Main-Line Corporate Holdings Ltd *v* United Overseas Bank Ltd [2010] SGCA 9

Case Number	: Civil Appeal No 98 of 2009
Decision Date	: 03 March 2010
Tribunal/Court	: Court of Appeal
Coram	: Chao Hick Tin JA; Andrew Phang Boon Leong JA
Counsel Name(s)	: Wong Siew Hong and Adeline Chong Seow Ming (Infinitus Law Corporation) for the appellant; Kannan Ramesh and Jasmine Foong Shu Jun (Tan Kok Quan Partnership) for the respondent.
Parties	: Main-Line Corporate Holdings Ltd — United Overseas Bank Ltd

Civil procedure – Interim payments

[LawNet Editorial Note: This was an appeal from the decision of the High Court in [2009] SGHC 212.]

3 March 2010

Chao Hick Tin JA (delivering the grounds of decision of the court):

Introduction

1 This appeal concerned the decision of the High Court judge ("the Judge") in Registrar's Appeal No 225 of 2009 ("RA 225") and Registrar's Appeal No 228 of 2009 ("RA 228") (see *Main-Line Corporate Holdings Ltd v United Overseas Bank Ltd* [2009] SGHC 212 ("the GD")). In his decision, the Judge reversed the decision of an assistant registrar ("the AR"), who ordered United Overseas Bank Ltd ("UOB"), on the application of Main-Line Corporate Holdings Ltd ("Main-Line"), to make an interim payment of $1,962,424.30 into court. At the conclusion of the hearing before us, Main-Line's appeal was allowed and the interim payment order made by the AR was restored, with the modification that the interim payment was to be made directly to Main-Line rather than into court. We now give the detailed reasons for our decision.

Background facts

2 The subject of the present appeal had its genesis in the decisions of the High Court in *Main-Line Corporate Holdings Ltd v United Overseas Bank Ltd* [2007] 1 SLR(R) 1021 ("*Main-Line HC*") and this court in *First Currency Choice Pte Ltd v Main-Line Corporate Holdings Ltd* [2008] 1 SLR(R) 335 ("*Main-Line CA*") on the substantive dispute between Main-Line, UOB and First Currency Choice Pte Ltd ("FCC") (which was not a party to this appeal). The proceedings that dealt with the substantive dispute will collectively be referred to hereafter as "the main proceedings" for convenience.

3 Main-Line, a company incorporated in Ireland, is the registered proprietor of Singapore Patent No 86037 (WO 01/04846 A1) titled "Dynamic Currency Conversion for Card Payment Systems" ("the Patent"), which provides for a method to determine the operating currency in which to process a transaction for a payment card (including credit cards, debit cards, etc) at the point of sale between a merchant and the holder of the card. FCC was the creator and proprietor of the First Currency Choice System ("the FCC System"). UOB, a leading local bank, entered into a Multicurrency Exchange Agreement ("the MEA") with FCC for the use of the FCC System. Main-Line alleged that the FCC

System infringed the Patent, and instituted an action that subsequently led to the main proceedings. In the main proceedings, Tay Yong Kwang J, the trial judge, found in favour of Main-Line (see *Main-Line HC*), and his decision was upheld by this court (see *Main-Line CA*).

4 One of the orders made by Tay J was for an inquiry to be held by a registrar on damages or an account of profits, and that Main-Line had to elect, at or before the stage of directions for the inquiry, whether it preferred that there be an assessment of damages or an account of profits for the infringement of the Patent (see *Main-Line HC* at [85])). Before making its election, Main-Line applied by way of Summons No 5347 of 2007 for pre-election discovery of documents. In response to Main-Line's application, Ms Gan Ai Im ("Ms Gan"), a senior vice president of UOB, filed an affidavit on 6 March 2008, where the following was stated: [note: 1]

