IN THE SINGAPORE INTERNATIONAL COMMERCIAL COURT OF THE REPUBLIC OF SINGAPORE

[2022] SGHC(I) 12

Suit No 3 of 2020

Between

(1) Christian Alfred Larpin
(2) Quo Vadis Investments Limited

… *Plaintiffs*

And

(1) Kaikhushru Shiavax Nargolwala
(2) Aparna Nargolwala

… *Defendants*

JUDGMENT

[Civil Procedure — Costs — Principles — Reasonable costs]

Larpin, Christian Alfred and another
v
Kaikhushru Shiavax Nargolwala and another

[2022] SGHC(I) 12

Singapore International Commercial Court — Suit No 3 of 2020
Roger Giles IJ
27–30 September, 27 October, 5 November 2021; 29 June 2022

26 August 2022 Judgment reserved.

Roger Giles IJ:

1 The judgment in the substantive proceedings, *Larpin, Christian Alfred and another v Kaikhushru Shiavax Nargolwala and another* [2022] SGHC (I) 4, was given on 21 February 2022 ("the Main Judgment"). The proceedings were dismissed, and it was ordered that the plaintiffs pay the defendants' costs of the proceedings. In a further judgment given on 25 April 2022, *Larpin, Christian Alfred and another v Kaikhushru Shiavax Nargolwala and another* [2022] SGHC(I) 7 ("the Indemnity Costs Judgment"), the defendants' application for an order that the costs be on the indemnity basis from a particular date was dismissed, and it was ordered that the defendants pay the plaintiffs' costs of the application. Submissions were then received on the respective costs amounts, in writing and orally. This is the determination of the net amount payable by the plaintiffs to the defendants.

2 The parties were able to agree on the amount for disbursements inclusive of any GST applicable (S$15,840.78) and the amount for a pre-trial application to adduce evidence by video link (S$2,500) to be paid by the plaintiffs to the defendants. They were unable to agree on the amounts for profit costs for the substantive proceedings, for the indemnity costs application, and for this determination.

The applicable costs regime

3 This is a transfer case. The proceedings were commenced in the High Court on 7 October 2019 and were transferred to the Singapore International Commercial Court ("the SICC") on 2 April 2020. At the time of transfer, it was ordered that O 110 r 46 of the Rules of Court (2014 Rev Ed) ("the Rules") "is to apply to the assessment of costs in respect of proceedings in and arising from [the High Court proceedings] after its transfer…". Strictly, therefore, pre-transfer costs for the substantive proceedings should be determined as costs under O 59 r 27 of the Rules, including with reference to Appendix G of the Supreme Court Practice Directions ("Appendix G"), and post-transfer costs should be determined as costs under O 110 r 46. Further, Appendix G may be a factor to be borne in mind in determining the amount of costs under O 110 r 46: *CBX and another v CBZ and others* [2022] 1 SLR 88 at [39].

4 Sensibly, the parties were agreed that the work done prior to transfer was unlikely to be significant, and that costs should be determined wholly under the SICC regime of O 110 r 46. It was also common ground that in this case, at least in relation to the costs of the substantive proceedings, that regime should be applied without particular regard to Appendix G – as was accepted by Mr Christopher Anand Daniel for the plaintiffs, that it "doesn't count for much".

Entitlement to reasonable costs

5 Under O 110 r 46(1), the unsuccessful party is to pay the "reasonable costs" of the successful party, unless the court orders otherwise. The rule does not elaborate on what are reasonable costs, but paragraph 152(3) of the SICC Practice Directions state that reasonable costs are in the discretion of the court and lists, non-exhaustively, circumstances which the court may consider. As well as the conduct of the parties, the circumstances include the amount or value of any claim involved; the complexity or difficulty of the subject-matter involved; the skill, expertise and specialised knowledge involved; the novelty of any questions raised; and the time and effort expended in the application or proceedings.

6 In *Kiri Industries Ltd v Senda International Capital Ltd and another* [2022] 3 SLR 174 ("*Kiri*") at [66] it was said:

> In short, 'reasonable costs' allows the court to look at all the facts and circumstances in a given case to determine the appropriate quantum of costs to be awarded. Skill, expertise and specialised knowledge coupled with the novelty of the issues raised are important considerations. It is, by design, a more generous and flexible regime, that may in appropriate circumstances mirror the approach to costs in international arbitration: see *CPIT* at [15]; *Quoine* at [22]; the SICC Committee's Report. The broad nature of this inquiry was observed by the court in *CBX* at [9]:
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> > Thus, the question of amount of costs that a successful party should recover is at large and the judge is tasked to determine what is 'reasonable', a determination which can be guided by many factors moving far beyond the type of proceeding, the number of hearing hours and the kind of transcription service employed (though these factors will also be relevant, of course).

7 In *Kiri*, the court went on to explain the rationale and purpose of the SICC costs regime, to the conclusion (at [77]) of the commercial consideration

of ensuring that a successful litigant is not generally out of pocket for prosecuting their claim (which must include defending a claim against them) in a sensible manner. So long as the costs are sensibly and reasonably incurred, a party in the SICC ought to be able to claim them.

