



CPIT Investments Limited v Qilin World Capital Limited and another [2018] SGHC(I) 2: Guidelines on cost awards for SICC cases

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Introduction

On 5 March 2018, the Singapore International Commercial Court (“SICC”) in **CPIT Investments Limited v Qilin World Capital Limited and another [2018] SGHC(I) 2** (“**CPIT Investments**”) passed a significant ruling on the issue of costs for cases heard before it.

In an earlier judgment (see **CPIT Investments Ltd v Qilin World Capital Ltd and another [2017] 5 SLR 1**), the court had determined the issue of liability as between the parties. In brief, the 1st and 2nd Defendants had provided to the Plaintiff, CPIT, a non-recourse loan. CPIT pledged certain shares as collateral for the loan. The Defendants subsequently sold the pledged shares, which thereafter fell in value. CPIT terminated the loan agreement and brought a claim against the 1st and 2nd Defendants for a repudiatory breach of the loan agreement.

The court found in favour of CPIT and held that the 2nd Defendant was not entitled to sell the pledged shares. By doing so, CPIT had repudiated the loan agreement. The court further held that the 2nd Defendant held the sale proceeds of the shares on trust for CPIT. However, the court dismissed CPIT’s claim in conversion and found that the 1st Defendant was not liable to CPIT. CPIT’s claim that for damages for the fall in the share price was dismissed, as it was not caused by the sale of the shares by the 2nd Defendant (the “**Portfolio Claim**”). The court also dismissed the 1st and 2nd Defendants’ counterclaim for repudiatory breach of the agreement.

On the issue of costs, CPIT highlighted, among other things, that it had made an offer to settle (“**OTS**”) to the 1st and 2nd Defendants,

and that the terms of the OTS were more favourable than the eventual judgment. On the other hand, the 1st and 2nd Defendants argued that CPIT had failed on certain claims and thus should not be entitled to recover its full costs. The 1st and 2nd Defendants also referred to the costs guidelines in Appendix G to the Supreme Court Practice Directions.

SICC’s decision on costs

The court noted that the costs regime under O 110 r 46 of the Rules of Court (Cap. 322, R 5) (“**ROC**”) (which applies to SICC proceedings) was intended to replace the usual High Court costs regime. This was supported by O 110 r 46(6) of the ROC which expressly precludes the application of O 59 (which governs the issue of costs for High Court cases) to proceedings in the SICC. As such, the “standard” and “indemnity” bases for awarding costs under O 59 ROC would not apply to SICC proceedings.

The court also noted that pursuant to paragraph 152(1) of the SICC Practice Directions, the costs are in the discretion of the court who “shall have the full power to determine by whom and to what extent the costs are to be paid”.

On that basis, the court held that there was nothing precluding the court from referring to Appendix G in assessing what constitutes reasonable costs under O 110 r 46 of the ROC (even though it did not form part of the SICC Practice Directions), particularly in cases originally filed in the High Court that was subsequently transferred to the SICC, unless the parties had agreed to disregard Appendix G. The court further held that while it was usual for a plaintiff to fail on some of its claims against a defendant, the Portfolio Claim incurred more significant costs, as it involved

expert evidence and submissions in relation to that claim.

Lastly, although O 22A r 9 of the ROC (which governs the issue of costs where an OTS was made) did not apply, the court was entitled to take the OTS into account in making the costs order. The court eventually held that the appropriate way to take the OTS into account was to allow CPIT its reasonable costs from the date of OTS, without any allowance for costs incurred in respect of the 1st Defendant or the Portfolio Claim.

The Court also awarded CPIT its reasonable costs for the entire claim up to the date of the OTS, with an allowance deducted in respect of the costs of its claim against the 1st Defendant and Portfolio Claim.

Conclusion

The decision in **CPIT Investments** is certainly a welcome one in relation to the issue of costs in the nascent SICC.

As the first written decision on the issue of costs in the SICC, the ruling establishes invaluable precedence on the considerations that the

court may take into account in determining what would constitute “reasonable” costs under O 110 r 46, a relatively new provision under the ROC.

Among other things, the decision also demonstrates the wide breadth of factors the court may take into account in determining the issue of “reasonable costs”, while also doing away with the more traditional notions of costs on a “standard” and “indemnity” basis.

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