

SUPREME COURT OF SINGAPORE

11 May 2020

Case summary

BYL and another v BYN [2020] SGHC(I) 12
Originating Summons No 9 of 2019

Decision of the Singapore International Commercial Court:

Outcome: SICC orders plaintiffs to pay defendant's costs of S\$82,500 plus interest in accordance with Order 110 rule 46 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed).

Background

1 This judgment deals with the costs of the proceedings in Originating Summons No 9 of 2019 ("OS 9/2019"), which was the Plaintiffs' application to set aside an award in favour of the Defendant ("ICC Award") pursuant to an arbitration before the ICC ("ICC Arbitration"). OS 9/2019 was heard on 17 February 2019 before the Court, which decided in favour of the Defendant in *BYL and anor v BYN* [2020] SGHC(I) 6.

2 The Plaintiffs accepted that they should pay the Defendant's costs. However, there was a divergence on the quantum of costs payable. The Plaintiffs argued that regard should be had to Costs Guidelines in Appendix G of the Supreme Court Practice Directions ("Appendix G"), which specifies costs of S\$15,000 for a one-day originating summons hearing. The Defendant, on the other hand, argued that Appendix G should be ignored in the circumstances of this case.

The decision

3 When an application to set aside an arbitral award is transferred to the SICC, pre- and post-transfer costs ought in principle to be assessed in accordance with O 110 r 46 of the Rules of Court, which provides that an unsuccessful party must pay the "reasonable costs" of the successful party unless otherwise ordered. When transferring the case to the SICC, the Deputy Registrar left open the question of whether costs should be assessed by reference to Appendix G or O 110 r 46. Even when assessing costs under O 110 r 46, the SICC can still refer to Appendix G. But it was doubtful that Appendix G was of real assistance where the recoverable costs specified there constituted a significant discount to both party's actual costs. In cases relating to international arbitration heard by the SICC, assessing costs by reference to Appendix G despite the amount there being significantly below the reasonable costs of the successful party in the relevant arbitration, could incentivize the unsuccessful party to delay paying on an award by putting up unmeritorious setting aside applications. The successful party would in effect be subsidising the unsuccessful party's attempt to avoid having to honour an award (at [3], [7], [16]).

4 In this case, Appendix G should not be relied upon, as both parties reasonably recognised that the circumstances warranted spending more than the S\$15,000 specified by Appendix G and both parties actually spent substantially more than S\$15,000 even before the Case Management Conference for OS 9/2019 took place (at [18]).

5 Applying the "reasonable costs" standard, the Defendant's reasonable costs for the entirety of the Plaintiffs' setting-aside application came up to S\$82,500. While the amount at stake was substantial (S\$144m), this did not give a party *carte blanche* to spend however

much it wished to obtain a favourable legal outcome. Further, while the Plaintiff's estimated expenditure (of between S\$800,000 and S\$900,000) exceeded the Defendant's claimed costs (of S\$235,000), this did not *ipso facto* mean that the Defendant's estimate was reasonable, since the parties' positions may not have been symmetrical and there was the possibility that both sides had been extravagant in the types of activities that they had undertaken in the proceedings and the amounts spent in carrying out those activities. The reasonableness of the individual items claimed by a party would often still have to be established (at **[19]**–**[20]**).

6 A difficulty arose from the minimal particulars provided by the Defendant in support of its claim for costs. Parties preparing cost submissions in SICC cases should bear in mind the need to provide sufficiently detailed particulars for cost items being claimed (at **[13]**).

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.