IN THE SINGAPORE INTERNATIONAL COMMERCIAL COURT OF THE REPUBLIC OF SINGAPORE

[2023] SGHC(I) 14

Suit No 4 of 2021

Between

(1) Bidzina Ivanishvili
(2) Ekaterine Khvedelidze
(3) Tsotne Ivanishvili, a minor suing by his litigation representative, Ekaterine Khvedelidze
(4) Gvantsa Ivanishvili
(5) Bera Ivanishvili

… *Plaintiffs*

And

Credit Suisse Trust Limited

… *Defendant*

JUDGMENT

[Civil Procedure — Costs]
[Civil Procedure — Final orders]

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Ivanishvili, Bidzina and others
v
Credit Suisse Trust Ltd

[2023] SGHC(I) 14

Singapore International Commercial Court — Suit No 4 of 2021
Patricia Bergin IJ
29 August 2023

19 September 2023 Judgment reserved.

Patricia Bergin IJ:

Introduction

1 These reasons relate to the finalisation of orders to be made consequent upon judgment in SIC/S 4/2021 (the "Suit") which was delivered on 26 May 2023: *Ivanishvili, Bidzina and others v Credit Suisse Trust* [2023] SGHC(I) 9 (the "Judgment"). Unless otherwise specified, the same abbreviations as used in the Judgment are adopted.

2 There are three main issues with which it is necessary to deal. The first issue is the quantification of the amount payable by the defendant in accordance with Model 1B by reason of the finding that the defendant's breach occurred on 30 March 2008, rather than 31 December 2007 as contended by the plaintiffs. The second is the issue of costs of the proceedings. The third is the issue of

whether a declaration ought to be made that the Deed of Amendment and Restatement is void and/or unenforceable.

Quantification

3 The Judgment included a request for the experts to further assist the Court by updating the Model 1B calculations to commence from the date of the breach, 30 March 2008, to the date of Judgment, taking into account the Settlement amount to ensure there is no double recovery: the Judgment at [729]–[731].

4 The parties' respective forensic accounting experts, Mr Davies and Mr Nicholson, conferred after the delivery of the Judgment to assist the parties to reach agreement on the amount payable under Model 1B from the date of breach. As the parties were not able to agree, the experts provided their respective reports dated 25 August 2023 to assist the Court in the determination of the amount.

5 For the Model 1B calculations, Mr Davies adjusted: (a) the start date from 31 December 2007 to 30 March 2008 for all accounts other than Meadowsweet's account 75, which remained at 31 December 2008; and (b) the end date from 30 September 2021 to 26 May 2023.

6 The original value of US$926.04m in the Model 1B calculations has reduced to US$781.51m by reason of the change in commencement date, some three months later than the original calculations, and the significantly reduced

performance of the Benchmark Portfolio between 1 October 2021 and 26 May 2023.[1]

7 The Settlement amount of US$79,430,773 referred to in the Judgment at [730] was in fact made up of three components, only one of which related to Meadowsweet in the amount of US$30,011,498 (the "Meadowsweet Settlement Amount").[2] The other two amounts related to the plaintiff's company Wellminstone SA and personal accounts held by the plaintiff.

8 Mr Davies calculated the amount for deduction on two bases. The first was by deducting the whole of the amount of the Settlement and reaching a total of US$702.8m. The second was by deducting only the Meadowsweet Settlement Amount and reaching a total of US$742.73m.

9 Both experts have indicated that the parties agree that the correct treatment of the Settlement payments is to adopt the second basis of calculation, albeit that there is disagreement on the approach to be adopted.[3] As 30 March 2008 fell on a Sunday, Mr Davies calculations commenced from 31 March 2008. Mr Nicholson's calculations commenced from 28 March 2008. Having considered both experts' analysis of the approach to be adopted,[4] Mr Davies' approach is preferred as the fairest and most reasonable in the circumstances.

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1 Mr Davies' Report dated 25 August 2023 ("Mr Davies' Report") at paras 2.8–2.9.

2 Mr Davies' Report at para 3.17.

3 Mr Davies' Report at para 1.9.2; Mr Nicholson's Report dated 25 August 2023 ("Mr Nicholson's Report") at para 1.10.

4 Mr Davies' Report at paras 4.13 to 4.20; Mr Nicholson's Report at paras 2.4 to 2.9; 3.5 to 3.14.

10 The amount of compensation that the defendant must pay is US$742.73m.

Costs

11 The parties have reached agreement in respect of some costs of the proceedings and, in respect of the costs on which they were unable to reach agreement they have filed written submissions on 18 July 2023 (in chief) and 1 August 2023 (in reply), with a round of supplementary written submissions on 22 August 2023 (the defendant) and 29 August 2023 (the plaintiffs).

12 There is no issue between the parties that as the plaintiffs prevailed in the Suit, they should be awarded costs in accordance with the principle that costs should follow the event. However, there is an issue as to the amount of any discount that might be applied to the award of costs by reason of various matters that are discussed below.

Approach to determination of costs

13 The approach to be adopted in the determination of costs of these proceedings is gleaned from the recent decisions of the Court of Appeal in *Senda International Capital Ltd v Kiri Industries Ltd* [2023] 1 SLR 96 ("*Senda*") and of the Singapore International Commercial Court ("SICC") in *Lao Holdings NV v Government of the Lao People's Democratic Republic and another matter* [2022] SGHC(I) 6 ("*Lao Holdings*").

14 In accordance with O 110 r 46 of the Rules of Court 2014 (the "Rules"), unless otherwise ordered by the Court, the defendant is required to pay to the plaintiffs their "reasonable costs" of the proceedings.

15 The process for the determination is "an open-ended inquiry" in which the Court will have "due regard to the specific facts of the case at hand", the complexity of the issues, the amount of costs claimed and the nature and extent of the differences between the parties in respect of their positions on costs: *Senda* at [70] and [100].

16 It is expected that in discharging their obligations to show that the costs as claimed are "reasonable costs", the plaintiffs will provide a breakdown of the claimed costs to enable the Court to properly assess whether those costs are reasonable. That breakdown would typically include the costs in terms of the number of hours claimed; by whom the services were provided in relation to the hours claimed with their levels of seniority and hourly rates; and some explanation as to the type of work in respect of which those hours were spent: *Senda* at [73]. Such information will usually also include the detail of the post-qualification experience of the professionals providing the legal services and/or expert services, and their respective charge-out rates. In some circumstances, where it is helpful, such information could be broken down into the stages of the litigation: *Lao Holdings* at [113].

17 Once the successful party has provided the appropriate information in support of the claim for their reasonable costs, the evidential burden shifts to the unsuccessful party to show that the claimed costs are not reasonable costs. In this regard the Court of Appeal observed that the "best evidence" that the unsuccessful party can adduce will often be information as to the costs that it had correspondingly incurred for the matter: *Senda* at [75].