> 25 … UOB does not have a specific amount or breakdown of the costs associated with the operation of the FCC System. However, in order to provide a fair basis for [Main-Line] to make its election, annexed hereto and marked "**GAI-4**" is a computation of the net profits that were generated from the operation of the FCC System from May 2002 to December 2007.
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> 26 As shown in "**GAI-4**", the revenue earned by UOB from the operation of the FCC System from May 2002 to December 2007 was the amount of commissions received by UOB from FCC for that period. UOB's expense/income ratios for the financial years from 2002 to 2006, as published in UOB's annual reports are then applied to derive the net profits earned by UOB from the operation of the FCC system from May 2002 to December 2007. In this regard, I should explain that as the expense/income ratio for financial year 2007 has not been published yet, the expense/income ratio for financial year 2006 is used as a proxy instead. …
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> [underlining and emphasis in bold in original]

5 According to Ms Gan's affidavit filed on 6 March 2008, the total revenue of UOB arising from the operation of the FCC System, which infringed the Patent, was $3,135,236.40 – this being the total amount of the commissions paid by FCC to UOB. However, UOB did not have a precise breakdown of its costs in earning the revenue of $3,135,236.40. Therefore, to provide Main-Line with a basis for election, UOB disclosed its general expense/income ratios for financial years 2002 to 2006. These ratios were found in UOB's annual reports. By applying the ratio for each financial year in question to the commissions received in that financial year (with the ratio for financial year 2006 used as a proxy for the ratio for financial year 2007), the sum of $1,999,285.28 was derived.

6 On the basis of the information given by UOB (including the above), Main-Line elected, on 16 July 2008, for an account of profits as against UOB but for an assessment of damages as against FCC. On 13 August 2008, in a hearing before an assistant registrar, UOB and FCC successfully applied (by way of Summons No 3347 of 2008) to set aside the notice of election on the ground that Main-Line had to elect for the same remedy as against both Main-Line and FCC. Main-Line successfully appealed to a High Court judge against this decision (see *Main-Line Corporate Holdings Ltd v United Overseas Bank Ltd* [2010] 1 SLR 189). UOB did not file a further appeal to this court, and this effectively meant that the notice of election given by Main-Line was valid.

7 On 14 May 2009, Main-Line applied, pursuant to O 29 rr 10, 11 and 12 of the Rules of Court (Cap 322, R 5, 2006 Rev Ed) ("the Rules"), for an order for UOB to pay Main-Line the sum of $3,135,236.40 (or such sum as deemed fit by the court) as an interim payment (in relation to the account of UOB's profits). This application formed the subject matter for the present appeal. For the purposes of this application, Main-Line proceeded on the basis that the commissions paid by FCC was the only revenue earned by UOB, although it was of the view that UOB's revenue was not confined

solely to the commissions earned.

8 In response to Main-Line's application, Mr Cheang Kok Chew ("Mr Cheang"), a vice president of UOB, filed an affidavit on 2 June 2009, which stated the following: [note: 2]

> 18 To run the FCC [S]ystem in tandem with UOB's overall system, UOB incurred costs and expenses such as operating and infrastructure costs. However, as explained by Ms Gan in her affidavit filed on 6 March 2008, UOB did not have a specific amount or breakdown of the costs associated with the FCC [S]ystem.
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> 19 Ms Gan has, however, provided in her affidavit filed on 6 March 2008 an estimate of the costs and expenses incurred by UOB in using the FCC [S]ystem during the period of UOB's liability from May 2002 to December 2007 …. The estimate was derived at by applying UOB's expense/income ratio[s] (as reflected in UOB's Annual Reports) for each of the financial years from 2002 to 2007 to UOB's gross revenue which arose from the infringement, *i.e.*, the FCC commissions, for the respective years. The computation of the estimated costs and profits can be seen from exhibit "GAI-4" found in Ms Gan's affidavit.
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> 20 Annexed hereto and marked "CKC-1" is a revised computation of the estimated costs and profits. … [T]his revised computation is based on the abovementioned exhibit "GAI-4" and the revision was for the purpose of correcting certain errors in the sums stated as the commissions earned in the period of May to December 2002 [and] in year 2007. Further, the revised computation in "CKC-1" also reflects the actual expense/income ratio for year 2007 as stated in UOB's Annual Report 2007. At the time of preparing the original computation in "GAI-4", UOB's Annual Report 2007 had not yet been released and hence the expense/income ratio for year 2007 had not yet been released and hence the expense/income ratio for year 2007 was assumed to be the same as the expense/income ratio for year 2006.
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> 21 It can be seen from "CKC-1" that the estimated profits earned by UOB from the operation of the FCC System during the period of May 2002 to December 2007 is S$1,962,424.30.

