IN THE SINGAPORE INTERNATIONAL COMMERCIAL COURT
OF THE REPUBLIC OF SINGAPORE

[2024] SGHC(I) 11

Originating Application No 5 of 2023

Between

DFI

… *Claimant*

And

DFJ

… *Defendant*

JUDGMENT

[Civil Procedure — Costs]

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DFI
v
DFJ

[2024] SGHC(I) 11

Singapore International Commercial Court — Originating Application No 5 of 2023
Sir Vivian Ramsey IJ
27 March 2024

3 May 2024 Judgment reserved.

Sir Vivian Ramsey IJ:

1 On 1 February 2024, I issued a judgment in this case dismissing the claimant's application to set aside the arbitral award (the "Award") issued by an arbitral tribunal (the "Tribunal") in an arbitration (the "Arbitration") between the parties administered by the International Chamber of Commerce.

2 I gave the parties the opportunity to agree on costs and, if they were unable to do so, I directed that the parties should provide written submissions. There was no agreement and the parties filed their costs submissions on 18 March 2024. The defendant then filed its written reply submissions on 27 March 2024 whilst the claimant informed the court that it would not be filing reply submissions.

3 It is agreed by the claimant that costs should be awarded to the defendant and the only issue is as to the amount of those costs. The defendant seeks costs of $120,848.86 (plus $10,667.50 for the cost submissions) and the claimant submits that the defendant's costs should be limited to $40,000, the amount in the defendant's cost estimate provided in the case management bundle filed on 10 October 2023.

4 For the reasons given below, I decide that the defendant should recover $131,516.36 in respect of its costs.

Submissions

5 The defendant refers to O 22 r 3 of the Singapore International Commercial Court Rules 2021 which provides that "the quantum of any costs award will generally reflect the costs incurred by the party entitled to costs, subject to the principles of proportionality and reasonableness." It refers to the decision in *Lao Holdings NV v Government of the Lao People's Democratic Republic and another matter* [2023] 4 SLR 77 ("*Lao Holdings*") at [83] and [89] and submits that this case gives appropriate guidance on the issue of whether costs are reasonable.

6 Having successfully resisted the claimant's application, the defendant seeks all the costs it incurred in doing so and submits that the costs incurred and claimed in its costs schedule are reasonable.

7 It submits that the subject matter of the Award was factually complex and technical in nature, with expert evidence being led by both parties in the Arbitration. Further, it says that the documents reviewed by its counsel were

voluminous and it refers to a table summarising the papers filed in this application.

8 As the defendant's counsel dealing with the application were not involved in the Arbitration, it says that they had to review the entirety of the claimant's 2924-page long supporting affidavit which exhibited, in particular, the documents filed in the Arbitration and the transcripts of the seven-day hearing to understand the case and frame the arguments necessary to resist the application.

9 On that basis, the defendant submits that it was entirely reasonable to engage a team of consisting of a senior legal practitioner and two assisting counsel to assimilate the voluminous material and assist the court at the hearing, including drafting legal submissions to address the issues raised by the claimant. It says that the defendant's lead counsel in the Arbitration provided valuable insight and assistance to the defendant's Singapore counsel. If he had not been involved as instructing counsel, the defendant says that its Singapore counsel would have incurred even more time in reviewing the matter and structuring their arguments to resist the application.

10 The defendant says that it has incurred legal costs of $120,848.86, inclusive of disbursements, in defending the claimant's unmeritorious application, as set out in the costs schedule. Having regard to the guiding principles on costs in *Lao Holdings*, the defendant submits that it ought to be compensated for the costs it actually incurred in resisting this application, to discourage such applications to set aside arbitral awards.

11 The claimant submits that, in determining the quantum of costs, the following factors are typically taken into account:

(a) the complexity or novelty of the case;

(b) the number of documents or volume of evidence adduced in the matter;

(c) the time and labour expended by counsel; and

(d) the number of hearings and the length of hearings in the matter.

12 Based on these factors, the claimants submits that the application was straightforward and was neither factually nor legally complex, being premised on the single issue of whether the Tribunal, in breach of the rules of natural justice, had failed to take into account the evidence and legal submissions of the claimant. It says that all the relevant documents were annexed to its supporting affidavit, which contained 22 pages of text and 3,053 pages of exhibits. The defendant then filed a single response affidavit, which spanned 29 pages and contained no documentary exhibits.

13 The claimant says that the written submissions filed by the parties were brief, with the claimant's being 21 pages and the defendant's 38 pages, with nine legal authorities cited by the claimant and five by the defendant. The parties attended one case management conference on 12 October 2023, which lasted approximately 30 minutes, and the substantive hearing on 4 December 2023 took a total of 1.5 hours.

14 The claimant submits that these factors should be taken into consideration as should the cost estimate provided by the defendant in the case management bundle. This estimate was prepared with the defendant's input

after the defendant had the opportunity to review the entirety of the claimant's case. Based on that review, the defendant estimated its costs at $40,000. In view of the factors raised above, the claimant submits that there is no reason for significantly more costs to have been incurred.

15 In response, the defendant submits that the starting point in assessing costs in the SICC must be the costs actually incurred by the successful party rather than the cost estimate set out in the case management bundle and it refers to *CNA v CNB and another and other matters* [2023] 5 SLR 264 ("*CNA*") in support of that submission.