18 The Singapore International Commercial Court Practice Directions (the "Practice Directions"), which apply to these proceedings, record at para 152(4) that the Court may require parties to provide a costs schedule to be

submitted with closing submissions. The Practice Directions include Form 24 as a "sample costs schedule" which is divided into seven areas of work (Commencement of Proceedings/Pleadings, CMC/Interlocutory hearing(s), Disclosure, Affidavits, Expert Evidence, Preparation for hearing(s) and Attending hearing(s)) with sections for recording the description of the nature of the work, the hours worked, the hourly rates, the total hours worked and the total amounts of costs incurred in those areas.

19 The parties were not required to provide a Form 24 costs schedule with their closing submissions in these proceedings. Nor were the parties required to provide a Form 24 with their submissions on costs. However, as will be seen from the discussion below, the plaintiffs filed a costs schedule in a Form 24 format as an annexure to their reply submissions on costs dated 1 August 2023. That is what prompted the further round of written submissions referred to at [11] above.

Parties' positions on costs

Agreed costs

20 The parties have agreed that costs for the work done from 25 August 2017 to 8 March 2021 prior to the proceedings being transferred to the SICC, should be awarded to the plaintiffs in the amount of S$85,000.

21 There were numerous interlocutory applications brought by way of Summons.[5] The parties have agreed that the plaintiffs should be awarded costs

[5] Including relevantly SIC/SUM11/2022; SIC/SUM21/2022; SIC/SUM40/2022; SIC/SUM44/2022; SIC/SUM49/2022; SIC/SUM50/2022; and SIC/SUM51/2022.

and disbursements for these applications, bar two (see [23(c)] and [23(d)] below), in the amount of S$482,551.40.

22 The parties have also agreed that interest on costs be fixed as simple interest at 5.33% per annum and that post-judgment interest be fixed as simple interest at 5.33% per annum from the date of the Judgment, 26 May 2023, to the date of full payment. There is an issue in respect of the date from which interest should apply to costs, returned to at [25] below.

Contested costs

23 In addition to an order that these agreed amounts be paid, the plaintiffs seek an order that the defendant pay their costs of S$6,741,421.98 made up of:

(a) S$4,330,028.73 for costs after the transfer of the proceedings from the High Court to the SICC ("Post-Transfer Costs");

(b) S$2,382,893.25 for the costs incurred in obtaining experts' opinions ("Quantum Experts' Fees");

(c) S$25,000 for costs in respect of SIC/SUM 11/2022 ("SUM 11"); and

(d) S$3,500 for costs in respect of SIC/SUM 49/2022 ("SUM 49").

24 The defendant opposes the plaintiffs' claims and proposes that the Court should award the plaintiffs a total of S$5,251,000 made up of:

(a) S$3.5m for Post-Transfer Costs;

(b) S$1.75m for Quantum Experts' Fees; and

(c) S$1,500 as costs for SUM 49.

It proposes that all parties pay their own costs of SUM 11.

25 Although the parties have reached agreement on the interest rate to be applied to costs and the Judgment debt, they are at issue on the date from which interest should apply to costs. The plaintiffs contend that interest should apply to the agreed costs from the date on which the parties reached agreement and on contested costs from the date of the Court order. The defendant contends that the Court should make orders in respect of costs both agreed and not agreed, and that interest should apply to both from the date of the Court orders.

Post Judgment costs proposals

26 After the Judgment was delivered, the parties exchanged their proposals in respect of the costs orders they contended should be made.

27 On 20 June 2023, the plaintiffs' solicitors, Drew & Napier LLC, sent a costs proposal to the defendant's solicitors, Allen & Gledhill LLP, enclosing the plaintiffs' "cost schedule" which, it was said, "sets out a breakdown of the costs incurred" by the plaintiffs in the proceedings (the "June Schedule").

28 The June Schedule was divided into five sections: (I) Summary of the costs claimed; (II) Counsel's Fees; (III) Interlocutory Applications; (IV) Quantum Experts' Fees; and (V) Disbursements.

29 Section (II) identified each of the practitioners who provided legal services, their status (senior counsel, director or associate), their hourly rate, the hours worked, and the amount claimed in respect of those hours. The stages

were divided into "Pre-Transfer Costs" up to 8 March 2021 and "Post-Transfer Costs" from 9 March 2021.

30 Pre-Transfer Costs were divided into costs incurred for commencement of proceedings and pleadings and costs incurred after the determination of the Court of Appeal proceedings in *Ivanishvili, Bidzina and others v Credit Suisse Trust Ltd* [2020] 2 SLR 638 (see [51] of the Judgment).

31 Post-Transfer Costs were divided into five stages and time periods:

(a) The first period was between 9 March 2021 and 28 March 2022 for costs leading up to the filing of the plaintiffs' factual and expert AEICs in the amount of S$1,133,681.19.

(b) The second timeframe was between 29 March 2022 and 8 June 2022 for costs leading up to the filing of the defendant's factual and expert AIECs in the amount of S$333,913.04.

(c) The third was for the period 9 June 2022 to 4 September 2022 for costs leading up to the trial in the amount of S$1,416,724.

(d) The fourth was from 5 to 23 September 2022 for costs during the trial in the amount of S$923,960.

(e) The final period was 24 September 2022 to 17 February 2023 for costs after the trial in the amount of S$1,507,981.90.

32 It is not in issue that although the hours of work were set out in each of the stages and time periods, there was no narration of the actual or type of work that was carried out by the legal practitioners for the plaintiffs.

33 Section (III) of the June Schedule included a description of the nature of each of the interlocutory applications and the outcome. As discussed earlier, the only costs of interlocutory matters for determination are in respect of SUM 11 and SUM 49.

34 Section (IV) of the June Schedule included claims for the Quantum Experts' Fees set out in a similar manner to the costs of the legal practitioners. The stages into which the provision of services for the experts were divided are:

(a) costs leading up to the filing of the plaintiffs' expert AEICs, from 28 February 2022 to 27 March 2022;

(b) costs leading up to trial, from 28 March 2022 to 31 August 2022;

(c) costs leading up to trial and during trial, from 1 to 26 September 2022;

(d) costs after trial, from 27 September 2022 to 19 February 2023.

There was also a section detailing the amounts of disbursements.

35 On 4 July 2023, the defendant's solicitors provided the plaintiffs' solicitors with a costs counter-proposal in the form of a "Schedule" which included discussion of the category of costs, the amount claimed by the plaintiffs, the defendant's comments on the plaintiffs' proposed claim and the counter-proposal amount (the "4 July Schedule").

36 In the sections of the 4 July Schedule dealing with Post Transfer Costs and Quantum Experts' Fees, the defendant recorded that "[w]ithout a narration of work done", it was difficult for it to "form a view on the reasonableness of

the amount claimed". The defendant enquired whether the plaintiffs' solicitors would provide such "a narration of the work done for each time period".

