IN THE SINGAPORE INTERNATIONAL COMMERCIAL COURT OF THE REPUBLIC OF SINGAPORE

[2018] SGHC(I) 02

Suit No 5 of 2016

Between

CPIT INVESTMENTS LIMITED

… *Plaintiff*

And

(1) QILIN WORLD CAPITAL LIMITED
(2) QILIN WORLD CAPITAL LIMITED

… *Defendants*

JUDGMENT

[Civil Procedure] — [Costs] — [Principles] — [Singapore International Commercial Court]

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v
Qilin World Capital Limited and another

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Vivian Ramsey IJ
28 September 2017

5 March 2018 Judgment reserved.

Vivian Ramsey IJ:

Introduction

1 In this judgment, I deal with the costs of these proceedings.

2 On 17 July 2017, I handed down judgment in these 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: see *CPIT Investments Ltd v Qilin World Capital Ltd and another* [2017] 5 SLR 1.

3 I 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, and that the Plaintiff accepted that repudiation and terminated the Loan Agreement. I also found that the Second Defendant held

the proceeds of that sale, less the loan amount, on a constructive trust for the Plaintiff.

4 Whilst the Plaintiff was, overall, the successful party, it failed on certain aspects. First, it had made the claim against the First Defendant, but I held that the Loan Agreement had been made with the Second Defendant and that the First Defendant was not the controller and/or manager of the business and/or operations of the Second Defendant. As a result, the First Defendant had no liability. Secondly, the Plaintiff had claimed that the sale of the Pledged Shares had been the cause of the substantial fall in the share price of those shares and had led the Plaintiff to suffer loss in the value of its further shareholding in those shares ("the Portfolio Claim"). I held that the cause of the fall in the share price was the overinflated share price and not the sale of those shares by the Second Defendant. As a result, the Plaintiff had not established a loss caused by the sale of the Pledged Shares. Thirdly, the Plaintiff had claimed that the Second Defendant, by selling shares after the termination of the Loan Agreement, had converted the remaining Pledged Shares and was therefore liable in conversion. I held that the Plaintiff's claim in conversion failed because there was no allegation that there had been any interference with the share certificates so as to amount to conversion.

The parties' submissions

5 The Plaintiff seeks recovery of its costs and disbursements on the basis that it was the successful party. It claims costs of S$56,000 (for interlocutory applications) and S$450,000 (for the proceedings, excluding interlocutory applications). In terms of disbursements, it claims 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 submits

that it is entitled to indemnity costs from the date of service of an offer to settle ("the Offer") dated 9 November 2016.

6 The Defendants accept that, in principle, the Plaintiff was the successful party but says that it should not be entitled to recover the whole of its costs because it failed on certain issues, including its claim against the First Defendant and the Portfolio Claim. The Defendants submit that an issue-based approach should be adopted. On that basis, they submit that the Plaintiff should only recover 40% of its costs because there should be a 10% reduction for failing to succeed against the First Defendant and a 50% reduction for failing on the Portfolio Claim and the claim in conversion. Further, the Defendants say that the disbursements should be reduced to take account of the same matters, and also claim that the costs of the Claimant's accounting expert, Mr Clive Derek Conway Louis Rigby ("Mr Rigby"), should be deducted because of the Claimant's failure in relation to the Portfolio Claim.

7 In making a costs order, the Defendants submit that the costs guidelines in Appendix G to the Supreme Court Practice Directions ("Appendix G") apply and that nothing in O 110 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("the ROC") or the Singapore International Commercial Court Practice Directions ("the SICC Practice Directions") prevents the court from taking reference from Appendix G. The Defendants refer to the way in which costs were dealt with in the previous decision of the Singapore International Commercial Court ("SICC") in *Teras Offshore Pte Ltd v Teras Cargo Transport (America) LLC* [2017] 4 SLR 38 ("*Teras*").

8 In relation to the Offer, the Defendants submit that O 22A r 9, which applies to offers to settle in the High Court, does not apply in the SICC and

that the Offer is a factor that the court may take into account in assessing costs under the relevant paragraphs of the SICC Practice Directions.

