWEEN

(1) HYTERA COMMUNICATIONS CORPORATION LTD.

(2) PROJECT SHORTWAY LIMITED

Appellants

- and -

(1) MOTOROLA SOLUTIONS, INC.

(2) MOTOROLA SOLUTIONS MALAYSIA SDN, BHD.

Respondents

ORDER

UPON hearing Leading Counsel for the Appellants and Leading Counsel for the Respondents,

AND UPON judgment being handed down electronically under the COVID-19 Protocol on
11 January 2021,

IT IS ORDERED THAT:

1. The appeal is allowed.
2. The Orders of Jacobs J dated 9 April 2020 and 24 April 2020 (“the 24 April Order”) (together, the “April Orders”) are set aside.

3. Any application by Sepura Limited to be released from the undertakings given in Schedule C to the April Orders must be made to the Commercial Court.
4. Any application by the Appellants to enforce the cross-undertaking in damages in paragraph (1) of Schedule B to the April Orders must be made to the Commercial Court by 4pm on 8 February 2021.
5. The Respondents shall repay to the Appellants the costs of £132,098.49 paid pursuant to paragraph 13 of the 24 April Order, plus interest calculated at an annual rate of 3% in the amount of £2,833.78, by 4pm on 25 January 2021.
6. The Respondents shall pay the Appellants' costs of the appeal, to be subject to detailed assessment on the standard basis if not agreed. [Note: in the Court's view, the amount of £328,435 claimed by the Appellants as their costs of the appeal substantially exceeds a reasonable and proportionate amount for a case of this nature in the Court of Appeal.]
7. The Respondents shall pay the Appellants £125,000 on account of the costs payable pursuant to paragraph 6 above by 4pm on 25 January 2021.
8. The Respondents shall pay the Appellants' costs of the remainder of the proceedings, to be subject to detailed assessment on the standard basis if not agreed.
9. The Respondents shall pay the Appellants £250,000 on account of the costs payable pursuant to paragraph 8 above by 4pm on 25 January 2021.
10. The Respondents' application for permission to appeal to the Supreme Court is refused.
11. In the event that the Respondents make an application to the Supreme Court for permission to appeal from this Order by 4 pm on 25 January 2021, paragraphs 5, 7 and 9 of this Order are stayed pending the determination of that application.

11 January 2021