37 On 7 July 2023 the plaintiffs' solicitors responded to the 4 July Schedule (the "7 July Schedule"). In respect of Post-Transfer Costs, the plaintiffs' solicitors advised that although they could not understand why the defendant required a narration of the work done, further information in respect of the legal services was provided as follows:

> Nonetheless, in the interest of moving matters forward, our clients' responses to your client's specific queries (at [7]) are as follows:
>
> (a) Costs for the period of 29 March 2022 to 8 June 2022 were incurred for *inter alia*:
>
> (i) work done in relation to the Plaintiffs' 4th Supplementary List of Documents filed on 29 March 2022, the Case Management Conference on 1 April 2022, Reply (Amendment No. 2) filed on 19 April 2022;
>
> (ii) corresponding with you and your client's requests for documents regarding our clients' expert's AEICs, the proposed expert meetings and our clients' Notices of Non-Admission/on the issue of authenticity; and
>
> (iii) reviewing the documents listed in the Defendant's 3rd Supplementary List of Documents filed on 13 May 2022, your clients' factual and expert AEICs and the Defence (amendment no 2).

38 The 7 July Schedule included a similar observation of failing to understand why the defendant wanted a narration of the work done in relation to the Quantum Experts' Fees. However, the plaintiffs' solicitors provided further information as follows:

> Nonetheless, purely in the interests of saving time and costs, the breakdown of costs is as follows:
>
> (a) costs leading up to the filing of the Plaintiffs' expert AEICs. This is plainly self-explanatory;

> (b) costs leading up to and during trial which, as stated in our letter to you dated 20 June 2023, includes costs incurred for the joint experts' meetings and joint quantum expert reports (which are listed). It goes without saying that these costs also include our experts' preparation to give oral evidence at trial; and
>
> (c) costs after trial. This includes costs incurred for our experts' assistance with preparing our clients' Closing and Reply Closing Submissions, reviewing your client's Closing and Reply Closing Submissions, and preparing for and attending the oral closing hearing held from 16 to 17 February 2023.

Written Submissions

39 Although there was further correspondence between the parties' solicitors and further agreement on some matters, the parties proceeded to file their written submissions on costs with an agreement that the Court would determine the question of costs without an oral hearing.

40 In their written submissions in chief the plaintiffs provided the supporting invoices for the claim for costs in respect of the Quantum Experts' Fees, which included descriptions of the nature of the services that the experts provided.

41 Notwithstanding the provision of this additional material, the defendant complained that the plaintiffs had failed to provide adequate information upon which the Court could determine whether the plaintiffs' costs were reasonable.

42 On 1 August 2023 the plaintiffs provided additional information in a Form 24 format. As this was provided as an attachment to the plaintiffs' reply submissions, the defendant had not had an opportunity to comment upon it. The defendant was given the opportunity to file supplementary written submissions on the content of the Form 24 by 22 August 2023 and the plaintiffs were given the opportunity to file reply submissions by 29 August 2023.

43 The parties' submissions developed over time and became finely focused after the plaintiffs filed their detailed information in the Form 24 format and there was the further round of written submissions. The earlier submissions up to 1 August 2023 (the "earlier submissions") addressed the costs as they were divided into five time periods. Whereas the later submissions on 22 and 29 August 2023 (the "later submissions") addressed the costs detailed in the Form 24 format.

Post-Transfer Costs

44 The plaintiffs seek costs from 9 March 2021 to 17 February 2023 in the amount of S$4,330,028.73. The defendant submitted that the plaintiffs' costs for this period should be fixed at S$3.5m.

45 The plaintiffs claimed that they reduced their actual Post-Transfer Costs of S$4,811,143.03 by 10% to their claimed amount of S$4,330,028.73. This reduction was said to be in recognition of and/or to account for the difference between their claim that the defendant was in breach of its duty to them from 2007 and the finding that the defendant was in breach as at 30 March 2008.

46 Although the plaintiffs claimed that the actual Post-Transfer Costs incurred by them were S$4,811,143.03, it appears that the actual costs were more than S$5m. The amounts claimed in the five stages in the earlier submissions totalled S$5,514,260.13 and the amounts claimed in the Form 24 format also in the earlier submissions totalled S$5,316,260.13. The plaintiffs

explained that this difference arose because discounts were provided to them by their solicitors, and they were not claiming these amounts.[6]

47 The difference between S$5,514,260.13 and S$4,330,028.73 is in the order of a 21.5% reduction. The difference between S$5,316,260 and S$4,330,028.73 is in the order of an 18.5% reduction. Irrespective of these matters the plaintiffs have maintained their claim for Post-Transfer Costs at the reduced amount of S$4,330,028.73.

48 The defendant originally contended that in the absence of appropriate information, it was not possible to determine whether the plaintiffs' costs were reasonable costs or whether they had been properly and sensibly incurred.[7] Accordingly, it submitted that the Post-Transfer Costs should be awarded in the amount of $3m and subsequently $3.5 million.[8] After the provision of the information in the Form 24 format, it maintained its submission that the Post-Transfer Costs should be awarded in the amount of $3.5m.[9]

The defendant's failure to provide information about its legal costs

49 In *Senda* (see [17] above), the Court of Appeal did not prescribe that the unsuccessful party would provide information about its costs as the "best evidence" in every case. Rather the Court of Appeal referred to it as "often" being the best evidence. It will obviously be necessary to assess each case on its own facts and circumstances. If it is probable that such information may assist

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6 Plaintiffs' reply submissions to defendant's supplementary submissions on costs dated 29 August 2023 at para 14.

7 Defendant's submissions on costs dated 18 July 2023 at para 9.

8 Defendant's submissions on costs dated 18 July 2023 at para 44.

9 Defendant's reply submissions on costs dated 1 August 2023 at para 35; Defendant's supplementary submissions on costs dated 22 August 2023 at para 28.

in the determination of the reasonableness of the successful party's claimed costs and an unsuccessful party decides not to provide it, then the Court may be more comfortable in determining that the successful party's claimed costs are reasonable.

50 The provision of the detailed information in the Form 24 format by the plaintiffs on 1 August 2023 shifted the onus onto the defendant to demonstrate that the costs as claimed are unreasonable. One of the ways of demonstrating that unreasonableness is the disclosure of its own costs. Although the defendant provided detail of its Quantum Experts' Fees, referred to at [148] below, it proffered and maintained an explanation that it would not be "meaningful" to provide information of its legal costs as a comparison with the plaintiffs' legal costs, because of "the significant asymmetry in the preparatory work for trial".[10]

51 The defendant submitted that this "asymmetry" arose by reason of a number of factors: the AEICs were staggered and the defendant had to consider that plaintiffs' evidence before responding; unlike the plaintiffs, it was not in a position to leverage off the work of witnesses in the Bermuda Proceedings; it likely spent "significantly more time on discovery" given the allegations that were made against it; and it had to respond to the new allegations arising from the amendment of the Statement of Claim just three months before trial which required further work in relation to discovery and document production.