9 The Plaintiff submits, by reference to *Singapore Civil Procedure 2017* vol 1 (Foo Chee Hock JC gen ed) (Sweet & Maxwell, 2017), that an issue-based approach should not be adopted unless the case is unusual or if a particular issue has unnecessarily or unreasonably protracted or added to the costs or complexity of the proceedings. It submits that the costs order should be made, taking things in the round, rather than taking an issue-based approach. On that basis, if the court is inclined to apply a discount to reflect the fact that the Plaintiff did not succeed on certain claims, then taking matters in the round, any discount ought to be only, at most, 15%.

10 In relation to the costs guidelines in Appendix G, the Plaintiff submits that those costs guidelines do not apply in the SICC, and that the case of *Teras*, where the court appeared to apply those costs guidelines, is irrelevant because the parties were content to rely on the costs guidelines and no arguments were made on the issue of whether the costs guidelines should apply.

The appropriate costs orders

11 In order to come to a conclusion on the appropriate order as to costs in this case, the following issues must first be considered:

(a) the basis upon which costs orders are made in the SICC;

(b) whether the costs guidelines in Appendix G apply in the SICC; and

(c) the way in which offers to settle are to be dealt with and, in particular, whether O 22A of the ROC applies.

The applicable principles

The basis for costs orders in the SICC

12 The starting point for costs in the SICC is O 110 r 46 of the ROC, which provides as follows :

> **Costs (O. 110, r. 46)**
>
> **46.**—(1) The unsuccessful party in any application or proceedings in the Court must pay the reasonable costs of the application or proceedings to the successful party, unless the Court orders otherwise.
>
> (2) The unsuccessful party in any appeal from the Court to the Court of Appeal, or in any application to the Court of Appeal, must pay the reasonable costs of the appeal or application to the successful party, unless the Court of Appeal orders otherwise.
>
> (3) For the purposes of paragraphs (1) and (2), the court may, in particular —
>
> (*a*) apportion costs between the parties if the court determines that apportionment is reasonable, taking into account the circumstances of the case;
>
> (*b*) take into account such circumstances as the court considers relevant, including the conduct of the case;
>
> (*c*) order costs to be paid by counsel personally, or by a person who is not a party;
>
> (*d*) order interest on costs; or
>
> (*e*) make any ancillary order, including an order as to the time and manner of payment.
>
> (4) Paragraphs (1), (2) and (3) are subject to paragraph (5) and Rules 15(5), 17(3) and 19(4).
>
> (5) If the defendant in an action begun by writ pays the amount claimed within the time and in the manner required by the endorsement on the writ, the costs allowed are to be fixed at $5,000.

> (6) Order 59 (costs) does not apply to —
>
> (*a*) proceedings in the Court;
>
> (*b*) appeals from the Court to the Court of Appeal; or
>
> (*c*) applications to the Court of Appeal in relation to such appeals or in relation to proceedings in the Court.

13 Order 110 r 46(4) of the ROC does not restrict the applicability of rr 46(1) and 46(3) in this case. Rules 15(5) and 17(3), which apply when a party requests documents, do not apply in this case because there was an order under O 110 r 21(1) that O 24 should continue to apply. Neither does r 19(4) apply, given that there was no application for pre-action production of documents.

14 It follows that the rules applicable to a costs order in this case are that the unsuccessful party must pay the reasonable costs of the proceedings to the successful party, unless the court orders otherwise (O 110 r 46(1) of the ROC), and the court may, in particular: (a) apportion costs between the parties if the court determines that apportionment is reasonable, taking into account the circumstances of the case; and (b) take into account such circumstances as the court considers relevant, including the conduct of the case (O 110 r 46(3)).

15 The fact that O 110 r 46(6) of the ROC expressly precludes the application of O 59 to proceedings in the SICC is also of importance. Order 59 contains a separate regime for costs in the High Court, including the definition of "standard" and "indemnity" costs (provided for under O 59 r 1(1) read with O 59 rr 27(2) and 27(3) of the ROC), and also the manner in which costs might be ordered, which differs from O 110 r 46. From that, it is clear that the usual High Court costs regime in O 59 was intended to be replaced with the simpler regime in O 110 r 46.

