IN THE SINGAPORE INTERNATIONAL COMMERCIAL COURT OF THE REPUBLIC OF SINGAPORE

[2020] SGHC(I) 07

Suit No 3 of 2017

Between

DyStar Global Holdings (Singapore) Pte Ltd

… *Plaintiff*

And

(1) Kiri Industries Limited
(2) Manishkumar Pravinchandra Kiri
(3) Pravinchandra Amrutlal Kiri
(4) Kiri International (Mauritius) Private Limited
(5) Mukherjee Amitava

… *Defendants*

JUDGMENT

[Damages] — [Assessment] — [Quantum]

[Civil Procedure] — [Costs]

TABLE OF CONTENTS

THE JUDGMENT SUM....2

COSTS....4

PROFESSIONAL COSTS....4

DISBURSEMENTS....7

THE COSTS SUBMISSIONS....8

JUDGMENT....8

This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

DyStar Global Holdings (Singapore) Pte Ltd
v
Kiri Industries Ltd and others

[2020] SGHC(I) 07

Singapore International Commercial Court — Suit No 3 of 2017
Kannan Ramesh J, Roger Giles IJ and Anselmo Reyes IJ
30 January 2020

3 March 2020 Judgment reserved.

Roger Giles IJ (delivering the judgment of the Court):

1 In our judgment in *DyStar Global Holdings (Singapore) Pte Ltd v Kiri Industries Ltd and others* [2020] SGHC(I) 01 ("the Judgment"), we directed an agreed statement of damages calculated in conformity with our reasons, together with interest. We also directed the exchange of written submissions on costs, with costs to be determined on the basis of the written submissions unless the Court required or one of the parties requested an oral hearing.

2 These reasons are concerned with the judgment sum and costs. They use the acronyms used in the Judgment, and assume familiarity with it.

The Judgment Sum

3 Damages were agreed at USD 542,833.53. A daily rate of interest was agreed, being USD 79.05. The parties were unable to agree on the date from which interest would run. DyStar said from various "value dates" in the calculation of damages, standing for the dates of accrual of loss. Kiri said from the date of commencement of the proceedings.

4 The grant of pre-judgment interest is the exercise of a wide discretion, including in relation to the period between when the cause of action arose and the date of judgment. A plaintiff is generally entitled to interest from when the loss accrued, but an established circumstance for a later date is where there has been unwarranted delay by the plaintiff: *Robertson Quay Investment Pte Ltd v Steen Consultants Pte Ltd and another* [2008] 2 SLR(R) 623 at [102]–[103].

5 The value dates were ranges from 15 December 2015 to 4 March 2016 (FOTL), from 30 August 2012 to 30 August 2018 (Hayleys), and from 30 August 2014 to 30 August 2016 (Brandix). The proceedings were commenced on 27 January 2016.

6 Kiri submitted that there had been unwarranted delay by DyStar, in that the proceedings were commenced over three years after the first accrual of loss. It submitted also that the proceedings were not genuinely brought in order to recover losses suffered in connection with Kiri's breaches of the SSSA, but in retaliation to the minority oppression suit brought against Senda.

7 We do not accept either basis for exercising our discretion against interest from the value dates.

Version No 2: 27 Oct 2020 (22:41 hrs)

8 As to delay, while the earliest breaches and the earliest value dates were some years before the commencement of the proceedings, the FOTL breaches were in 2015, the Hayleys breaches continued from 2012 to 2018, and the Brandix breaches were from September 2013 to at least late 2014. The earliest breach was continued until the commencement of the proceedings and thereafter, and the other breaches were more proximate to the commencement of the proceedings; the accruals of loss were in large measure not distant from that commencement and, in part, post-dated it. To the extent that time passed between the breach and the commencement of the proceedings, we do not regard it as undue so as to deny interest whereby proper compensation is given to DyStar.