52 It was submitted therefore that there was "no equivalence between the preparatory work leading up to trial for there to be a like for like comparison".[11]

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[10] Defendant's submissions on costs dated 18 July 2023 at para 23.

[11] Defendant's submissions on costs dated 18 July 2023 at para 23.

53 Symmetry is not a pre-requisite to the comparison of the costs incurred by the respective parties. The fact that a party is responding to affidavit evidence does not exclude the costs incurred in doing so from comparison with the costs incurred in the preparation of the affidavits to which they respond. It will all depend on the circumstances of the case and the analysis of the work that was done by each party.

54 The so-called inability to "leverage off the work of witnesses in the Bermuda Proceedings" is also not an impediment to the comparative exercise upon which a Court may embark if both parties provide the detail of their costs. It would be a matter to be taken into account in the exercise.

55 The submission that the defendant spent "significantly more time on discovery" suggests that its costs may be higher than the plaintiffs' costs for this work. The plaintiffs emphasise that the defendant has not put forward any material to suggest that its costs incurred in providing discovery were significantly lower than the plaintiffs' costs. Either way, these matters are not an impediment to the comparative exercise but rather are matters to be taken into account when making the comparison.

56 These observations also apply to the work that the defendant claimed it had to perform because of the amendments to the Statement of Claim. This work was no impediment to the comparison being made.

57 It may be reasonably inferred from the absence of any information about the defendant's costs that its costs are probably higher than the plaintiffs' costs. Even if the defendant formed the view, as it did, that there was "significant asymmetry", that should not have prevented it from disclosing the quantum and providing the explanations in respect of the differences. However, it has chosen

to complain about the plaintiffs' level of costs without permitting any comparison with its own costs.

58 In the circumstances it is probable that the information in respect of the costs incurred by the defendant may have assisted the Court in determining the reasonableness of the plaintiffs' costs. The absence of the provision of this information is a matter that is to be taken into account in assessing whether the plaintiffs' costs are reasonable.

Form 24

59 As discussed above, the initial information that the plaintiffs provided did not include any explanation of the type of work that was carried out during the hours for which claims are made. This was the subject of complaint by the defendant to which the plaintiffs responded by providing the information in the Form 24 format on 1 August 2023. The plaintiffs have provided detailed descriptions of the nature of the work done in each of the seven areas identified in the Form.

60 The defendant does not criticise the nature of the information provided in the Form 24 format but submits that it demonstrates that many individual components of the plaintiffs' costs are "unreasonable and unjustified".[12] It indicated that it did not intend to adopt a "granular approach" to reduce the amounts claimed for each "discrete item of work". Rather it maintained its contention in its earlier submissions that a 25% discount is appropriate to reflect: (a) those parts of the plaintiffs' cases on which they did not prevail; and

[12] Defendant's supplementary submissions on costs dated 22 August 2023 at para 3.

(b) the numerous items of work in Form 24 "where the costs incurred are plainly disproportionate".[13]

61 It is appropriate to address the information within the framework of the Form 24 format and the parties' later submissions in relation to it but keeping in mind the parties' earlier submissions relevant to the topics under discussion. The only matter with which it is unnecessary to deal is the plaintiffs' costs of attending the trial in September 2022 to which there is no objection by the defendant.

(1) Pleadings

62 The first category of costs addressed by the defendant were those in relation to Pleadings. The total amount claimed by the plaintiffs in respect of Pleadings is S$251,426.50. The defendant addressed three items totalling $143,326.28 without any suggestion as to the reduction that should be applied to them individually.

63 The first item is the plaintiffs' claim for S$72,508.83 for 104.67 hours of work relating to Further and Better Particulars ("F&BPs") of Statement of Claim (Amendment No. 1) ("SOC A1") dated 8 June 2021. The defendant claimed that a substantial portion of the F&BPs concerned the Swiss proceedings against Mr Lescaudron and were obtained from the findings of the Swiss Court. It also submitted that these details were in the plaintiffs' knowledge prior to the filing of the SOC A1 and that the remaining portions of the F&BPs contained "broad statements supporting the Plaintiffs' allegation on breach of trust".

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13 Defendant's supplementary submissions on costs dated 22 August 2023 at para 3.

64 In response, the plaintiffs submitted that the fact that particulars had to be drawn from other materials does not mean that less or no work is required. Obviously, work had to be done to review and consider the relevant materials and then draft the particulars.

65 It should be remembered that until just before the trial began in early September 2022, the defendant had put the plaintiffs to proof in respect of the frauds committed by Mr Lescaudron. It was necessary for the plaintiffs to review these rather lengthy materials carefully so that it could meet the challenge that the defendant had set it. In the circumstances, this does not present as a plainly disproportionate or unreasonable amount of costs. These costs are reasonable.

66 The second item is the plaintiffs' claim of S$38,373.73 for 54.17 hours of work in relation to F&BPs of SOC A1 dated 31 July 2021. The defendant submitted that these "mainly contained details on the alleged unsuitable, imprudent or undiversified investments". It contended that the work of identifying these details would have been undertaken by the plaintiffs' experts.

67 The plaintiffs submitted that the defendant's claim is "illogical".[14] They contend that it cannot be disputed that the F&BPs provided in this regard were substantial and, irrespective of whether the experts had input in relation to the identification of the details relating to the breach of trust, work still had to be done to prepare the particulars and provide them to the defendant.

68 Although it is unnecessary to decide whether there was illogicality in the defendant's claim, the plaintiffs' submissions are clearly correct. The facts of

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[14] Plaintiffs' reply submissions to defendant's supplementary submissions on costs dated 29 August 2023 at para 17.

this case spanned years from 2005 to at least 2015 with the necessity to analyse the investments and the defendant's conduct as it dealt with or failed to deal with the Trust assets. The plaintiffs had to review the investments in the context of the defendant's resistance to any recognition or admission of its breach of trust (until the tenth day of the trial). In the circumstances, this does not present as a plainly disproportionate or unreasonable amount of costs. These costs are reasonable.

69 The third item is the plaintiffs' claim for S$32,443.72 for 57.17 hours of work in relation to the Reply (Amendment No.1) dated 12 October 2021 (the "Reply"). It was submitted that the key substantive amendments were contained "in about five pages" concerning the defences raised by the defendant under s 60 of the Trustees Act, contributory negligence and consent/acquiescence, and that apart from bare denials, the facts pleaded in response repeated matters set out in the Statement of Claim.

70 The plaintiffs submitted that the amendments were substantive, a matter recognised by the defendant, resulting from work that included considering the new defences, considering the law so as to form a position and drafting the Reply. Notwithstanding that the amendments were only contained in five pages, the plaintiffs submitted that the achievement of succinctness in pleadings does not mean that little work was done.