Establishing reasonable costs

8 In *Lao Holdings NV v The Government of the Lao People's Democratic Republic* [2022] SGHC(I) 6 ("*Lao*") at [58], the court repeated (with reference to *Kiri*) that for proceedings in the SICC as long as the costs are reasonably incurred a successful party should be compensated for those costs, and said (at [83]):

> The fundamental purpose of an award of costs in the SICC under O 110 of the ROC is to compensate the successful party for reasonable costs incurred in the legal proceedings. The phrase 'reasonable costs' is applicable to all costs, provided that they are reasonable. The qualification that the costs must be reasonable is only intended to provide a means for the court to ensure discipline in the pursuit of the case, as well as to prevent an unsuccessful party from being oppressed by the successful one. It is not intended to incorporate any further attenuation on the basis of considerations of social policy which may be appropriate in domestic courts. *The starting point, therefore, in assessing costs in the SICC must be the costs actually incurred by the successful party, ie, the costs payable by the successful party to its solicitors, and its experts or consultants where relevant, which is then subject to the single attenuation for reasonableness.* [emphasis added]

9 It follows that the successful party should ordinarily seek to show the costs actually incurred, with any recognised attenuation, the claimed costs then being subject to consideration of their reasonableness. As to this, the court said in *Lao*:

> 112 We must pause at this point to state that parties do themselves no favours when submitting on costs without assisting the court with the relevant details. Giving ballpark

> figures is wrong in principle. Whilst parties may wish to do so in those international arbitration challenges which seldom exceed one day, they may take the risk of rough justice.
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> 113 However, where trials have taken place, *a fortiori* in more complex trials and with tranches, and even for originating summonses that are heard over a few days, we expect counsel to put in more details into their submissions on the level of costs to be awarded. They should be able to break down costs in different broad stages – costs leading up to the filing of Affidavits of Evidence-in-Chief, or at least costs up to trial, costs during the trial and costs after trial (usually submissions). Parties should be able to provide the number of lawyers claimed, their post-qualification experience, their hours and their respective charge-out rates. Where applicable or beneficial, it should also be broken down into stages … Any information or detail that counsel feel will be relevant and helpful should also be provided. All this is good practice to enable any court or tribunal to come to a proper assessment of costs to be awarded.

10 This is not new. In *CPIT Investments Ltd v Qilin World Capital Ltd and another* [2018] 4 SLR 38 at [41], Vivian Ramsay IJ noted the need for the court to be "provided with a sufficient breakdown of the costs so that the paying party can make appropriate comments on the reasonableness of the costs and understand the work carried out for those costs". Without some details of the costs actually incurred, the successful party is exposed to the court's inability to be satisfied that the claimed costs were reasonably incurred.

Costs for the substantive proceedings

11 The defendants claimed profit costs of S$374,500, being S$350,000 plus seven percent goods and services tax ("GST"). They said that the professional fees in fact incurred "come up to slightly above S$420,000 (excluding GST)", with the rider that the final bill had not yet been issued. However, they provided no details at all of the costs actually incurred; rather, in support of the claimed amount they said that:

(a) it was reasonable for them to have vigorously defended claims which included allegations of fraud and dishonesty particularly having in mind Mr Nargolwala's standing in business circles, and there was no basis for suggesting that their defence of the claims had been oppressive to the plaintiffs;

(b) the proceedings had considerable complexity, and the value of the dispute was quite large involving rescission of a property transaction approaching US$8m and damages in excess of US$1m;

(c) their estimate in their Proposed Case Management Plan dated 6 July 2020 had been of overall costs of S$350,000 excluding taxes and disbursements, on the basis of a trial taking five days; the trial had taken four hearing days plus written closing submissions and a half day for oral closing submissions;

(d) in the defendants' application for security for costs heard in November 2020 (which was unsuccessful), the plaintiffs had not taken issue with the amount of security sought, being S$350,000;

(e) the plaintiffs' estimate of their own costs in their Proposed Case Management Plan had been of overall costs of S$500,000; and

(f) the amount of S$350,000 compared favourably with the costs awarded for a five-day trial in *B2C2 Ltd v Quoine Pte Ltd* [2019] 5 SLR 28.

12 The plaintiffs' principal response was that the claimed S$350,000 was disproportionate to the costs ordered in *Lew, Solomon v Kaikhushru Shiavax Nargolwala and others* [2020] 3 SLR 61 ("*Lew*"), the Lew proceedings referred

to in the Main Judgment, and that a proportionate figure was S$100,000 inclusive of GST. More widely, they submitted that the defendants' claimed costs appeared to be "a back-door attempt to obtain costs on indemnity basis despite their failed Indemnity Costs Application", saying that the defendants appeared to be:

> … attempting to pass on the entirety of the costs that they incurred in [the proceedings] going to trial, to the Plaintiffs. This is the very definition of costs being paid on an indemnity basis, and the Defendants should not be permitted to do so, especially since they attempted, and failed, in their Indemnity Costs Application.