As may be observed, Mr Cheang's evidence was substantially similar to that of Ms Gan's. However, Mr Cheang revised the estimated profits to take into account certain errors and the expense/income ratio for financial year 2007. That ratio was not available at the time when Ms Gan filed her affidavit. Thus, the sum of $1,962,424.30 was derived.

9 On 4 June 2009, pursuant to O 29 r 12 of the Rules, the AR ordered UOB to pay the sum of $1,962,424.30 into court as interim payment. Both Main-Line and UOB appealed against this decision. Main-Line appealed (in RA 225) against the quantum of the interim payment granted and the direction for payment to be made into court. UOB's case (in RA 228) was that the application for interim payment should have been dismissed.

10 On 13 July 2009, the Judge allowed UOB's appeal and set aside the order of the AR granting interim payment (and dismissed Main-Line's appeal), for the main reason that Main-Line had not satisfied the court that "there is an amount below which the assessment of profit will not go" (see GD at [12]). This decision in turn prompted the present appeal to us.

This appeal

11 The main issues raised in this appeal were:

(a) whether the Judge erred in law or fact in exercising his discretion against an order for interim payment; and

(b) whether interim payment, if ordered, should be paid into court or to Main-Line.

The contentions of the parties

12 Main-Line submitted that the minimum amount of profits that would have to be accounted for would be $3,135,236.40, or, in the alternative, $1,962,424.30, and there was no reason for payment not to be made to Main-Line instead of into court as it would be Main-Line's minimum entitlement at law. UOB submitted that it should be presumed that the Judge had correctly exercised his discretion, Main-Line had not shown evidence of hardship, and Main-Line had not shown evidence of an irreducible sum. In addition, UOB submitted that any interim payment should be made into court, due to the risk of non-recoverability of any excess amount.

The law relating to interim payment

13 Order 29 r 12(*a*) of the Rules provides as follows:

> **Order for interim payment in respect of sums other than damages (O. 29, r. 12)**
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> **12**. If, on the hearing of an application under Rule 10, the Court is satisfied —
>
> (*a*) that the plaintiff has obtained an order for an account to be taken as between himself and the defendant and for any amount certified due on taking the account to be paid;
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> …
>
> the Court may, if it thinks fit, and without prejudice to any contentions of the parties as to the nature or character of the sum to be paid by the defendant, order the defendant to make an interim payment of such amount as it thinks just, after taking into account any set-off, cross-claim or counterclaim on which the defendant may be entitled to rely.

14 In *American International Assurance Co Ltd v Wong Cherng Yaw* [2009] SGHC 89 ("*AIA HC*"), Andrew Ang J ruled that the test to determine whether an order for interim payment should be made involves a two-stage process, stating (at [21]):

> First, the court must be satisfied that one of the grounds stated in the sub-paragraphs [of O 29 rr 11 and 12] is established. … If the court is so satisfied, it has the *power* to grant an order for interim payment. The court then moves on to consider, at the second stage, whether it ought to exercise its discretion to do so and to determine the quantum of such payment. [emphasis in original]

An appeal against this decision was dismissed by this court in *American International Assurance Co Ltd v Wong Cherng Yaw* [2009] 3 SLR(R) 1117 ("*AIA CA*"). In the present case, it was not in dispute that the requirements of O 29 r 12(*a*) were satisfied (the first stage), and, therefore, the key issue was whether the court should exercise its discretion in favour of ordering interim payment (the second stage).