71 The plaintiffs' submissions on this item are persuasive. It is always dangerous to equate succinctness or economy of words in a final product with a lack of application or substantive effort. Clearly these were significant defences that the plaintiffs had to meet and deserved careful analysis and time for proper consideration. These costs are reasonable.

(2) CMCs

72 The next category of costs addressed by the defendant are the amounts claimed in respect of Case Management Conferences ("CMCs").

73 The first item addressed by the defendant is in relation to a pre-trial conference on 9 March 2021 in the amount of S$12,136.81. It submitted that this claim should be excluded because it relates to Pre-Transfer Costs".[15]

74 The plaintiffs submitted that these costs are in respect of work which was done following the pre-trial conference on 9 March 2021, including the solicitors' preparation and extraction of the Order of the Court, correspondence with the solicitors for the defendant and the plaintiffs in respect of same, and research on and advice to the plaintiffs on the consequences of the transfer of the Suit to the SICC. It was submitted that the plaintiffs are only claiming 16.67 hours for such work which, it was submitted, is "eminently reasonable".

75 Clearly, these are not Pre-Transfer Costs and the plaintiffs are entitled to them.

76 The next item is the plaintiffs' claim for S$130,812.71 in relation to the CMC on 27 April 2021 which the defendant claimed is "exorbitant".[16] It submitted that the bulk of the hearing was in respect of the plaintiffs' appeal against 28 categories of particulars which they had been ordered to provide in HC/RA 46/2021 ("RA 46"). It was submitted that the costs of and incidental to that hearing have been agreed between the parties at S$8,000 (all-in) to be paid

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15 Plaintiffs' reply submissions to defendant's supplementary submissions on costs dated 29 August 2023 at para 7.

16 Defendant's supplementary submissions on costs dated 22 August 2023 at para 8.

by the plaintiffs to the defendant. Accordingly, the defendant submitted that the plaintiffs should not be claiming costs for work done in respect of this Summons.

77 The defendant also submitted that the balance of the hearing was in respect of administrative matters with the main preparation work being in relation to the Case Management Bundle. It submitted that it was "inconceivable" that a total of 173.50 hours with costs of S$130,812.71 should have been properly incurred on a CMC.[17]

78 The plaintiffs submitted that there is no basis for the defendant to claim that this amount of work or costs are "exorbitant". It was submitted that the defendant's contention that these costs relate to RA 46 is "completely baseless" as the plaintiffs had explained in the 20 June Schedule that such costs had been excluded.

79 The plaintiffs also submitted that the defendant's description of the balance of the hearing being in relation to "administrative matters" is very misleading. They point to the fact that submissions were made in respect of: (a) timelines for the exchange of specific discovery requests; (b) timelines for the filing of AEICs, with discussion in respect of the prospect of the defendant commencing a counterclaim or third-party action and/or the filing of a bifurcation application; and (c) the prospect of mediation. It was submitted that these are case management issues and even if procedural, require the plaintiffs' counsel's consideration and discussion with the plaintiffs. It was submitted that the defendant is deliberately downplaying the work done by the plaintiffs by

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17 Defendant's supplementary submissions on costs dated 22 August 2023 at para 8.

describing it as "administrative work". Whereas these are matters requiring careful consideration and advice to the plaintiffs.

80 The plaintiffs also disagreed with the defendant's description that it was "inconceivable" that the hours of work claimed should have been incurred. They pointed out that the Case Management Bundle at that time included the Agreed Case Memorandum (21 pages), Agreed List of Issues (17 pages), Plaintiffs' Proposed Case Management Plan (13 pages), Agreed List of Case Management Issues (15 pages) and Defendant's Proposed Case Management Plan.

81 It was submitted that, apart from the last of these documents, the plaintiffs' counsel prepared first drafts of each document and corresponded with both the plaintiffs and the solicitors for the defendant. It was also noted that the Agreed Case Memorandum required consolidation of the parties' respective substantive positions in the Suit with a narrative of the procedural history of the Suit, which of course is not free from complexity. The plaintiffs submitted that multiple drafts were exchanged with the defendant's solicitors before agreement was reached on the documents and the hours claimed were "entirely reasonable".[18]

82 One of the complexities to this claim was the need for exclusion of the costs relating to the appeal in respect of the particulars that had been ordered. In trying to assess the reasonableness of the claim the Court will obviously make a judgment having regard to numerous matters including the point in the litigation at which the CMC took place. The plaintiffs' criticism of the defendant's use of the term "administrative" is understandable but it is not an incorrect description of some of the work of a case management judge. It should

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[18] Plaintiffs' reply submissions to defendant's supplementary submissions on costs dated 29 August 2023 at pp 8–9.

not be understood that this means that the work is unimportant or without significant consequences for clients which in many instances requires careful advice from their legal representatives. However, the difference in nomenclature between "administrative" and "case management" does not really assist in the assessment of the reasonableness of the claimed costs.

83 The amount in question is certainly higher than the claims for the other CMCs in the Form 24 and *prima facie* may present as disproportionate. However, as has been said, the costs incurred by the defendant have not been proffered for a comparison and the basic comparison with other CMCs may not be apt. The description of what had to be done and what was done in respect of the preparation and settling of the Case Management Bundle for the CMC and the consideration of the process of preparation for trial and advising thereon at that stage of the litigation was obviously very important.

84 Notwithstanding the possible *prima facie* presentation of the amount claimed by the plaintiffs being disproportionate, the explanations given by the plaintiffs and the lack of any comparative costs being provided by the defendant have dispelled that possible presentation. These costs have not been shown to be unreasonable.

85 The next item is the plaintiffs' claim for the work done in relation to a CMC on 17 June 2021 in the amount of S$33,183.68. The defendant submitted that there is no issue that that CMC was vacated on 7 June 2021 because the plaintiffs had sought and were granted an extension of time until the end of July 2021 to comply with the Court's order to furnish further and better particulars. On 7 June 2021 the CMC that was previously fixed for 17 June 2021 was vacated and fixed on 10 August 2021, a date after the plaintiffs were required to provide their further and better particulars.

86 The defendant submitted that in those circumstances it is not clear what work was required to be done in respect of the vacated 17 June 2021 CMC.

87 The plaintiffs submitted that as the Court had informed the parties on 27 April 2021 of a hope that a consent order for mediation might be made on 17 June 2021, the plaintiffs had discussed that option both internally and with the defendant. The plaintiffs further submitted that prior to the CMC being vacated, the Amended Case Management Bundle was due to be filed on 8 June 2021 and they prepared amended drafts of the Agreed Case Memorandum and List of Issues which were sent to the defendant's solicitors on 3 June 2021. In all those circumstances, the plaintiff submitted that these costs should be allowed.

