

SUPREME COURT OF SINGAPORE

3 March 2020

Case summary

BYL and another v BYN [2020] SGHC(I) 06
Originating Summons No 9 of 2019

Decision of the Singapore International Commercial Court:

Outcome: SICC dismisses the plaintiffs' application to set aside an arbitral award, finding that the tribunal was justified in granting the cumulative relief that it did to the defendant, and that there was no apparent bias on the part of an arbitrator who made a belated disclosure about being engaged as co-counsel with the defendant's legal representative.

Background

1 The second plaintiff ("the Company") was set up by the first plaintiff ("the Promoter") (collectively, "the Plaintiffs") as a special purpose vehicle for the construction and operation of a development. The defendant ("the Investor") entered into an agreement with the Plaintiffs ("the Agreement") for the Investor to buy 35% of the Company's shares. Under cl 14 of the Agreement, if the Promoter failed to undertake an IPO of the Company, the Promoter was obliged to buy the Investor's shares in the Company at Fair Market Value. Under cl 17 of the Agreement, upon other breaches of the Agreement, the Promoter was obliged to buy the Investor's shares in the Company at a premium. Under cl 28.3 of the Agreement, the rights of the parties under cll 14 and 17 were "independent" and "cumulative".

2 There were various delays to the development, causing the Plaintiffs to be in breach of the Agreement. The Investor commenced arbitration against the Plaintiffs before the International Chamber of Commerce ("the ICC Arbitration"), seeking relief pursuant to cll 14 and 17 of the Agreement "in tandem". The tribunal released a partial award ("the Award") in April 2019. The Award directed the Promoter to pay the Investor cumulative relief under cll 14 and 17 (collectively, "the Reliefs").

3 In June 2019, the arbitrator nominated by the Plaintiffs ("the Arbitrator") disclosed that back in March, he acted for certain private companies before the Delhi High Court for the enforcement of an arbitral award in favour of these companies against the Indian government. The arbitration giving rise to this award ("the India Arbitration") was unrelated to the ICC Arbitration. However, the international law firm ("the Firm") that represented the private companies in the India Arbitration also represented the Investor in the ICC Arbitration. Further, the head lawyer of the Firm's team representing the Investor ("the Advocate") was also a prominent member of the Firm's team representing the private companies in the India Arbitration. In July 2019, the Arbitrator was engaged as counsel for the private companies in the India Arbitration.

The dispute

4 The Plaintiffs applied to set aside the award on two grounds. First, they argued that the Reliefs were alternative in nature so that the tribunal had in effect failed to decide the dispute before it and improperly conferred upon itself the power to change the Award if the relief granted under cl 17 was later found to be unenforceable. Second, they charged the Arbitrator with making belated and only partial disclosures of his co-counsel relationship with

the Firm and the Advocate. This, they argued, amounted to apparent bias on the part of the Arbitrator and vitiated the Award.

The decision

5 On the first ground, the Court found that the tribunal was justified in granting the Reliefs as it did (at **[38]**, **[43]**). The Court observed that the Award was not “contingent” in the sense of being an award in the alternative (at **[41]**–**[42]**).

6 On the second ground, the Court found that the association between the Arbitrator and the Firm was insufficient to support a finding of apparent bias. The Arbitrator was not a partner within the Firm. While the Arbitrator met with some representatives of the Firm before the issuance of the Award, these representatives had no involvement with the ICC Arbitration. Similarly, the Arbitrator only met the Advocate to discuss matters relating to the India Arbitration after the Award had been issued (at **[55]**–**[57]**). Further, on the assumption that the Arbitrator’s disclosure had been belated, the Court was unable to infer that the disclosure eventually made was in some way insufficient so as to give rise to reasonable doubts about the Arbitrator’s impartiality (at **[63]**–**[65]**).

This summary is provided to assist in the understanding of the Court’s judgment. 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 judgment.