

# SUPREME COURT OF SINGAPORE

10 September 2019

## Case Summary

### **Singapore International Commercial Court Suit No 5 of 2018 (Summons No 47 of 2019)**

*Arovin Ltd and another v Hadiran Sridjaja* [2019] SGHC(I) 13

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## **Decision of Vivian Ramsey IJ**

Outcome: The Court allowed the defendant's application for production of documents for one out of three requested categories.

## **Background**

1 This dispute arises out of a disagreement between shareholders of Jurong Aromatics Corporation Pte Ltd ("JAC"), a joint venture to construct and operate a condensate and aromatics complex on Jurong Island in Singapore. The disputing shareholders are the first plaintiff ("Arovin") and a BVI company known as Shefford Investment Holdings Ltd which is controlled by the defendant. Arovin is part of the Goradia Group of Companies, whose ultimate controller is the second plaintiff.

2 In essence, the plaintiffs' case is that they and the defendant agreed to take over the shares of another investor, EDB Investments Pte Ltd ("EDBI"), in the event that EDBI exercised its right to exit the joint venture. According to the plaintiffs, the parties entered into a Binding Side Letter Agreement ("BSLA") in which the defendant agreed to bear 75% of the costs relating to the EDBI shares, whilst the plaintiffs would bear the remaining costs of 25%.

3 In 2018, the plaintiffs commenced these proceedings against the defendant, seeking to enforce the terms of the BSLA. The defendant denies any liability under the BSLA, and has counter-claimed against the plaintiffs for the return of monies paid to the plaintiff under the BSLA.

4 In Summons No 47 of 2019, the defendant applied under O 110 r 17(1) of the Rules of Court for an order that the plaintiffs produce three categories of documents. These include:

- (a) documents relating to negotiations surrounding the terms of a *prior* agreement to the BSLA ("Request 1");
- (b) documents relating to negotiations surrounding the terms of other clauses in the BSLA not relied upon by the plaintiffs ("Request 11"); and
- (c) documents identifying any involvement that EDBI may have in the plaintiffs' present prosecution of the claim against the defendant ("Request 12").

## **The Court's decision**

5 The Court granted the defendant's document production request in relation to Request 1, albeit of a narrower scope than requested by the defendant. The application for documents in Requests 11 and 12 was disallowed.

### ***Request 1***

6 In allowing the application for documents under Request 1, the Court recognised that even though the present claims arise under the BSLA, the prior agreement lay the foundation for some of the defendant's obligations under the BSLA. On the plaintiffs' own case, the understanding as to the parties' respective liability for EDBI costs was formed as early as the time of the prior agreement. Therefore, documents relating to negotiations of the prior agreement had sufficient relevance and materiality to the outcome to justify an order for production (at **[29]–[30]**).

7 The Court, however, narrowed the scope of documents under Request 1 to those relating to the *sharing of liabilities* arising out of any guarantee or exit option demanded by EDBI as envisioned in the prior agreement (at **[31]**).

### ***Request 11***

8 The Court disallowed the request for documents relating to negotiations surrounding other clauses in the BSLA. In the Court's view, it was difficult to see why these documents would be relevant or material to the outcome of the dispute (at **[50]–[52]**).

### ***Request 12***

9 The Court also disallowed the request for documents relating to EDBI's involvement on the basis that these documents were not relevant or material to the outcome of the case (at **[98]**). In any event, the Court considered that these documents, which would include communications between the plaintiffs and EDBI in the face of impending litigation, would be covered by litigation privilege. There was insufficient evidence that the present case fell under the crime/fraud exception that would allow the privilege to be lifted (at **[100]**).

*This summary is provided to assist in the understanding of the Court's grounds of decision. It is not intended to be a substitute for the reasons of the Court. All numbers in bold font and square brackets refer to the corresponding paragraph numbers in the Court's grounds of decision.*