88 The explanation given by the plaintiffs is accepted and the costs have not been shown to be unreasonable.

89 The next item is the plaintiff's claim for S$85,482.50 for the work done in relation to the CMC on 10 August 2021. The defendant submitted that the issues covered at that CMC were timelines for pre-trial procedures, such as specific discovery and AEICs and trial, and were largely administrative in nature. It was submitted there is no explanation why 111.83 hours of work was required to prepare for and attend this CMC. Similar submissions were made in respect of the CMCs on 28 September 2021 with a claim for S$38,250.44 and a CMC on 15 March 2022 with a claim for S$39,718.29.

90 The defendant submitted that these claims are excessive and disproportionate for administrative hearings covering issues such as those timelines and discovery applications, bifurcation of proceedings and AIECs. This is said to be particularly so where the costs of the bifurcation application have already been dealt with in respect of SUM 32.

91 The defendant noted that the costs of other CMCs in the Form 24 are on average approximately S$15,000 to S$20,000. It submitted that if these are the reasonable costs, then the costs of the nine CMCs as claimed would be less than S$200,000. However, the plaintiffs have claimed a total of S$401,062.82, or 540.50 hours, for work done in relation to 11 CMCs, of which two were vacated.

92 The plaintiffs reiterated the necessity to recognise that these matters were "case management issues", rather than mere "administrative" matters. It was submitted that they were clearly important procedural matters which had a bearing on the Suit and their importance should not be downplayed using the defendant's description.

93 The plaintiffs submitted that the defendant's general submission in relation to the average cost of CMCs is "completely arbitrary".[19] It was also submitted that the defendant is not entitled to choose from the plaintiffs' breakdown of costs in its Form 24 and claim that some of the costs are more reasonable than others simply because they fall within a range which the defendant is willing to pay. The plaintiffs submitted that the defendant has not explained why a range of approximately S$15,000 to S$20,000 is reasonable in circumstances where each CMC would deal with different matters, the preparatory work for which would not be the same. Some take longer than others, and there is simply no basis to assert that the same amount of costs would apply to each CMC.

94 As described earlier, the plaintiffs have submitted that it is inappropriate for the defendant to proceed in the manner that it has, having regard to the fact that it has failed to provide its own costs in the proceedings (other than those in

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19 Plaintiffs' reply submissions to defendant's supplementary submissions on costs dated 29 August 2023 at para 29.

relation to its experts). The plaintiffs submitted that the defendant must furnish its own time costs to justify its objections. They made a very powerful submission in relation to the defendant's explanation for not providing those costs as follows (footnotes omitted):[20]

> In fact, while the Defendant claims that it is unnecessary for it to produce its own time costs because it would not provide a "*meaningful*" comparison as there is "*no equivalence between the preparatory work leading up to trial for there to be a like for like comparison*" (which the Plaintiffs reject), this reason would not apply to the work done by the Defendant for a CMC, which would have the most equivalence.
>
> [emphasis in original]

95 In all the circumstances, the plaintiffs submitted that the defendant's objections to the plaintiffs' claimed costs for CMCs should be "wholly disregarded".[21]

96 Obviously from the analysis above the defendant's submissions have not been wholly disregarded. However, in all the circumstances it is not possible to accept its submissions. It has not been shown that these costs are unreasonable. These costs are reasonable.

(3) Disclosure

97 The next category of costs to which the defendant takes objection is in respect of disclosure. The plaintiffs claim the sum of S$107,199.74 for work

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20 Plaintiffs' reply submissions to defendant's supplementary submissions on costs dated 29 August 2023 at para 31.

21 Plaintiffs' reply submissions to defendant's supplementary submissions on costs dated 29 August 2023 at para 32.

done reviewing documents disclosed by the defendant and corresponding on specific discovery requests between 9 March 2021 and 30 June 2021.[22]

98 The defendant recounted the history from the time it filed its List of Documents on 29 December 2020 to 9 March 2021, the date on which the order was made for the Suit to be transferred into the SICC. It was submitted that substantial time must have already been spent by the plaintiffs reviewing the disclosed documents and which are already accounted for as pre-transfer costs.

99 The defendant also submitted that the parties issued their respective requests for specific discovery on 11 May 2021 and exchanged their substantive responses for specific discovery requests on 1 September 2021. In the interim, correspondence was exchanged on timelines and the defendant submitted that, given the nature of the work during this period, it did not appear reasonable for the plaintiffs to have done extensive work. It was submitted that the amount claimed is "unreasonably high".[23]

100 The plaintiffs submitted that the defendant has not adduced any evidence to support its claim that the amounts between 9 March 2021 and 30 June 2021 are unreasonably high. It was submitted that what the defendant has done is simply to speculate and make a "vague assertion" that it was not reasonable for the plaintiffs to have done extensive work.[24]

101 The plaintiffs reiterated the need for the defendant to disclose its own time costs in the absence of which it was submitted that the only reasonable

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22 Item 3(a) Plaintiffs' Form 24.

23 Defendant's supplementary submissions on costs dated 22 August 2023 at para 13.

24 Plaintiffs' reply submissions to defendant's supplementary submissions on costs dated 29 August 2023 at para 37.

inference the Court would draw is that the defendant incurred similar costs for disclosure in the Suit and that the plaintiffs' claimed costs fall within an appropriate range.[25]

102 Finally on the topic of disclosure, the defendant submitted that the claims made for the plaintiffs' work on its 2nd, 3rd and 4th Supplementary Lists of Documents did not require the plaintiffs' legal representatives to engage in extensive or time-consuming searches or reviews.

103 The defendant submitted that in the main the 2nd Supplementary List of Documents comprised correspondence between lawyers, documents in the Bermuda Proceedings, documents relating to the Swiss criminal proceedings and various bank statements and reports from 2016 onwards. It contended that the 3rd and 4th Supplementary Lists of Documents mainly comprised statements of account and investment reports as well as cause papers, documents, witness statements and transcripts for the Bermuda Proceedings.

104 The defendant submitted that it is not reasonable for the plaintiffs to expect the defendant to bear the costs of more than S$130,000 for 250 hours of work if the plaintiffs saw fit to instruct their Singapore lawyers to conduct "a duplicative review". It was submitted that even after the plaintiffs' purported review of the documents in the Bermuda Proceedings for relevance, they did not feature significantly in the Singapore proceedings.[26]

105 The plaintiffs submitted that the defendant appeared to suggest that simply because documents emanated from the Bermuda Proceedings, the

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25 Plaintiffs' reply submissions to defendant's supplementary submissions on costs dated 29 August 2023 at para 38.