15 Under O 29 r 12 of the Rules, the discretion is left to the court as to whether to grant an order for interim payment. In determining whether a case is "fit" for the court to make such an order, case

law has established that, *prima facie*, it would not be appropriate to invoke O 29 r 12 where the factual issues raised in the case are complicated, or where difficult points of law are raised therein. However, the fact that there are sufficient complex issues of fact or law will not prevent the court from ordering an interim payment in respect of part of a complex claim where there is evidence establishing, with "reasonable certainty", a minimum sum which is likely to be recoverable (see *AIA CA* at [22]–[23]).

The role of an appellate court

16 It is trite law that where a decision involves an exercise of judicial discretion, an appellate court should not disturb that decision unless it can be shown that the judge had exercised his or her discretion erroneously *vis-à-vis* law, principle, or fact, or that he or she took irrelevant matters into account, or that the decision reached was "outside the generous ambit within which a reasonable disagreement is possible" (see the decision of this court in *Lian Soon Construction Pte Ltd v Guan Qian Realty Pte Ltd* [1999] 1 SLR(R) 1053 at [34]). The starting presumption should be that the judge below had exercised his or her discretion correctly (see the decision of this court in *Westacre Investments v The State-Owned Company Yugoimport SDPR* [2009] 2 SLR(R) 166 at [18]).

The Judge's exercise of discretion

17 The Judge's exercise of discretion turned largely on the evidence relating to the sum of $1,999,285.28 (that was subsequently revised to $1,962,424.30 (see [8] above)). The Judge found that Ms Gan had not conceded that the sum of $1,999,285.28 was the "net profit" and that the figure was only a "rough estimate" (see GD at [9]). The Judge further iterated that in making an application for interim payment, Main-Line "must satisfy the court that there is an amount below which the assessment of profit will not go" and that the "raw estimate" furnished by Ms Gan and Mr Cheang was not sufficient for an order to be made (see GD at [12]).

18 The rationale for this prudent approach was presumably to reduce the risk that the court might err in paying out too much at the interim stage. While such an approach would, in a general sense, be fair and reasonable, it should not be used as an excuse to deny interim payment to an applicant – especially in a case where all the relevant information and particulars needed to ascertain the amount due are in the exclusive possession of the respondent as in the present case. This was an aspect which, we thought, the Judge had inadvertently not borne in mind. Main-Line had already obtained judgment in the main proceedings, and UOB had admitted that it had received commissions amounting to $3,135,236.40 from the operation of the FCC System in breach of the Patent. The main contention of UOB, in resisting Main-Line's application for interim payment, was that it had incurred expenses or costs in earning the said commissions. But on these facts, it was abundantly clear that, at the very least, a good portion of the sum of $3,135,236.40 would be pure profits earned by UOB from the operation of the FCC System.

19 Ms Gan, in her affidavit filed on 6 March 2008, deposed (see [4]–[5] above) that UOB did not have separate records which showed the expenses incurred in earning the commissions. However, Ms Gan did say that by applying the expense/income ratios of UOB for financial years 2002 to 2006, the net profits for the operation of the FCC System would be $1,999,285.28 (see [4]–[5] above). In our view, to deny Main-Line any interim payment completely just because the exact dollars and cents could not as yet be ascertained would be to reward UOB for the inadequacy of its own administrative process to the prejudice of Main-Line. This would be wholly unjust. In such circumstances, the court would be entitled to, and indeed should, adopt the "estimated" figures as the proper basis to order interim payment. In this connection, it is salient that O 29 r 12 empowers the court to order "interim payment of such amount as it thinks just".