16 The provisions of O 110 r 46 of the ROC are supplemented by the SICC Practice Directions made pursuant to O 110 r 54. In relation to costs, the SICC Practice Directions contains the following additional guidance at para 152:

> **General**
>
> (1) The costs of and incidental to any application or proceedings shall be in the discretion of the Court and the Court shall have the full power to determine by whom and to what extent the costs are to be paid.
>
> (2) In assessing costs, the Court:
>
> (a) shall have regard to Order 110, Rule 46(1) of the Rules of Court, which provides that the reasonable costs of any application or proceeding in the SICC be borne by the unsuccessful party to that application or proceeding unless the Court orders otherwise; and
>
> (b) may:
>
> (i) apportion costs between the parties if the Court determines that the apportionment is reasonable, taking into account the circumstances of the case;
>
> (ii) take into account such circumstances as the Court considers relevant, including the conduct of the case;
>
> (iii) order costs to be paid by counsel personally, or by a person who is not a party to the application or proceeding;
>
> (iv) order interest on costs; or
>
> (v) make any ancillary order, including the time and manner of payment.
>
> (3) In relation to sub-paragraph (2)(b)(ii) above, the circumstances which the Court may take into consideration in ordering reasonable costs of any application or proceeding under Order 110, Rule 46(1) of the Rules of Court include:
>
> (a) the conduct of all parties, including in particular –
>
> (i) conduct before, as well as during the application or proceeding;

> (ii) whether it was reasonable for a party to raise, pursue or contest a particular allegation or issue; and
>
> (iii) the manner in which a party has pursued or contested a particular allegation or issue;
>
> (b) the amount or value of any claim involved;
>
> (c) the complexity or difficulty of the subject matter involved;
>
> (d) the skill, expertise and specialised knowledge involved;
>
> (e) the novelty of any questions raised;
>
> (f) the time and effort expended on the application or proceeding.
>
> (4) Costs may be dealt with by the Court at any stage of the proceedings or after the conclusion thereof. In particular, the Court may require parties to provide a costs schedule to be submitted with closing submissions, or to submit cost estimates or budgets in the course of the proceedings.
>
> (5) The Court may take into account any payment of money into court, offer to settle and the conduct of the parties.

17 Paragraph 152(1) of the SICC Practice Directions emphasises that costs are in the discretion of the court and that the court "shall have the full power to determine by whom and to what extent the costs are to be paid". Paragraph 152(2) repeats O 110 r 46(3) of the ROC. The important provisions, for present purposes, are then in paras 152(3) and 152(5). Paragraph 152(3) defines, in a non-exclusive manner, the circumstances which the court may take into consideration in ordering reasonable costs. Paragraph 152(5) then says that in dealing with costs the court may take into account any payment of money into court or offer to settle. It also refers to "the conduct of the parties" which, given the reference to conduct in the broader context of assessing costs in general in O 110 r 46(3)(*b*) and paras 152(2)(b) and 152(3)(a) of the SICC Practice Directions, must be intended to refer to conduct specifically in relation to payment of money into court or offers to settle.

18 It follows that in this case the circumstances I have to consider include those in paras 152(3)(a)–(f), and 152(5) in relation to the Offer.

The applicability of the costs guidelines in Appendix G in the SICC

19 The costs guidelines are to be found in Appendix G to the Supreme Court Practice Directions which are stated by para 5(1) to apply to civil proceedings. Paragraph 99B of the Supreme Court Practice Directions provides as follows:

> **99B. Costs Guidelines**
>
> (1) Solicitors making submissions on party-and-party costs (whether at taxation hearings or otherwise) or preparing their costs schedules pursuant to paragraph 99A of these Practice Directions may have regard to the costs guidelines set out in Appendix G of these Practice Directions (the "Costs Guidelines").
>
> (2) The Costs Guidelines are to serve only as a general guide for party-and-party costs awards in the Supreme Court. The precise amount of costs awarded remains at the discretion of the Court making the award and the Court may depart from the amounts set out in the Costs Guidelines depending on the circumstances of each case.
>
> (3) For the avoidance of doubt, nothing in the Costs Guidelines is intended to guide or influence the charging of solicitor-and-client costs.

20 Appendix G then sets out the following:

> **I. Use of the Costs Guidelines**
>
> 1. This Appendix provides guidelines for party-and-party costs in the Supreme Court (the "Costs Guidelines").
>
> 2. These Costs Guidelines have been approved for publication by the Judges of the Supreme Court. It is intended to provide a general indication on the quantum and methodology of party-and-party costs awards in specified types of proceedings in the Supreme Court, taking into account past awards made, internal practices and general feedback.

