IN THE SINGAPORE INTERNATIONAL COMMERCIAL COURT OF THE REPUBLIC OF SINGAPORE

[2021] SGHC(I) 9

Originating Summons No 5 of 2021

Between

(1) CJM
(2) CJN
(3) CJO
(4) CJP
(5) CJQ
(6) CJR
(7) CJS

… *Plaintiffs*

And

(1) CJT

… *Defendant*

JUDGMENT

[Civil Procedure] — [Costs]

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CJM and others
v
CJT

[2021] SGHC(I) 9

Singapore International Commercial Court — Originating Summons No 5 of 2021
Anselmo Reyes IJ
21 April, 7 June, 13 July 2021

27 August 2021 Judgment reserved.

Anselmo Reyes IJ:

Introduction

1 In *CJM and others v CJT* [2021] SGHC(I) 4 I dismissed the plaintiffs' application to set aside an arbitral award (including a Summons to amend the Originating Summons filed by the plaintiffs). At the end of my judgment, I directed that the parties file written submissions on costs. This is my decision on costs.

2 Having prevailed, the defendant contends that the plaintiffs should be ordered to pay costs of S$85,000 (all-in) to the defendant as follows: (a) costs of S$25,000 prior to the transfer of the matter to the SICC ("pre-transfer costs"); (b) costs of S$45,000 following the transfer of the matter to the SICC ("post-transfer costs"); and (c) disbursements of S$15,000 (of which S$10,958.40 was

paid to an expert providing an opinion on foreign law). The plaintiffs do not dispute that, having lost, they are liable to pay costs to the defendant. Nor do the plaintiffs dispute the S$15,000 claimed for disbursements. There is also no dispute that the costs scale in O 59 of the Rules of Court (2014 Rev Ed) ("ROC") and Appendix G ("Appendix G") of the Supreme Court Practice Directions are relevant to pre-transfer costs. The parties further agree that, as to post-transfer costs, the defendant is entitled to its "reasonable costs" in accordance with O 110 r 46 ROC, the general rule governing costs before the SICC. Where the parties disagree is on the quantum of costs. The plaintiffs say that pre-transfer costs of S$5,000 should suffice and post-transfer costs should be no more than S$20,000. There is accordingly a difference of S$45,000 between the parties.

Pre-transfer costs

3 Appendix G gives a guideline of S$12,000 per day for contentious originating summonses not involving cross-examination. But Appendix G allows the court a discretion to depart from that guideline when appropriate in the circumstances of the case.

4 The defendant submits that I should deviate from the guideline. The defendant argues that such step is justified because its Singapore counsel was not involved in the underlying consolidated arbitration. Instead, the defendant's Singapore counsel had to take full instructions on the matter. Counsel had to review voluminous supporting documents when preparing their client's factual affidavit in opposition and a responsive affidavit on foreign law. In so doing, counsel had to liaise with the foreign lawyers who were involved in the arbitration on the defendant's behalf. The defendant notes that the arbitration took nearly 3 years. The defendant also points out that the award issued by the tribunal was almost 700 pages long and the affidavit in support of the plaintiffs'

setting aside application was 4,170 pages in length. The plaintiffs additionally submitted a 51-page affidavit on foreign law on which the defendant had to obtain instructions and file its own expert evidence. As a result, the defendant breaks down its pre-transfer costs as follows: (a) taking instructions from the client, reviewing cause papers and supporting documents: S$9,800; (b) assisting with the preparation of reply affidavits: S$31,600; and (c) cost of foreign counsel advising on foreign law issues and assisting with procuring and preparing a foreign law opinion: S$92,500. The defendant says that there is no duplication in respect of the costs claimed for Singapore and foreign counsel.

5 The plaintiffs counter that there is no reason to depart from Appendix G and, in any event, S$25,000 for pre-transfer costs is excessive. The plaintiffs agree that it filed "a voluminous record" in support of its application. But they claim that "this is commonplace for setting aside applications as the parties would put on record the entire underlying arbitration record for good order". The plaintiffs accept that, in accordance with the Court of Appeal's decision in *CBX and another v CBZ and others* [2021] SGCA(I) 4, a voluminous record is a factor that may be considered in deciding whether to give an up-lift on pre-transfer costs, but it is not a reason for disregarding Appendix G completely. The plaintiffs point out that the text of the factual affidavit in support of their setting aside application only contained 57 pages. What made it voluminous was the need to exhibit key papers and supporting documents filed in the arbitration (for example, the award, pleadings, witness statements, expert reports, written submissions, and hearing transcripts). The plaintiffs suggest that the volume of their setting aside application should not be taken as an indication of complexity. Further, the plaintiffs submit that the involvement of foreign counsel does not justify a departure from Appendix G. The plaintiffs contend that, while the defendant can organise its defence of the award as it sees fit, the plaintiffs should not be made to bear the extra costs of the defendant's decision

to employ two firms of lawyers in two different jurisdictions rather than a single firm in Singapore. The plaintiffs note that, despite what the plaintiffs say was the narrow scope of the foreign law issues in the application, it is "curious" that the pre-transfer costs claimed for foreign counsel should be more than twice that for Singapore counsel. Nor is it apparent from the breakdown provided by the defendant that the pre-transfer costs claimed for Singapore and foreign counsel avoid overlap.