20 There was one further point which was germane to the issue at hand. As noted by this court in *AIA CA* at [24], O 29 of the Rules also provides for the contingency of overpayment. This can be found in O 29 r 17, which accords the court with wide powers to make the necessary adjustments in the final judgment or order; in particular, the court may order the applicant for interim payment to repay all or part of the interim payment received (*per* O 29 r 17(*a*)). Thus, in balancing the interests of the parties in an application for interim payment, the court only requires that there is *reasonable certainty* that the proposed interim payment amount is likely to be the minimum sum recoverable. The Judge, however, appeared to have insisted on a higher standard of certainty, *viz*, *absolute* certainty, as seen by his declaration that Main-Line "must satisfy the court that there is an amount below which the assessment of profit will not go" (GD at [12]), and this, in our view, was an error of law.

21 At this juncture, it would already be clear that the Judge had erred in his exercise of discretion, and that the decision to not grant interim payment had to be revisited.

The decision to not grant interim payment revisited

Ascertainment of a minimum sum with reasonable certainty

22 From the affidavits of both Ms Gan and Mr Cheang (see [4]–[5] and [8] above) it could not be disputed that revenue, in the form of commissions, was earned by UOB from the operation of the FCC System. The uncertainty related to the expenses which ought to be deducted from that revenue for the purposes of ascertaining the net profit made by UOB. Main-Line, which was not confining its claim for profits to the commissions received by UOB, contended that the sum of $3,135,236.40 (*ie*, the total amount earned from commissions) was the minimum sum that would be accounted for because UOB did not incur any costs in offering and using the FCC System. In the alternative, Main-Line contended that the sum of $1,962,424.30 (*ie*, the sum derived after applying the income/expense ratios for the financial years in question to the amount of commissions earned) was clearly the minimum sum which was payable to Main-Line.

23 We were in agreement with UOB that the sum of $3,135,236.40 was not the minimum sum ascertainable (with absolute or reasonable certainty). It would be reasonable to assume, at this stage of the proceedings, that some costs would have been incurred by Main-Line to earn the commissions. For one, cl 5.2 of the MEA indicates that UOB was contractually bound to ensure, at its own cost, that its banking online system was fully compatible and be able to interface with the FCC System, and similarly ensure that the terminals at the merchants' premises would be fully compatible and be able to interface with UOB's banking system.

24 As for the alternative sum of $1,962,424.30, UOB contended (and the Judge agreed) that it would be unsafe to rely on the income/expense ratios to conclude that the sum of $1,962,424.30 was the minimum sum ascertainable (see GD at [9]–[12]). This was because Ms Gan's affidavit was filed for the limited purpose of providing Main-Line with adequate information to make an election – either for an assessment of damages or an account of profits. Second, the income/expense ratios were general in nature, and bore no specific relation to the costs incurred in the operation of the FCC System. Before this court, UOB further contended that the affidavit was filed shortly after the conclusion of the main proceedings, and therefore it was made without the benefit of any detailed computation of the costs breakdown.

25 For the reasons set out at [19] above, and as further elaborated below, we were satisfied, with reasonable certainty, that the sum of $1,962,424.30 would be the minimum payable by UOB to Main-Line following an account of profits earned by UOB from the operation of the FCC System. As we saw it, the Judge had placed insufficient weight on the indicative value of the sum of $1,962,424.30.