> 3. The precise amount of costs awarded remains at the discretion of the judicial officer making the award, who may depart from the amounts set out in these Costs Guidelines depending on the particular circumstances of each case (see in particular Order 59, Appendix 1 of the Rules of Court). Nothing in these Costs Guidelines is intended to guide or influence the charging of solicitor-and-client costs.
>
> 4. Litigants in person should take note of Order 59, Rule 18A of the Rules of Court, the application of which shall remain unaffected by these Costs Guidelines.
>
> 5. It should further be noted that in the event of an appeal, costs awards made by the court of first instance may be supplemented or otherwise modified by the appellate court as appropriate.
>
> 6. The Supreme Court may from time to time review these Costs Guidelines.

21 I do not consider that para 99B of the Supreme Court Practice Directions or Appendix G to the Supreme Court Practice Directions automatically apply to proceedings in the SICC. It is the SICC Practice Directions and not the Supreme Court Practice Directions which apply to proceedings in the SICC, which are governed by O 110 of the ROC. In relation to costs, from the context of the matters referred to para 99B and Appendix G, it is evident that they are referring to the costs regime under O 59 and party-and-party costs which are dealt with under that order. As stated earlier (at [15] above), the costs regime in the SICC under O 110 r 46 adopts a different approach from the costs regime under O 59.

22 The Defendants sought to place some reliance on the decision in *Teras* where reference was made (at [62]) to the costs guidelines in Appendix G. In *Teras*, the claims for costs appeared to be based on the costs guidelines, and that claim was found to be "unobjectionable". That however does not support the position that the costs guidelines apply to all SICC proceedings. The costs based on the costs guidelines in Appendix G were applied in *Teras* merely

because they were determined to be reasonable. Nothing more can or should be inferred from that decision.

23 The costs regime under O 110 r 46 of the ROC is applicable to all proceedings in the SICC. Having said that, in cases which are transferred from the High Court to the SICC under O 110 r 12, the costs regime under O 59 would have applied whilst the case was proceeding in the High Court. Thus, in dealing with pre-transfer costs, the SICC is likely to take into account Appendix G in deciding what are reasonable costs under O 110 r 46.

24 Of course, it remains open for the High Court or the SICC to make express orders that Appendix G continues to be relevant post-transfer. In this connection, the provisions of O 110 rr 12(5)(*d*) and 12(5)(*e*) are of relevance. They provide:

> (5) Where a case is transferred —
>
> …
>
> (*d*) the court ordering the transfer may make such consequential orders as it sees fit; and
>
> (*e*) the court to which the case is transferred may make such consequential orders as it sees fit, provided that such orders are not inconsistent with any orders made by the court ordering the transfer.

25 However, even absent an agreement by the parties or an order to that effect, although the SICC approach to costs will apply post-transfer, the SICC can, in exercising its discretion on costs, take into account all the circumstances of the case. In this regard, 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 that was filed in the High Court and transferred to the SICC, unless the parties have agreed to disregard Appendix G altogether. This is in the light of the wording of O 110 r 46 and para 152 of the SICC Practice

Directions, which make reference to "reasonable" costs, and the fact that costs are always in the discretion of the court. Of course, the weight to be given to Appendix G in assessing costs is highly dependent on the circumstances of each case.

26 In the present case, based on the court's records of the relevant hearings that have taken place, there was neither mention of Appendix G nor agreement or an order that the Appendix G would continue to apply. In fact, as reflected in the court's records, the matter expressly mentioned on transfer related to O 110 r 12(5)(*c*), which provides that: "unless the court ordering the transfer otherwise directs, the parties must continue to pay the hearing fees and court fees payable in the court where the case was commenced".

27 I am of the view that under the SICC costs regime in O 110 r 46 of the ROC, costs before the date of transfer, 28 June 2016, should, in this case, be assessed taking account of the fact that the High Court regime under O 59 would have applied before that date and, consequently, the appropriate weight ought to be given to Appendix G in assessing the reasonable costs under the SICC costs regime in O 110 r 46. As for post-transfer costs, in assessing reasonable costs, I consider that Appendix G is one of a number of factors which may be taken into consideration.