16 The defendant also says that the claimant mischaracterises the application as a straightforward case which was neither factually nor legally complex. It submits that it could hardly be said that the matter was straightforward or not complex when the parties had to engage experts at the hearing of the Arbitration. In addition, the claimant acknowledges the voluminous documents that the defendant's counsel had to review. In relation to the written submissions being brief and the substantive hearing being short, the defendant submits that this does not detract from the voluminous material that the defendant's counsel had to assimilate to prepare concise written submissions and properly assist the Court at the substantive hearing.

17 The defendant also seeks costs of $10,667.50 which were incurred in relation to the cost submissions.

Decision

18 In determining the reasonableness of the costs claimed by one party, one of the most relevant issues is what costs were incurred by the other party. In this

case the claimant has chosen not to provide any details of its own costs. As was said by the Court of Appeal in *Senda International Capital Ltd v Kiri Industries Ltd* [2023] 1 SLR 96 at [75]:

> … Hence, the best evidence that the unsuccessful party can adduce to discharge its evidential burden will often be information as to the costs that it had correspondingly incurred for the matter, which might well be a sound proxy by which the trial court can determine what the appropriate level of costs in the particular case is. …

19 The defendant has set out the relevant hourly rates for its counsel. No criticism is made of those by the claimant. The defendant has also set out a detailed breakdown of the costs of each fee earner in relation to the various steps in the procedure up to the hearing. Again, no criticism is made by the claimant of that breakdown, and it is not contended that any of the work was unreasonable nor that any of the fee costs were not reasonably incurred. Nor is there any challenge to the reasonableness of the amount of $12,585.86 claimed for disbursements.

20 Instead the claimant makes, essentially, two points. First, that this was a straightforward case, which was not complex and which involved the sole issue of whether the Tribunal, in breach of the rules of natural justice, had failed to take into account the evidence and legal submissions of the claimant. I do not consider that portrayal of the case is correct. Whilst this case was not at the most complex end of the spectrum, the affidavit exhibited over 3000 pages of exhibits containing documents on the record in the Arbitration. The claimant focused on the evidence and submissions which had been deployed in the Arbitration in relation to the two main issues which the Tribunal had to decide.

21 It was therefore necessary to consider what had been submitted and what evidence had been given in the Arbitration relating to several allegations that the Tribunal had failed to take account of the evidence and submissions in respect of each of the issues. The defendant's counsel and the defendant's original counsel in the Arbitration both, therefore, had to be involved in gathering together those parts of the lengthy Arbitration record to identify documents which would support its defence. This was by no means straightforward.

22 The second point made by the claimant is that the defendant had estimated costs at $40,000 in its cost estimate in the case management bundle in October 2023. The cost estimates are an essential part of the case management plan. In this case the defendant's costs schedule, which is not criticised by the claimant, shows that the cost estimates were not an accurate reflection of the costs which had been incurred or the overall costs which would be incurred.

23 Whilst I accept that it is important that parties properly estimate costs in the cost estimates which are put before the court, the issue before me at this stage concerns the proper quantum of reasonable costs. In this case, as in *CNA*, I do not consider that the cost estimate can displace an otherwise reasonable quantum of costs in a costs schedule. I find the costs in the defendant's costs schedule to be reasonable for three reasons. First, the claimant has not sought to put forward its own costs schedule which can only mean that the claimant's costs schedule would not have supported a case that the costs were unreasonable. Secondly, the claimant has not sought to challenge the reasonableness of the rates or the detailed breakdown of the costs by demonstrating anything unreasonable. Thirdly, contrary to the submission by the claimant, I have found that this was not a straightforward case but had a

degree of complexity which would justify a good deal of work in relation to the review of the Arbitration record.

24 As was pointed out in *CNA* at [40], there is no logical reason why a discount applied in other cases should be applied and, in the *CNA* case itself, the court would not have applied a reduction of 30%, and "would have approached the matter afresh", had there not been a concession by the defendants: see *CNA* at [44].

25 In this case, I found that there was no substance in the claimant's challenges to the Award. In such cases where parties make applications to challenge arbitral awards which are not established, then it is generally undesirable to make a discount to the costs which are to be recovered. There is a good reason to award all the costs in such cases.

26 As set out above, everything points in this case to the claimed costs being reasonable and there is no submission by the claimant that there should be a percentage reduction. In addition, whilst the legal costs in the defendant's costs schedule amounts to $117,243, the defendant says that:

> For avoidance of doubt, *after taking into account 8% GST and discounts offered to the Defendant*, costs of $68,063.00 was incurred by the Defendant in legal fees for Eldan Law LLP.
>
> The legal costs incurred by Defendant in engaging [redacted] for OA 5 was $40,200.00
>
> The total legal costs incurred was: $108,263.00.
>
> [emphasis in original omitted; emphasis added in *italics*]

27 This shows that the legal costs claimed of $108,263.00 has already had a discount applied and I do not consider that there is any basis for a further discount to be applied to that figure.

28 In relation to the sum claimed for disbursements of $12,585.86, there is no challenge to the reasonableness of this sum, the majority of which are eLitigation fees. I therefore allow the sum claimed.

29 I also allow the defendant the reasonable costs of making its cost submissions in the sum of $$10,667.50.

30 Overall, I therefore order the claimant to pay the defendant the costs of these proceedings in the sum of $131,516.36.

Sir Vivian Ramsey
International Judge

Senthil Dayalan, Tharanii Thiyagarajan and Paul Aman Singh Sambhi (Dentons Rodyk & Davidson LLP) for the claimant;
Koh Choon Guan Daniel, Wong Hui Yi Genevieve and Smrithi Sadasivam (Eldan Law LLP) for the defendant.