26 First, although UOB sought to downplay the relevance of the income/expense ratios which were used by it to generate an indicator of its profit margin, the fact of the matter was that it could not point to any other basis which was likely to give a more accurate figure. As deposed to by Ms Gan, UOB did not maintain a separate record from which a more accurate determination could be made as to the precise net profit of UOB in operating the FCC System (see [4]–[5] above). In the absence of evidence pointing to the contrary, it was unlikely that Ms Gan or Mr Cheang would give a figure which would depart substantially from the actual profits earned by UOB. In this regard, we would underscore the fact that the information provided by Ms Gan (which included the total amount of commissions received by UOB and the income/expense ratios) was intended to enable Main-Line to "have a fair basis for making its election". [note: 3] Although UOB contended that this meant that Ms Gan's affidavit was filed for a limited and specific purpose, it was clear to us that Ms Gan would not have provided information which would be far from the truth. The court would be entitled to assume that Ms Gan did not set out to mislead Main-Line in order that the latter would not make the right election. On the contrary, it would be fair to infer that the income/expense ratios would give Main-Line a fairly close indication of the true state of affairs.

27 Second, the burden was on UOB to show that the sum of $1,962,424.30 was not a reasonably ascertained sum due to Main-Line. As earlier stated at [19] above, all the information relating to the commissions earned, and the expenses incurred, in operating the FCC System was within the exclusive possession of UOB. Main-Line would not have any knowledge of these matters. In *AIA HC* and *AIA CA*, an insurance company sold certain investment-linked policies to certain investors. Subsequently, the insurance company discovered that it had made a mistake in valuing the funds, and brought an action against the investors for unjust enrichment and conspiracy, alleging that they had knowingly exploited the mistake to their advantage. The investors' investments were liquidated and held in a joint stakeholder's account pending the resolution of the suit. The investors then brought an application for interim payment of certain sums of money from the stake, which the High Court granted pursuant to O 29 r 12(*c*). It was not disputed that the capital investment in the stakeholder's account belonged to the investors. What was uncertain, however, was whether the insurance company had a genuine claim on those moneys. In those circumstances, this court held (*AIA CA* at [24]) that the burden was on the insurance company to satisfy the court why it should not order interim payment of any sum that was repayable in law to the investors.

28 Here, as UOB had conceded that the profits from the commissions were owed by it to Main-Line, and that the sum of $1,962,424.30 was an estimate of the profits earned, the burden would be on UOB to show why that sum did not satisfy the test of reasonable certainty. The mere assertion, without more, that the figure was only an estimate, rather than an exact figure, would not mean that the sum was not a reasonably ascertained sum. As UOB had not maintained distinct records on the breakdown of the expenses incurred in the operation of the FCC System, it was unlikely that UOB would be able to work out those expenses more accurately and there was no indication that UOB would be able to do so with more time (see, also, [29] below). It would be wholly unjust that merely because UOB was unable, or worse still, unwilling, to give a more accurate breakdown of its costs/revenues, Main-Line should be denied its entitlement to interim payment. Looking at the situation objectively, and even assuming that there was no desire on the part of UOB to delay matters, we could not see any reason why Main-Line should suffer on account of the inadequacy of UOB's own recording system. It seemed to us that it would be entirely just to adopt the figure given by Mr Cheang to be the reasonably certain amount of what would at least be due to Main-Line. The test for determining the amount that should be ordered as interim payment, it should be reiterated, is based on *reasonable* certainty rather than absolute certainty. Other than stating that the sum of $1,962,424.30 was only an estimate, UOB could not even begin to show why that sum could not be the minimum reasonably ascertainable sum due to Main-Line.

29 Third, although more than a year had elapsed between the filing of Ms Gan's affidavit on 6 March 2008 and the filing of Mr Cheang's affidavit on 2 June 2009, other than taking into certain errors and the income/expense ratio for financial year 2007 (following the publication of the UOB's 2007 annual report) into consideration, which explained the slight difference in the estimated net profit as deposed to by the two of them, UOB was unable to furnish any further information as to how the expenses incurred by it could be better ascertained (see [8] above). It was disingenuous of UOB to claim that Main-Line should be denied interim payment on the ground that Main-Line was unable to furnish the court with a more precise profit figure.