9 As to "genuineness", being a claim for breach of contract, DyStar's motivation is not relevant. Even if it brought the proceedings on retaliatory inspiration, we do not see why that makes its loss any less real, or detracts from an otherwise fully-existent entitlement to interest. It has been found that DyStar suffered loss, for which it should be compensated.

10 We note that Kiri said that it did not accept the value dates as the dates on which DyStar's losses arose. With losses accruing over a period of time, a sensible and practical approach must be taken to the dates of accrual. DyStar's calculation took the midpoint of the period covered by invoices (FOTL) or of the year (Hayleys and Brandix), plus 60 days as the invoice payment time. In our view, this was an appropriate course. As noted in the Judgment, at the hearing Kiri did not take issue with the methodology in DyStar's then calculation, which was followed for the calculation in conformity with our reasons.

Version No 2: 27 Oct 2020 (22:41 hrs)

11 With interest to 30 January 2020, the damages are USD 675,871.85. Adding interest to date at the daily rate, there will be judgment for USD 678,480.50.

Costs

12 It was common ground that, although this was a transfer case, costs were governed by the regime in O 110 r 46, by which costs generally follow the event and the unsuccessful party pays the reasonable costs of the successful party. Kiri did not dispute that DyStar was entitled to costs.

13 DyStar claimed as reasonable costs S$250,000 as professional costs and S$135,985.09 for disbursements, plus S$15,329.03 in relation to the submissions on costs. Kiri submitted that, although the O 110 r 46 regime applied, costs should be assessed with reference to Appendix G of the Supreme Court Practice Directions, and that the amount for professional costs should be S$16,000. It took issue with certain disbursements.

Professional costs

14 In *CPIT Investments Ltd v Qilin World Capital Ltd and others* [2018] SGHC(I) 02 ("*CPIT*"), it was said at [25] that under the O 110 r 46 regime, and unless the parties have agreed to disregard it altogether, regard may be had to the Appendix G guidelines ("the Guidelines") as one factor in taking into account all the circumstances of the case. In *B2C2 Ltd v Quoine Pte Ltd* [2019] SGHC(I) 12 ("*B2C2*") it was said at [17] that this would be rare where there had been a specific order that O 110 r 46 should apply post-transfer. There was no such order in the present case. Nonetheless, the discussion of policy considerations by Simon Thorley IJ in *B2C2* at [12]–[14] highlights the place of reasonable costs in proceedings in the SICC. In this case the parties, both

Version No 2: 27 Oct 2020 (22:41 hrs)

large international entities, had devoted extensive resources to disputes of which the assessment of damages for Kiri's breaches was a part. This was not an ordinary assessment of damages, and in our view the Guidelines (which in any event may be departed from) have little bearing on the amount of costs that should be awarded.

15 The difference in the proposed amounts for professional costs is remarkable. Kiri arrived at S$16,000 through its reference to the Guidelines, as the lower end of the guideline stipulating that for a hearing for assessment of damages in non-motor accident cases, the applicable costs would be S$8,000 to S$12,000 per day. It submitted that there were no novel issues of law, the amount in dispute was not large, and the evidence was not extensive. It also submitted that the evidence of loss was not cogent: without accepting that description, we do not see why, DyStar having succeeded, it affects the quantum of costs.

16 However, the submissions overlooked the fact that the proceedings were hard-fought, and involved a number of Case Management Conferences, quite extensive discovery of documents, overseas witnesses, and expert evidence calculating costs. It is not realistic to confine professional costs to costs in accordance with the guideline, even if regard be had to it.

17 The costs must still be reasonable, and proportional to the amount at stake. We have considered the schedule in Annex D to DyStar's written submissions. As to professional costs, it is a series of round figures with a brief description of the work. The observation of Vivian Ramsay IJ in *CPIT* at [41] is apposite:

> "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

Version No 2: 27 Oct 2020 (22:41 hrs)

> 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."

18 We also had the bare minimum. Of necessity, we must take a broad approach in considering the reasonableness of the costs claimed by DyStar. There are seven heads of claim.