The applicability of O 22A of the ROC for offers to settle in the SICC

28 Order 22A of the ROC deals with offers to settle and provides for matters including the form of such offers, their timing, the time for acceptance and withdrawal, the applicability of the without prejudice rule and non-disclosure of the offer, the manner of acceptance, provisions for a party under disability, compliance with an accepted offer to settle, joint and several

liability, an offer to contribute and the applicability to counterclaims and third-party claims.

29 In addition to those provisions which are not excluded by O 110 of the ROC, there are two provisions of relevance to costs, *viz*, O 22A rr 9 and 12. Those provide as follows:

> **Costs (O. 22A, r. 9)**
>
> **9.**—(1) Where an offer to settle made by a plaintiff —
>
> (*a*) is not withdrawn and has not expired before the disposal of the claim in respect of which the offer to settle is made; and
>
> (*b*) is not accepted by the defendant, and the plaintiff obtains a judgment not less favourable than the terms of the offer to settle,
>
> the plaintiff is entitled to costs on the standard basis to the date an offer to settle was served and costs on the indemnity basis from that date, unless the Court orders otherwise.
>
> (2) Where an accepted offer to settle does not provide for costs —
>
> (*a*) where the offer was made by the plaintiff, he will be entitled to his costs assessed to the date that the notice of acceptance was served; and
>
> (*b*) where the offer was made by the defendant, the plaintiff will be entitled to his costs assessed to the date he was served with the offer, and the defendant will be entitled to his costs from the date 14 days after the date of the service of the offer assessed up to the date that the notice of acceptance was served.
>
> (3) Where an offer to settle made by a defendant —
>
> (*a*) is not withdrawn and has not expired before the disposal of the claim in respect of which the offer to settle is made; and
>
> (*b*) is not accepted by the plaintiff, and the plaintiff obtains judgment not more favourable than the terms of the offer to settle,

> the plaintiff is entitled to costs on the standard basis to the date the offer was served and the defendant is entitled to costs on the indemnity basis from that date, unless the Court orders otherwise.
>
> (4) (*a*) Any interest awarded in respect of the period before service of the offer to settle is to be considered by the Court in determining whether the plaintiff's judgment is more favourable than the terms of the offer to settle.
>
> (*b*) Any interest awarded in respect of the period after service of the offer to settle is not to be considered by the Court in determining whether the plaintiff's judgment is more favourable than the terms of the offer to settle.
>
> (5) Without prejudice to paragraphs (1), (2) and (3), where an offer to settle has been made, and notwithstanding anything in the offer to settle, the Court shall have full power to determine by whom and to what extent any costs are to be paid, and the Court may make such a determination upon the application of a party or of its own motion.
>
> …
>
> **Discretion of Court (O. 22A, r. 12)**
>
> **12.** Without prejudice to Rules 9 and 10, the Court, in exercising its discretion with respect to costs, may take into account any offer to settle, the date the offer was made, the terms of the offer and the extent to which the plaintiff's judgment is more favourable than the terms of the offer to settle.

30 The provisions of O 22A r 9 of the ROC are clearly intended to operate in the context of the High Court costs regime under O 59, because of the reference therein to the "standard" and "indemnity" bases of costs, which, as explained earlier (at [15] above), are cost concepts that are specifically defined under O 59 r 1(1) read with O 59 rr 27(2) and 27(3). I therefore consider that r 9 cannot apply to proceedings in the SICC where the standard or indemnity basis is not applicable. The Plaintiff places reliance on the decision in *Telemedia Pacific Group Ltd and another v Yuanta Asset Management International Ltd and another* [2017] 3 SLR 47 at [67]–[76], where payment of costs on an indemnity costs was considered, leading to an order "that the

defendants pay 10% of the plaintiffs' costs of the proceedings on an indemnity basis" (at [76]). In that case, both parties argued in favour of indemnity costs and no reference appears to have been made to the provisions of O 59 or O 110 in that context. I do not therefore consider that this decision provides grounds for contending that costs can be awarded on a standard or indemnity basis under O 110.