26 Defendant's supplementary submissions on costs dated 22 August 2023 at para 14.

plaintiffs could and should just disclose them without reviewing them further. The plaintiffs submitted that regardless of whether these documents had emanated from related proceedings in Bermuda, the plaintiffs' legal representatives in the Singapore proceedings would still have to review them for relevance and necessity to the issues in the Suit. The lawyers could not and would not rely solely on the review of the plaintiffs' foreign lawyers to decide whether or not documents should be disclosed in the Singapore Suit. The plaintiffs also relied upon the evidence that had been previously filed relating to the differences between the Bermuda Proceedings and the Singapore proceedings.[27]

106 With reference once again to the defendant's failure to provide any evidence in relation to its own costs, the plaintiffs submitted that the defendant's objections to these amounts should be disregarded.[28]

107 This was a case not free from complexity in which the plaintiffs were put to proof of facts that one might have considered were otherwise obvious for admission, such as Mr Lescaudron's fraud over the years. It was a case that was very hard fought requiring careful attention to the finest of detail in a complex web of conduct. The amount claimed by the plaintiffs for disclosure has not been shown to be unreasonable. These costs are reasonable.

(4) Expert Evidence

108 The next category in respect of which the defendant objects is the costs incurred by the plaintiffs in dealing with the expert evidence. The defendant

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27 Plaintiffs' reply submissions on costs dated 1 August 2023 at para 26.

28 Plaintiffs' reply submissions to defendant's supplementary submissions on costs dated 29 August 2023 at paras 37–38.

claimed that the costs of S$164,305.30 for 253.5 hours for the work done between 9 March 2021 and 28 March 2021 are not reasonable or justified. The defendant submitted that the list of expert issues that was the subject of the claim is only five pages long and there is overlap because of the involvement of the plaintiffs' experts in the Bermuda Proceedings.

109 The defendant made a comparison between the work done in that period, referring to it as dealing with administrative matters, and the work done between 1 January 2022 and 28 March 2022, referring to it as "substantive", which was approximately half the amount claimed in the earlier period (S$90,617.30 for 119.83 hours). It submitted that, in this latter period, the plaintiffs' lawyers were reviewing matters of substance and discussing matters with the experts in relation to their reports. It submitted that it cannot be reasonable that the "administrative" matters dealt with in the period in March 2021 could be twice the amount claimed in respect of this latter period.

110 The plaintiffs submitted that simply because the list of issues was five pages long, it should not be understood that this was a straightforward or simple matter, or indeed an administrative matter. Rather, it involved extensive discussions from 1 November 2021 to 3 March 2022 with multiple drafts being created and shared, the final version being discussed with the Court at the CMC on 7 February 2022. The final version resulted in the 24 expert issues.

111 The plaintiffs submitted again that the length of the final product is not always a good indicator of the work that was necessary to produce such a document. Again, the plaintiffs raise the fact that the defendant has not adduced any evidence of its own time costs in relation to the agreed list to show that its costs are significantly lower, with the compelling inference that the plaintiffs' costs would fall within an appropriate range.

112 The plaintiffs submitted that even if there was overlap between the Singapore proceedings and the Bermuda Proceedings it was necessary to be instructed on the differences between those two sets of proceedings.

113 The plaintiffs also submitted that the description given by the defendant in respect of the matters that were dealt with by the plaintiffs between 9 March 2021 and 28 March 2022 as "mainly administrative matters" is erroneous.

114 The defendant questioned whether there was some overlap in the plaintiffs' claims in respect of the work that was done between 29 March 2022 to 8 June 2022. The defendant was concerned that there may have been a double claim. The plaintiffs indicated there was no double claim and identified the differences between the two claims.[29]

115 Finally on this topic, the defendant submitted that the amount claimed by the plaintiffs of S$23,885.30 for 33.17 hours of costs for dealing with the experts in relation to closing submissions, reply submissions and oral submissions was disproportionate when one reviews the amount claimed by the plaintiffs' experts in that same period.

116 The plaintiffs submitted that the amount claimed does not solely relate to discussions with their experts. The defendant made a claim that there were wasted costs because the plaintiffs' experts prepared a supplemental report. However, the plaintiffs have explained that those matters within that report were relevant to the plaintiffs' preparation of their reply closing submissions and for the oral closing hearing on 16 and 17 February 2023.

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[29] Plaintiffs' reply submissions to defendant's supplementary submissions on costs dated 29 August 2023 at para 43.

117 Although the defendant suggested that some of the costs related to the experts dealing with the Settlement, the plaintiffs indicated that this was certainly not the case.[30]

118 The expert issues were very significant and in parts difficult aspects of the proceedings. One of the experts even described the consideration of some aspects of the issues as requiring a "cold towel".[31] The work that had to be done to prepare this part of the case for the plaintiffs was clearly onerous, time consuming and very significant. It is simply not possible in the absence of any comparative exercise to determine that the costs claimed are other than reasonable. These costs are reasonable.

(5) Affidavits and Preparation for hearings

119 The next category of costs to which the defendant objects are the amounts claimed by the plaintiffs for affidavits and preparation for hearings.

120 The defendant complains that the amount claimed by the plaintiffs for the preparation of AEICs and the preparation for hearings of $248,755.22 is "excessive". It was submitted that the plaintiffs filed only three factual AEICs, two for each witness, the plaintiff and Mr Bachiashvili, and one in reply for the plaintiff. The defendant submitted that both of those individuals provided written testimony in the Bermuda Proceedings and, accordingly, there was significant overlap.

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30 Plaintiffs' reply submissions to defendant's supplementary submissions on costs dated 29 August 2023 at para 44.

31 Transcript 21 September 2022, p 104.

121 The plaintiffs have already addressed these submissions in respect of overlap and submitted that the defendant had not answered their submissions but repeats its previous submissions without a proper basis.

122 The next aspect of this category in respect of which the defendant objects is the plaintiffs' claim of S$80,038.39 for 131.83 hours of work for correspondence with the defendant and the plaintiffs in respect of the restated financial statements and issues with the plaintiffs' disclosed documents. The defendant submitted that these costs are unreasonable, particularly because the issues with the plaintiffs' disclosed documents arose from the plaintiffs' failure to provide complete and proper listings and disclosure. The defendant highlighted missing and/or wrong attachments to correspondence and documents disclosed that did not match the descriptions provided in the lists.

123 The plaintiffs submitted that the defendant omitted to mention that it had requested additional documents from the plaintiffs and had asked the plaintiffs to lift certain redactions or explain the basis for the application for redactions. The plaintiffs submitted that they further identified duplicates for the defendant and provided cross-references to other documents.

124 The plaintiffs also emphasised that the defendant made 281 requests of the plaintiffs, excluding sub-requests. The work that had to be done for the plaintiffs to respond to those requests took close to two months and the plaintiffs were only able to respond on about 15 April 2022. The plaintiffs submitted that the defendant's claim that they are not entitled to claim costs for such extensive work is unjustified and patently unreasonable.

125 The plaintiffs also submitted that the defendant "deliberately" ignored the fact that the 131.83 hours included work done by the plaintiffs in relation to

the restated financial statements, which were a significant matter in the proceedings and in the closing submissions.