19 The first is reviewing the liability judgment and the appeal judgment, and taking instructions. S$10,000 is claimed. We think an appropriate amount is S$4,000.

20 The second is preparation for and attendance at Case Management Conferences. There were four conferences, occupying some time. S$20,000 is claimed. We consider that S$15,000 is appropriate.

21 The third is discovery. The discovery exercise was quite extensive. S$40,000 is claimed. We consider that an appropriate amount is S$25,000.

22 The fourth is preparation of AEICs and reviewing Kiri's AEICs. The AEICs included overseas witnesses and the expert, but we do not countenance the S$90,000 claimed; in our view, an appropriate amount is S$45,000.

23 The fifth is, in substance, preparation for the hearing. S$30,000 is claimed. In our view, S$20,000 is appropriate.

Version No 2: 27 Oct 2020 (22:41 hrs)

24 The sixth and seventh are the hearing, including written and oral closing submissions. S$60,000 is claimed. In our view, an appropriate amount is S$30,000.

25 The amount for professional costs will therefore be S$139,000.

Disbursements

26 DyStar claimed S$35,436.60 for the expert report of Mr Chee Yoh Chuang. For the hearing, it relied on the expert report of Mr Iain Potter, who reviewed and agreed with Mr Chee's report save for one modification, but effectively provided his own report. Kiri submitted that Mr Chee's calculation of damages was superseded by Mr Potter's calculation, and DyStar should hence not have Mr Chee's fees. In our view, that is correct.

27 DyStar claimed S$57,529.09 for Mr Potter's expert fees. Kiri submitted that DyStar should not have Mr Potter's fees for calculating the Hayleys damages on the basis that DyStar would have made all the sales made by Kiri, as that was not accepted or even pressed, or for recalculating damages in conformity with our reasons, since that was due to our declining to accept the entire claim for damages. From the invoices, the latter amount was S$2,232.02; the former amount is not clear to us.

28 We do not think it appropriate to parse a small element out of the fees for Mr Potter's substantive report. Calculation of damages in conformity with our reasons was a necessary step in DyStar's case, even if it was necessary *because* we did not accept DyStar's entire claim for damages. We do not think that either adjustment should be made.

Version No 2: 27 Oct 2020 (22:41 hrs)

29 Kiri tabulated photocopying charges and filing fees to which it said DyStar was entitled. The amount for filing fees was a little greater than that claimed by DyStar. The amount for photocopying proposed was S$465.90 compared to S$5,636.80 claimed by DyStar. No explanation for the difference between the parties was given, but it appears to have been because the DyStar amount was almost all for commercial copying. In the absence of an explanation by Kiri, we see no reason to decline to regard DyStar's proposed figure as a reasonable charge.

30 The amount for disbursements will therefore be S$100,548.49.

The costs submissions

31 As noted above, DyStar claimed costs for its submissions on costs, in a total amount (including printing) of S$15,329.03. The professional costs claimed were S$15,000. In our view, an appropriate amount is S$6,000.

32 We therefore assess the costs at S$145,000 for professional costs and S$100,877.52 for disbursements.

Judgment

33 We order as follows:

(a) Judgment for the plaintiff against the First and Second defendants for USD 678,480.50.

Version No 2: 27 Oct 2020 (22:41 hrs)

(b) The First and Second defendants to pay the plaintiff's costs including disbursements assessed at S$245,877.52.

Kannan Ramesh	Roger Giles	Anselmo Reyes
Judge	International Judge	International Judge

Yim Wing Kuen Jimmy SC, Teng Po Yew, and Eunice Lau Guan Ting (Liu Guanting) (Drew & Napier LLC) for the plaintiff;
Dinesh Dhillon Singh, Margaret Joan Ling Wei Wei, Lim Dao Kai, Teh Shi Ying and Ling Ying Ming, Daniel (Allen & Gledhill LLP) for the defendants.

Version No 2: 27 Oct 2020 (22:41 hrs)