31 In relation to O 22A r 12, this details the matters which the court may take account in exercising its discretion as to costs. In the SICC Practice Directions at para 152(5), the matter is stated in more general and open terms, *viz*: "The Court may take into account any … offer to settle …". There is nothing in O 110 or in para 152(5) that is inconsistent with O 22A r 12, and whilst O 22A r 9 is inapplicable because it is inconsistent with O 110 r 46, the same cannot be said about O 22A r 12. I therefore consider that O 22A r 9 does not apply to offers to settle in the SICC. The same would apply to r 10, in so far as it deals with costs consequences under r 9. However, I otherwise see no reason why the other provisions of O 22A should not apply.

32 In the present case, the Offer was made on 9 November 2016, after transfer to the SICC. In it, the Plaintiff offered to accept HK$13,000,000.00, and has therefore recovered more in these proceedings than the sum offered.

The principles applied

33 In exercising my discretion as to costs in this case, I consider that there are two matters for me to take into account: (a) the fact that the Plaintiff was not wholly successful, and (b) the Offer made on 9 November 2016.

34 The Plaintiff failed in its claim against the First Defendant. The Defendants do not seek the costs of the First Defendant, but seek a reduction

in the Plaintiff's costs. The issue of the proper defendant led to costs being incurred in relation to discovery, including an application for specific discovery, and to some time being spent in the affidavits of evidence-in-chief, at the hearing and in submissions in dealing with the proper party and an *alter ego* argument. Otherwise, I do not consider that significant costs were expended. I do not consider it appropriate to reduce the overall costs by 10% as submitted by the Defendants but, in considering the costs claimed by the Plaintiff, it would be appropriate to make a deduction because of this issue.

35 The Plaintiff also failed to establish the Portfolio Claim. That incurred more significant costs, in particular, in terms of the expert accounting evidence adduced from Mr Rigby and the time taken at the hearing and in submissions in relation to that claim. Mr Rigby was however also concerned with allegations that the Plaintiff artificially maintained the share price at a high level and that the Second Defendant was "hedging" when it sold the Pledged Shares. The first point I rejected and the question of hedging was not pursued with any vigour by the Defendants. I therefore consider that, on the basis of the failure of the Portfolio Claim and subject to the other considerations mentioned below, it would be appropriate to make some allowance against Mr Rigby's total costs and against the costs of the hearing and submissions.

36 Other than those two matters, I consider that the other matters, such as the claim for conversion on which the Plaintiff failed, do not require any allowance to be made. In all litigation, it is not unusual for there to be an element where the successful party will not be successful. But it is only the two matters considered above which, in my judgment, would affect the recoverable costs.

37 I now turn to consider the impact of the Offer. I have set out above that I do not consider that O 22A r 9 of the ROC applies and that it is not appropriate to consider the costs in the SICC on either the standard or indemnity basis (see [30] above). Instead, O 110 r 46(1) refers to the "reasonable costs" as being the measure of costs. The Offer meant that the Defendants would have done better if they had accepted the Offer made on 9 November 2016. That means that the costs which were incurred by the Plaintiff, including the costs of the issues on which it was unsuccessful, would not have been incurred if the Defendants had accepted the Offer. In those circumstances, I consider that the appropriate way to take the Offer into account is 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.

38 It follows that the orders for costs that I make are:

(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.

(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.

Quantum of costs

39 Turning now to address the quantum of the costs that should be awarded, the claims by the Plaintiff fall into the following four heads:

(a) costs of interlocutory applications where no costs orders were made;

(b) costs of the proceedings, excluding interlocutory applications;

(c) disbursements for interlocutory applications where no costs orders were made; and

(d) disbursements for proceedings, excluding interlocutory applications.

40 The information provided by the Plaintiff with its original costs submissions contained a breakdown of the costs of interlocutory applications and disbursements. However, in respect of the costs of the proceedings (excluding interlocutory applications), the Plaintiff merely claimed a lump sum of S$450,000. In addition, on the morning of the costs hearing, the Plaintiff put in revised schedules of disbursements. As a result, I ordered the Plaintiff to put in a high-level breakdown of the sum of S$450,000, and provided for further submissions in relation to the breakdown and to the amended disbursements.

