

**SUPREME COURT OF SINGAPORE**

17 April 2020

**Case summary**

*SK Lateral Rubber & Plastic Technologies (Suzhou) Co. Ltd v Lateral Solutions Pte Ltd*  
[2020] SGHC(I) 09  
Summons No. 13 of 2020

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**Decision of Roger Giles IJ:**

Outcome: The court dismissed the defendant's application for security for costs until the end of the trial.

**Background**

1. The plaintiff (a company incorporated in the People's Republic of China) manufactured and supplied polymer parts ("the parts") for onsale by the defendant (a company incorporated in Singapore). Their business relationship began in 2011 pursuant to an agreement ("the Agreement"), but had deteriorated by 2017. HC/S 910/2017 was filed on 2 October 2017. The plaintiff commenced this suit seeking payment for equipment purchased, tooling procured and other expenses incurred in the manufacture of the parts, and for the parts themselves. An initial sum of \$30,000 was ordered by consent to be provided for the defendant's costs up to the conclusion of discovery.
2. In response to the claim for payment for the parts, the defendant argued that it was only obliged to make payment when its cashflow allowed it. This however, was not the pleaded defence until a late stage in the proceedings. Its defence until the fifth amendment had been that it was not obliged to pay until it had been paid by its customer. As to payment for tooling, the defendant said that payment was not due until its customer had agreed to and ultimately paid for the tooling, or until after it had been paid for the parts produced with the tooling. The plaintiff's claims for equipment costs and other miscellaneous expenses for the manufacture of the parts were denied.
3. The defendant counterclaimed that:
  - i. the plaintiff owed it money for casings for which it (the defendant) had paid on behalf of the plaintiff;
  - ii. the plaintiff was holding on to items of equipment which rightfully belonged to the defendant;
  - iii. the plaintiff had wrongfully ceased supply of parts under the Agreement; and
  - iv. some of the parts supplied had been defective but the plaintiff had refused to repay their cost.
4. In April 2018, the plaintiff applied for summary judgment. On January 2019, the application was dismissed by Kannan Ramesh J on the basis that the defendant had a defence of set-off against SKL's claim, but with remarks doubting the then defence of payment when paid by the customer.

5. In December 2019, the proceedings were transferred to the SICC. Order 24 of the Rules of Court (“the Rules”), relating to discovery, was to continue to apply. There was no condition relating to security for costs.

6. The present application was filed on 13 March 2020, after the plaintiff refused the defendant’s request for further security till the conclusion of trial.

### **The court’s decision**

7. The court held that the defendant was not entitled to further security for costs simply because the plaintiff had earlier consented to providing security until the conclusion of discovery. It remained necessary that, on the facts now appearing, one of the threshold requirements for the power to order security for costs was satisfied, and that the discretion be exercised in granting such security (at [18]).

8. The defendant relied on two bases for the court’s power to order security for costs.

9. The first basis was the plaintiff’s impecuniosity, pursuant to s388 of the Companies Act (Cap. 50, 2006 Rev. Ed.). The court held that the requisite condition for the impecuniosity basis was not fulfilled. The defendant argued that the plaintiff had failed to pay costs for one of the interlocutory applications in a punctual manner. The plaintiff replied that this had been due to quarrels about set-offs and arguments about what was the proper sum to be paid. The court declined to draw anything adverse about the plaintiff’s inability to pay from the course of payment for the interlocutory amounts (at [23]). The defendant also took the plaintiff’s statements about the likely economic effects of the COVID-19 pandemic as an admission that it (the plaintiff) “may be experiencing cash flow issues” (at [24]). The court did not regard this, as required by s 388, as credible testimony giving reason to believe that the plaintiff would be unable to comply with an adverse costs order (at [25]). Accordingly, the requisite condition for the impecuniosity basis was not fulfilled.

10. The second basis was the plaintiff’s status as a party ordinarily resident out of jurisdiction. Pursuant to an earlier decision, it was common ground that since the present proceedings were not commenced in the SICC, it would be notionally added to the conditions in O 110 r 45(1B) of the Rules of Court that where the plaintiff is ordinarily resident out of the jurisdiction, the principles applicable in the exercise of the discretion are those established under Order 23 of the Rules of Court (at [28]). This was because the defendant would ordinarily have been entitled to take the plaintiff’s residence as a basis to establish the court’s power to award security for costs, since the plaintiff had commenced suit in the High Court. The defendant should not lose that benefit simply by virtue of the transfer (at [28]). The court’s power to order security for costs was accordingly established.

11. In exercising its discretion, four principal factors were considered.

12. Although the plaintiff was ordinarily resident out of jurisdiction, the court determined that the Memorandum of Guidance between the Supreme People’s Court of the People’s Republic of China and the Supreme Court of Singapore (“the Memorandum”) gave “assistance to and confidence in ability to enforce a Singapore judgment in China” (at [33]). That said, there was still “some inconvenience and perhaps delay in comparison with domestic enforcement, or additional expense in taking steps in a foreign legal environment” (at [33]). The court therefore held that the plaintiff being resident out of jurisdiction was a factor in favour of ordering security, although the Memorandum reduced its weight.

13. Regarding the strength of the parties' cases, the court raised doubts about the latest iteration of the defence as to the claim for payment for parts, stating that "[a] commercial agreement, for millions of dollars, that payment should be made when the debtor was able to pay, would be unusual" (at [37]), and also referred to the late pleading of the defence (at [37]). The court considered that for the purposes of the application, the plaintiff had the stronger case. This was a factor against ordering security.

14. Third, the court considered the statements about the likely economic effect of the COVID-19 pandemic. The plaintiff argued that an order for security for costs, married with economic effects of the COVID-19 pandemic, would stifle its claim. The court rejected this argument as it was an "unsubstantiated suggestion" that only spoke of the COVID-19 pandemic's economic impact in "general terms", without evidence of the plaintiff's trading or financial circumstances (at [41]). The defendant argued that the economic effects meant that there was no assurance that the plaintiff could pay costs if ordered (at [43]). For like reasons, the court rejected this argument also. The court held that the pandemic was a factor neither in favour of nor against ordering security (at [44]).

15. Finally, the court considered whether the costs incurred by the defendant in defending the claim overlapped with the costs incurred by it in prosecuting a counterclaim. The court determined that all the claims arose from "one course of dealings over some years in a corporate supply relationship, with an overlay of personal relationships." (at [50]). The same witnesses deployed to testify in the defence against the plaintiff's claims could be expected to give evidence pertaining to the defendant's counterclaims. The court concluded that though the defendant may incur additional costs in defending the claim on top of its costs in prosecuting the counterclaim, this increase was not likely to be great (at [50]). This was a factor against ordering security for the defendant's costs.

16. On balance, the court held that it would not be just to order security for costs (at [52]). Having considered and dismissed the prospect of ordering security in a lesser amount (at [52]), the court ordered the application to be dismissed.

*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.*