30 Fourth, in our opinion, precisely because of the lack of specific breakdowns, it was reasonable to assume that when filing their affidavits, both Ms Gan and Mr Cheang were likely to have offered conservative estimates of the profits earned, in the interest of reducing the risk of over-payment by UOB. It was therefore highly unlikely that the sum of $1,962,424.30 would be substantially greater (if at all) than what would eventually be ascertained to be the amount due to Main-Line following the account of profits inquiry, *ie*, the actual net profits earned by UOB.

Other considerations

31 In coming to our decision, we noted that the present case had been ongoing since 2004. Although Main-Line had been successful in the main proceedings, given that discovery applications were still ongoing, and, having regard to the stances taken by Main-Line and UOB, it seemed to us that the taking of accounts, which would also involve an assessment of profits, would likely be of some complexity, and we were not confident that the exercise would be concluded anytime soon. In the meanwhile, all of the profits owed to Main-Line would remain with UOB, unless interim payment was awarded.

32 UOB also contended that Main-Line had not suffered any hardship because legal costs had already been paid to them. However, we could not see how the payment of legal costs could affect Main-Line's entitlement to interim payment. This argument was a *non sequitur*. Instead, we should clarify that while need or prejudice may be the usual basis upon which an interim payment is sought, it does not follow that an applicant for interim payment must show such need or prejudice before an interim order may be made. In *Schott Kem Ltd v Bentley and Others* [1991] 1 QB 61, Neill LJ said (at 74):

> I am not satisfied, however, that there is any restriction implicit in the rules which prevents an interim payment order being made in the absence of evidence of need or prejudice. By the use of the words "if it thinks fit" both rules 11 and 12 confer a discretion on the court whether to order an interim payment at all. Moreover the amount of the payment is expressed to be "of such an amount as [the court] thinks just," with the additional limitation in the case of damages that the amount is not to exceed "a reasonable proportion of the damages which in the opinion of the court are likely to be recovered by the plaintiff" after taking into account the matters specified. For my part I can see no basis for any further limitation on the jurisdiction of the court to order interim payments other than those set out in Order 29 itself.
>
> I would therefore reject the argument that it is necessary for Schott Kem to produce evidence of need or prejudice.

33 We also bore in mind that where liability has already been established, it is generally appropriate and just to make an interim order where there will be some delay until the final disposal of the case (see *Singapore Court Practice 2009* (Jeffrey Pinsler SC gen ed) (LexisNexis, 2009) at para 29/11/3).

Our decision on interim payment

34 For the above reasons, it was our view that an interim payment of $1,962,424.30 was appropriate. Parenthetically, we should add that it surprised us that there was no offer at all from UOB of any sum as interim payment when clearly a good part of the commissions should be due to UOB.

Payment into court or to Main-Line

35 Since the objectives of interim payments would include mitigating hardship (as in *AIA HC* and *AIA CA*), or, as in the present case, preventing a party from being kept out of money owed to it for an extended period of time (see [33] above), an order that payment be made into court would not have served much purpose.

36 UOB contended that as Main-Line was a foreign party, there was a real risk that UOB might not be able to get back that part of the interim payment which was paid in excess to Main-Line. However, we saw no reason to doubt Main-Line's ability to make a repayment, if required, pursuant to an order under O 29 r 17 of the Rules. Moreover, for the reason alluded to at [30] above, there was a minimal likelihood that there would be significant overpayment if an interim payment in the sum of $1,962,424.30 was ordered to be made. We therefore directed that the interim payment be paid to Main-Line instead of into court.

Conclusion

37 In the result, we allowed the appeal with the usual consequential orders and ordered UOB pay to Main-Line a sum of $1,962,424.30 as interim payment. As requested by UOB, we gave three weeks for payment to be made.

[note: 1] Affidavit of Ms Gan filed on 6 March 2008 at paras 25–26

[note: 2] Affidavit of Mr Cheang filed on 2 June 2009 at paras 18–21

[note: 3] Affidavit of Ms Gan filed on 6 March 2008 at para 29

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