41 It is obviously essential that the court is provided with a sufficient breakdown of the costs so that the paying party can make appropriate comments on the reasonableness of the costs and understand the work carried out for those costs. In the end, the Plaintiff's written submissions and the breakdown of the lump sum into seven lump sums for identified periods

provided the bare minimum of information for the paying party to provide comments and the court to assess reasonable costs. It is evident that a more detailed costs schedule identifying the work with costs broken down into hours spent at hourly rates would provide a better basis for assessments.

Costs of interlocutory applications, including disbursements, where no costs orders were made

42 First, in relation to the interlocutory applications, it is convenient to consider the costs and disbursements of these applications together. There are the following six interlocutory applications which have to be considered:

(a) Summonses Nos 164 and 170 of 2016, which were the Plaintiff's application for prohibitory injunction and freezing order. The Plaintiff claims S$25,000 plus disbursements of S$3,961 and the Second Defendant submits that the Plaintiff is entitled to S$15,000 plus disbursements of S$1,500. These were urgent applications requiring extensive affidavits and attendance for almost a full day on 15 January 2016. I note that the Plaintiff's affidavit contained a significant portion dealing with the identity of the First Defendant. I consider that the appropriate sums are S$22,000 plus S$3,500 disbursements.

(b) Summons No 171 of 2016, which was the Plaintiff's application for leave to serve the writ and statement of claim out of jurisdiction. The Plaintiff claims S$3,000 plus disbursements of S$494. The Second Defendant submits that only S$1,500 plus disbursements of S$186 should be allowed, noting that this application related to leave to serve outside the jurisdiction in respect of both the First and

the Second Defendant. I consider that the appropriate sums are S$2,000 plus S$400 disbursements.

(c) SICC Summons No 18 of 2016, which was the Plaintiff's application for specific discovery. The Plaintiff claims S$15,000 plus disbursements of S$1,019.30. The Second Defendant submits that S$5,000 plus disbursements of S$2 should be allowed on the basis that significant portions of the application were on issues concerning the First Defendant being a party or being the *alter ego*. I consider that the appropriate sums are S$10,000 plus disbursements of S$500.

(d) SICC Summons No 19 of 2016, which was the Second Defendant's application for specific discovery. The Plaintiff claims S$8,000 plus disbursements of S$4.20. The Second Defendant submits that S$3,000 plus disbursements of S$4.20 should be allowed, noting that this application was for five documents. I consider that the appropriate sums are S$5,000 plus disbursements of S$4.20.

(e) SICC Summons No 22 of 2016, which was the Second Defendant's application for the trial to be bifurcated. The Plaintiff claims S$5,000 plus disbursements of S$2. The Second Defendant submits that S$3,500 plus disbursements of S$2 should be allowed. I consider that the appropriate sums are S$4,500 plus disbursements of S$2.

43 Accordingly, in relation to the interlocutory applications, I allow S$43,500 for costs plus disbursements of S$4,406.20, being a total of S$47,906.20.

Costs of the proceedings, excluding interlocutory applications

44 Next, regarding the costs of the proceedings, excluding the interlocutory applications, I consider, first, the costs before the date of transfer 28 June 2016, where the Plaintiff is entitled to its costs with an allowance to be deducted in respect of the costs of its claim against the First Defendant and the Portfolio Claim. In essence, this was the period up to the close of pleadings. The Plaintiff claims S$50,000 for the writ and statement of claim and S$35,000 for notices to produce, reviewing the defence and counterclaim, preparing the reply and defence to counterclaim, and advising on the transfer of the matter to the SICC.

45 Whilst this case was complex and the writ and statement of claim had to be prepared urgently, I consider that taking account of the costs guidelines in Appendix G, the overall figure of S$85,000 should be reduced to S$50,000 to represent reasonable costs. From this I consider that S$5,000 should be deducted for the pleading of the claim against the First Defendant and the Portfolio Claim, giving S$45,000.

46 Secondly, I consider the Plaintiff's reasonable costs from 28 June 2016 to 9 November 2016. Essentially, this covered discovery and amended pleadings and general case management, with initial consideration of expert evidence following the Defendants' affidavit with expert evidence filed at the end of October 2016. The Plaintiff claims S$71,500 for the period July to October 2016 and then a further lump sum from October to December 2016 of S$165,000. I agree with the submission of the Defendants that there is a difficulty in a potential overlap in October 2016. However, from the schedule and the listing, it is clear that discovery and amended pleadings represent the work carried out up to the date of the Offer. I therefore consider that in the

period up to 9 November 2016, the total claimed costs would amount to S$80,000. Given the work carried out in this period, I consider that some reduction is required to reflect reasonable costs. I therefore allow S$60,000. From this sum I deduct S$6,000 to represent work related to the claim against the First Defendant and the Portfolio Claim, giving S$54,000.

