

SINGAPORE INTERNATIONAL COMMERCIAL COURT

5 March 2018

Media Summary

Singapore International Commercial Court Suit No 5 of 2016

CPIT Investments Limited v Qilin World Capital Limited and another [2018] SGHC(I) 02

Decision of Vivian Ramsey IJ

SICC sets out guidance on the principles for orders as to costs for matters before the SICC.

Background

1 This was the judgment dealing with the costs of the proceedings, which concerned an agreement (“the Loan Agreement”) under which the Second Defendant provided a non-recourse loan to the Plaintiff, with the Plaintiff providing certain shares (“the Pledged Shares”) as collateral for the loan. The Suit, which had originally been commenced in the High Court, was transferred to the Singapore International Commercial Court (“SICC”) on 28 June 2016. The court handed down judgment dealing with the issues of liability on 17 July 2017, but dealt with the issues of costs separately.

2 In the judgment on liability, the court found, in favour of the Plaintiff, that the Second Defendant was not entitled to sell the Pledged Shares and, by selling those shares, it repudiated the Loan Agreement. This entitled the Plaintiff to accept that repudiation and terminate the Loan Agreement. The Second Defendant thus held the proceeds of that sale, less the loan amount, on a constructive trust for the Plaintiff. However, the court also found that: (a) the Plaintiff’s claim against the First Defendant failed; (b) the Plaintiff’s claim that the sale of the Pledged Shares had caused the substantial fall in the share price of those shares, thereby causing the Plaintiff to suffer loss in the value of its further shareholding in the shares (“the Portfolio Claim”), was not made out; and (c) the Plaintiff’s claim in conversion failed.

3 During the hearing on costs on 28 September 2017, the Plaintiff sought recovery of its costs and disbursements on the basis that it was the successful party, claiming costs of S\$56,000 (for interlocutory applications) and S\$450,000 (for the proceedings, excluding interlocutory

applications), and disbursements of S\$5,681.82 (for interlocutory applications) and S\$28,600.26 plus HK\$648,427.57 (for the proceedings, excluding interlocutory applications). The Plaintiff also sought indemnity costs from the date of service of an offer made to the Defendants on 9 November 2016 to settle the suit for HK\$13,000,000 (“the Offer”), which the Defendants had rejected. The Defendants claimed that they should only pay the Plaintiff 40% of its costs as there should be reductions for the Plaintiff failing to succeed on certain claims. They also submitted that the costs guidelines in Appendix G to the Supreme Court Practice Directions (“Appendix G”) should apply to guide the court in making the costs order, and that indemnity costs should not be ordered because O 22A r 9 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) (“the ROC”) does not apply in the SICC.

The decision

4 The court made the following orders for costs: (a) the Plaintiff is to have its reasonable costs before the date of transfer, 28 June 2016, with an allowance to be deducted in respect of the costs of its claim against the First Defendant and the Portfolio Claim; (b) the Plaintiff is to have its reasonable costs from 28 June 2016 to the date of the Offer, 9 November 2016, with an allowance to be deducted in respect of the costs of its claim against the First Defendant and the Portfolio Claim; and (c) the Plaintiff is to have its reasonable costs after 9 November 2016, without any deduction in respect of the costs of its claim against the First Defendant and the Portfolio Claim. Accordingly, the court found that the Plaintiff was entitled to S\$47,906.20 for its costs and disbursements for the interlocutory applications, and S\$384,000 for its costs for the proceedings (excluding interlocutory applications) and S\$28,600.26, plus HK\$648,427.57 for its disbursements for the proceedings (excluding the interlocutory applications). (**[38]**, **[43]**, **[48]**, **[52]** and **[53]**)

5 In arriving at those costs orders, the court held that O 110 r 46 of the ROC applies to govern the costs of proceedings in the SICC, and this is supplemented by para 152 of the SICC Practice Directions. Order 110 r 46 expressly precludes the application of the costs regime under O 59, and obliges an unsuccessful party in the SICC to pay the reasonable costs of the proceedings to the successful party unless the court orders otherwise. This rule, together with para 152 of the SICC Practice Directions, gives the court the discretion to take into account

such circumstances of the case that the court considers relevant in dealing with costs. (**[14], [15], [16] and [17]**)

6 The court also held that for cases which are filed in the High Court and transferred to the SICC under O 110 r 12 of the ROC, although Appendix G does not automatically apply to proceedings in the SICC, it is likely for the SICC to take account of Appendix G in assessing what are reasonable pre-transfer costs under O 110 r 46. As for post-transfer costs, even absent an agreement by the parties or a court order that Appendix G should continue to be relevant post-transfer, the SICC can take into account all the circumstances of the case. There is nothing to preclude the SICC from taking account of Appendix G even in assessing reasonable costs under O 110 r 46 in a case transferred from the High Court to the SICC, unless parties have agreed to disregard Appendix G altogether. Hence, in this case, the court held that pre-transfer costs should be assessed taking account of the fact that the High Court costs regime under O 59 would have applied to costs incurred pre-transfer, and that Appendix G is one of a number of factors to be considered in assessing reasonable costs for costs incurred post-transfer. (**[21], [23], [24], [25] and [27]**)

7 As for the effect of the Offer, the court determined that O 22A rr 9 and 10 of the ROC, which are intended to operate in the context of the High Court costs regime under O 59, do not apply to offers to settle in the SICC because they are inconsistent with O 110 r 46. However, the other provisions of O 22A, including O 22A r 12 which details the matters that the court may take into account in exercising its discretion as to costs, could continue to apply. Hence, the appropriate way in this case to take the Offer into account was to allow the Plaintiff its reasonable costs from 9 November 2016, without making an allowance for the costs it incurred in respect of the failed claim against the First Defendant or the Portfolio Claim. (**[30], [31] and [37]**)

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.