6 I am unable to agree with the plaintiffs.

7 First, while the plaintiffs' supporting factual affidavit only ran for 57 pages, the reality of the exhibits to the affidavit running to thousands of pages cannot be ignored. The plaintiffs must be assumed to have included such volume of material for a reason. Accordingly, conscientious Singapore counsel who had not been involved in the arbitration would have little option but to go through the exhibits, even if only to conclude, after consideration of the same, that much of the material was not actually relevant. It is unrealistic to expect defendant's lawyers to have concluded, without taking the time to review the plaintiffs' several thousands of pages of exhibits in depth, that the application was commonplace and unexceptional.

8 Second, as matters turned out, it proved unnecessary to evaluate the foreign law evidence adduced by the parties in order to decide the issues raised by the setting aside application. But again, the plaintiffs having initially filed evidence on foreign law in support of their application, it was incumbent on the defendant's Singapore representatives, if they were to perform their role as counsel, to go through such evidence and take instructions upon it from foreign counsel involved in the arbitration. It would have been remiss to have dismissed such evidence as immaterial without taking the time to consider the same. The

presumption must be that the plaintiffs included the foreign law material because they believed it to be relevant and it would have been the job of the defendant's counsel to attempt to understand why. At the case management conference ("CMC"), I queried the need for the foreign law evidence that had been filed by both parties. However, that is the prerogative of a judge who has had the benefit, while preparing for the CMC, to read through both parties' evidence on foreign law and reflect on whether that evidence is pertinent to the issues thrown up by the setting aside application.

9 Third, I do not think that this is the case of a party employing two sets of counsel in different jurisdictions to perform the same tasks. It seems to me that it was warranted for Singapore counsel to have involved foreign counsel in order to understand the foreign law material adduced by the plaintiffs. I take the plaintiffs' point that it is odd that the pre-transfer cost of foreign counsel should be more than twice the pre-transfer cost of Singapore counsel. But the defendant is not asking for the totality of its pre-transfer costs. The defendant is merely asking for S$25,000. This is just under 20% of its total pre-transfer costs. If there were any overlap in the costs claimed for Singapore and foreign counsel, the discounting of more than 80% of the defendant's actual pre-transfer costs would have factored out such duplication.

10 In short, for the reasons given, I think that this is a case where, on pre-transfer costs, I should exercise the discretion to depart from a strict application of the guideline in Appendix G. I award pre-transfer costs of S$25,000.

Post-transfer costs

11 The defendant's actual post-transfer costs have been broken down as follows: (a) attending CMC: S$3,600; (b) reviewing plaintiffs' further reply affidavits and preparing defendant's further reply affidavit: S$5,800; (c)

drafting submissions: S$23,100; (d) preparing for and attending hearing: S$59,700; (e) preparing cost submissions: S$5,600. The foregoing items add up to S$97,800. Therefore, the S$45,000 sought by the defendant for post-transfer costs discounts its actual post-transfer costs by a little over 50%. According to the defendant, the costs are reasonable, given that it was represented at the substantive hearing of the setting aside application by a Senior Counsel assisted by two experienced Singapore lawyers. The substantive hearing was scheduled for a full day, albeit in the end it only took about three hours. The defendant also points to the volume of documentation and the complexity of the facts to be mastered, for the purposes of the substantive hearing at which the plaintiffs were seeking to set aside the award on four bases. The defendant further complains that the plaintiffs put forward unreasonable allegations and arguments and belatedly attempted to amend their original application after the expiry of the three-month time limit for filing an application to set aside an arbitral award.

12 For their part, the plaintiffs characterise the defendant's costs claim of S$45,000 as "wholly excessive and unreasonable". They maintain that, despite the voluminous material filed, the setting application was far from complex, being only limited to setting aside a few paragraphs of the award. They say that there were no novel questions of law and the parties' arguments were fully set out in their skeletal submissions which had been limited by my direction to 30 pages. The four setting aside grounds raised by the plaintiffs boiled down to the application of familiar legal principles to the same set of facts. The plaintiffs deny that its arguments were unreasonable or unfounded and note that the outcome of their amendment application added little to the issues that were already in play under their initial setting aside application.

13 I am not persuaded that the S$45,000 claimed by the defendant is exorbitant.

14 While the figure of S$97,800 strikes me as excessive, that is not what the defendant is seeking. It has voluntarily reduced the amount by more than half. As mentioned above in relation to pre-transfer costs, there was a mass of material that the defendant's counsel had to assimilate in order to properly assist the court at the substantive hearing. That would take significant preparation time and care, especially in the drafting of succinct laser-like submissions.

15 I do not believe that the plaintiffs advanced arguments or allegations which were unwarranted in the sense of going beyond the normal cut and thrust of litigation. Nor do I think that the plaintiffs' amendment application or its reliance on four setting aside grounds further complicated the proceedings. But my views on those matters do not detract from the hard reality that to discern what is relevant and what is not in a mass of several thousand pages requires considerable attention and thought on counsel's part. In that context, S$45,000 for the work done by a Senior Counsel and his two assisting lawyers must be regarded as wholly reasonable.

16 I will award post-transfer costs of S$45,000.

Conclusion

17 There will be an order that the plaintiffs pay the defendant costs of S$85,000 (all-in).

Anselmo Reyes
International Judge

Francis Xavier s/o Subramaniam Xavier Augustine, Chia Xin Ran Alina and Gani Hui Ying Tracy (Rajah & Tann Singapore LLP) for the plaintiffs;
Vergis S Abraham, Asiyah binte Ahmad Arif and Zhuo Jiaxiang (Providence Law Asia LLC) for the defendant.