47 Thirdly, I consider the Plaintiff's claim for costs after 9 November 2016. That represents four lump sums: S$156,500 (S$165,000 less S$8,500) for work up to December 2016; S$39,000 for the trial in December 2016; S$86,500 for post-trial matters including preparing and considering closing submissions; and S$3,000 for post-closing submissions. I have reviewed the work carried out in this period and, given the effect of the Offer and the fact that the Defendants did not raise any challenge to the reasonableness of the costs, I find no reason to reduce those costs. On that basis and having decided that, in the light of the Offer, I make no deduction in respect of the costs of the claim against the First Defendant or the Portfolio Claim, I award S$285,000.

48 It follows that I award a total of S$384,000 for the costs of the proceedings, excluding interlocutory applications.

Disbursements for the proceedings, excluding interlocutory applications

49 Finally, regarding the disbursements for the proceedings (excluding interlocutory applications), the Plaintiff claims the following, totalling S$28,600.26: filing and service costs of S$4978.30; printing costs of S$1,557.60; hearing fees of S$9,000; costs for collection of grounds of decision of S$439.00; notice of setting down for trial of S$1,005.60, transcript for trial of S$6,211.35; transportation of S$559.25, videoconferencing fees of S$1,000.00; search fees of S$35.98; process server fees of S$80.00; courier charges of S$313.00; fax charges of S$39.74; and photocopying charges of

S$3,380.44. The Second Defendant submits that the disbursements should be reduced by 60%, to allow a 10% reduction for the failure on the claim against the First Defendant and a 50% reduction for the Portfolio Claim.

50 In addition, the Plaintiff claims expenses totalling HK$648,427.57. This covers airfares and accommodation for witnesses and lawyers of HK$56,694; airfares, accommodation and expert fees of HK$344,592.57 for Mr Rigby; video link fees of HK$6,000; service and search fees of HK$4,141; costs in liaising with the Plaintiff's representatives and experts in Hong Kong of HK$212,000; and costs of advising the Plaintiff on Hong Kong law of HK$25,000. The Second Defendant submits that it should not have to bear the costs related to Mr Rigby and that the remainder of the disbursements of HK$303,835 should be reduced by 60%.

51 In relation to the sum of S$28,600.26, I do not consider that there are any costs incurred in the period prior to 9 November 2016 and which obviously relate to the claim against the First Defendant or the Portfolio Claim. Whilst the Second Defendant has criticised the claim for photocopying charges, I am satisfied that the sum claimed is reasonable. I therefore allow S$28,600.26.

52 In relation to the sum of HK$648,427.57, in the light of the Second Defendant's failure to accept the Offer, I do not consider that the costs related to Mr Rigby should be deducted, although absent the offer I would have made a deduction for the reasons set out above. Nor do I consider that it is appropriate to deduct 60% of the balance of disbursements. I have not identified any item of the claimed disbursements which would justify a reduction on the basis of being incurred in relation to the claim against the First Defendant or the Portfolio Claim. I therefore allow HK$648,427.57.

Conclusion

53 As a result, I find that the Plaintiff is entitled to recover from the Second Defendant the following sums in relation to costs and disbursements, totalling S$460,506.46, together with HK$648,427.57 in relation to disbursements:

Head of claim	**Quantum**
Costs and disbursements for interlocutory applications	S$47,906.20
Costs for the proceedings, excluding interlocutory applications	S$384,000.00
Disbursments for the proceedings, excluding interlocutory applications	S$28,600.26, plus HK$648,427.57
Total	**S$460,506.46, plus HK$648,427.57**

Vivian Ramsey
International Judge

Tan Poh Ling Wendy and Chua Han Yuan, Kenneth (Morgan Lewis Stamford LLC) for the plaintiff;
Sharon Chong Chin Yee and Gideon Yap (RHTLaw Taylor Wessing LLP) for the defendants.