13 This last submission is misconceived. As stated in the Indemnity Costs Judgment itself, at [11], costs on the indemnity basis is a matter of the burden of proof of reasonableness, and costs on that basis does not mean that the successful party recovers all their costs. The point of that judgment was that the distinction between costs on the standard basis and costs on the indemnity basis does not arise under the SICC costs regime, and there was no power in the SICC to award costs on the indemnity basis. The failure of the defendants' application for an order that the costs be paid on the indemnity basis does not intrude into the present determination of reasonable costs; nor indeed do the defendants claim the entirety of the costs that they incurred in the proceedings going to trial.

14 The reasons of Simon Thorley IJ for the costs awarded in *Lew* have not been published, but I was provided with a transcript. The defendants as the first and second defendants in those proceedings were awarded costs of S$475,000, and the plaintiffs as the third and fourth defendants were awarded costs of S$400,000. The plaintiffs submitted that the Lew proceedings occupied nine hearing days and a further day and a half for oral closing submissions, and were more complex in particular in having issues of Thai law; they said that the

S$400,000 should be used as the basis for a proportionate costs order in the present case, and that a proportionate order would be S$100,000.

15 I have some difficulty with the submission that the costs awarded in the present case should be proportionate to those awarded in *Lew.* Costs should be proportionate to the amount at stake and the issues in the proceedings in which they are awarded, but whether the incurred costs claimed are reasonable must depend on the facts in the particular case, and any reference to the costs awarded in other cases is more for possible guidance as to reasonableness. Be that as it may, *Lew* was a very different costs situation. Between them, the plaintiffs and the defendants recovered costs of S$875,000. The defence of Mr Lew's claims was in part shared – Simon Thorley IJ referred to the first and second defendants having done "the heavy lifting", and it appears that his Honour discounted the third and fourth defendants' very large costs claim in part for that reason. I am unable to obtain guidance in the present case from the S$400,000 awarded to the plaintiffs as those defendants, nor in my view would an order of costs of S$100,000 in the present case be justified. It is necessary to address the reasonableness of the claimed S$350,000 on the facts of this case.

16 The plaintiffs pointed to the absence of any details of the claimed amount, saying that in the absence of any useful substantiation that amount could not be allowed. It is certainly far from ideal that the defendants appear to have paid no regard to the observations in *CPIT* and *Lao* earlier noted. But it does not follow that in the absence of details of the claimed costs, they must be denied in the claimed amount in favour of a "rough justice" amount.

17 The defendants are not without support for the reasonableness of the claimed amount, particularly in the plaintiffs' own estimate of their costs in a

considerably larger amount. In my view, the work involved on the defendants' side of the record was of a roughly equal extent to that involved on the plaintiffs' side of the record. Further, the plaintiffs did not suggest that any matter in evidence or submissions on the defendants' part was excessive or inappropriate, or invite attention to alternative estimations of appropriate hours or charge out rates reflecting on the defendants' incurred costs (with the possible qualification that they suggested that the facts had already been rehearsed in the Lew proceedings and one could not reasonably charge twice for going through the same facts; but I accept that the focus in the present proceedings was different, and do not think that that is a significant point). Perhaps in the light of the estimate of their own costs, the plaintiffs really did not contest reasonableness of the claimed costs *per se.*

18 The proceedings were of some factual complexity, requiring careful and detailed attention to what had occurred. There was some legal complexity in relation to misrepresentation by active concealment. I accept the particular importance to the defendants of defending the claims of fraud and dishonesty. In the particular circumstances of this case, I am satisfied that the incurred costs of S$374,500 claimed was reasonable.

Costs for the indemnity costs application

19 The application was conducted through correspondence. The plaintiffs proposed costs of S$15,000 inclusive of disbursements. The defendants responded that the plaintiffs' work was "principally in the form of a four-page letter" and that the S$15,000 was disproportionate to the costs for the substantive proceedings; they suggested a range of S$2,500 to S$3,000. I am unable to see S$15,000 as reasonable costs for the plaintiffs' work and determine costs of S$4,000 inclusive of disbursements.

Costs for this determination

20 The defendants have been substantially successful in this determination. They proposed S$3,500 inclusive of disbursements – implicitly, as costs incurred additional to the approximately S$420,000 earlier mentioned. The plaintiffs said nothing about these costs, and they should be awarded in the amount proposed.

Conclusion

21 Doing the arithmetic, the amount payable by the plaintiffs to the defendants is S$392,340.78 inclusive of GST and disbursements.

Roger Giles IJ
International Judge

Christopher Anand Daniel and Harjean Kaur (Advocatus Law LLP) for the first and second plaintiffs;
Ramesh Kumar s/o Ramasamy and Edmond Lim Tian Zhong (Allen & Gledhill LLP) for the first and second defendants.