126 The next item in this category about which the defendant complains is the plaintiffs' claim for S$983,978.54 for 1379.99 hours of work over the period 29 March 2022 to 4 September 2022. The plaintiffs have divided that figure into two periods, 29 March 2022 to 8 June 2022, and then 9 June 2022 to 4 September 2022. The defendant submitted that it does not know how much time was spent on each component of trial preparation as described in the Form 24 or if the costs were incurred on witness meetings, preparation for cross-examination or consideration of documents and affidavits. It was submitted therefore that the defendant could not be satisfied that items were not being "doubly claimed".

127 The plaintiffs' response to these complaints is to suggest that the defendant could adduce evidence of its own time costs if it wished to dispute the plaintiffs' Form 24 information. The plaintiffs also submitted that it was difficult to understand the suggestion that the plaintiffs may have "double-claimed" for costs incurred in this category. It was submitted that the Form 24 is clear in that the work identified dealt only with the preparation for trial. It was made clear that it was only concerned with witness meetings for the preparation of trial and should have been understood as the Form and the relevant footnote made clear.

128 The next item within this category in respect of which the defendant complains is in relation to closing submissions which the defendant claims are *prima facie* "excessive". The defendant reiterated its submission that it is "plainly unreasonable" for the plaintiffs' legal team to incur more costs for closing submissions than during the three-week hearing.

129 The costs to which objection is taken are the plaintiff's claims for costs of S$496,747.52 or 745.83 hours, for work done in relation to the plaintiffs' closing submissions dated 18 November 2022; S$306,232.86 or 391.33 hours for the work done in relation to the Reply Submissions dated 20 January 2023; and S$49,133.79 or 85.67 hours for work done in relation to the Agreed Chronology. In relation to this last-mentioned matter, the defendant submitted that it prepared the first draft of the Agreed Chronology after the plaintiffs declined to do so, despite having carriage of the Suit.

130 The plaintiffs submitted that the defendant's comparison between the work in the five months post the hearing of evidence and the final oral submissions with the work done during the hearing is "illogical".[32] They submitted that it is entirely reasonable that the plaintiffs' costs for post-trial or post-hearing work would be higher, given that it was done over a period of close to five months compared to the three weeks of the hearing. They emphasised the length of the written submissions and the need for the plaintiffs to review the defendant's submissions and to reply to them.

131 The other matter to which the plaintiffs referred was the fact that they did not claim for the costs of their foreign counsel who assisted during the trial.

132 The plaintiffs took objection to the defendant's suggestion that it declined to prepare the first draft of the Agreed Chronology. It was submitted that the plaintiffs' solicitors simply asked the defendant's solicitors when they would be providing the Draft Agreed Chronology. It was also submitted that the plaintiffs were at the same time preparing their own Draft Agreed Chronology and were able to suggest extensive amendments to the defendant's document

[32] Written Submissions 1 August 2023, par [38]

promptly on 8 November 2022. It was submitted that there is no reason that the plaintiffs should be disentitled from claiming the costs of their work done in this regard.

133 The final item in this category is the defendant's complaint in respect of the plaintiffs' claim for costs of S$482,115.93, or 595.50 hours, for what was described as "work done post-trial including in relation to NONAs, outstanding disclosure for Defendant and for oral closing hearing". The defendant complains that this is more than 10% of the plaintiffs' total claim for costs and it is unclear how such post-trial wrap-up work could be so extensive.

134 The parties are at issue in respect of the nature of the work done in respect of the non-admission to the authenticity of certain documents. It is apparent that that issue relates to some communications between the parties in respect of the defendant's communications with the Monetary Authority of Singapore.

135 In any event, the plaintiffs submitted they are not claiming significant costs for reviewing the documents which the defendant produced at the end of the trial, nor are they claiming that the bulk of the work was preparing for the two days of oral closing submissions.

136 The plaintiffs submitted that the costs claimed in that regard are justified because the plaintiffs' counsel had to review the parties' closing submissions and documents afresh and consider the material issues and points to raise at the oral closing before the Court. They emphasised that it was not a matter of simply reading out what had been written in the parties' closing submissions. It was submitted that the defendant's approach of simply relying on the fact that written submissions had already been completed ignores the realities of

litigation and the nature of oral submissions. The plaintiffs submitted that it is obvious that considerable additional preparatory work was done ahead of the oral closing submissions. They claim that the defendant's objections to their claimed costs for affidavits and hearings are unsupported by evidence and should be wholly disregarded by the Court.

137 The written submissions of the plaintiffs and the defendant when combined were more than 1,000 pages. One might wonder with such detailed submissions what might be left for oral submissions. However, the length of the submissions and the fact the parties took up the two days for oral submissions is demonstrative of the complexity of the case and the intensity of the positions adopted. The defendant raised new and rather innovative submissions for the first time in final oral submissions which had to be analysed, understood, and met by the plaintiffs.

138 In the absence of the provision of its own costs for a comparative exercise, the defendant made the comparison of the costs incurred by the plaintiffs in the different time periods to suggest they are unreasonable. This was not a helpful exercise. The enormous amount of work that had to be done in this case for both the plaintiffs and the defendant to present their cases cogently to the Court was obvious. It is simply not possible in the circumstances to find that the plaintiffs' costs for this aspect of the work were unreasonable. These costs present as reasonable.

(6) Application of discount

139 The defendant submitted that the plaintiffs' 10% discount on their claim in recognition of the date of the breach having been found to be in 2008 instead of 2007 does not reflect the significance of that issue on which the plaintiffs were not successful.

140 The defendant submitted that the further issue on which the plaintiffs failed to prevail at trial was the propounding of Model 1A, whereas Model 1B was found to be the appropriate model for quantification of losses. The defendant submitted that the significance of the plaintiffs' failure in this regard can be assessed having regard to the difference between Mr Davies' quantification of Model 1A as US$1.268bn and Model 1B as US$920.40m. It was submitted that the effect of the application of Model 1B was a reduction of approximately 25%.

141 The defendant submitted that a 25–30% discount on the plaintiffs' actual costs is appropriate in the circumstances of: (a) the two important issues on which the plaintiffs did not prevail; and (b) disproportionately high quantification of costs claimed by the plaintiffs.

142 The defendant submitted that a reasonable amount of Post-Transfer Costs would therefore be S$3.5m, which was an increase of half a million on the defendant's suggested amount of S$3m in its earlier submissions.

143 The date of the breach was intrinsically linked to the model to be adopted for the quantification of loss, compensation or damages. Once the date of breach was identified and various other findings relevant to the management of the Trust assets were made the choice of model could be made. The parties approached this aspect of the matter in a cooperative and sensible fashion.

144 The fact that the plaintiffs did not succeed in securing a finding of breach of duty by the defendant as at 2007 but rather March 2008 with the consequential choice of model is properly reflected by a 10% discount as adopted by the plaintiffs.

145 The plaintiffs will be awarded S$4,330,028.73 for Post-Transfer Costs.

Quantum Experts' Fees

146 The plaintiffs' Quantum Experts' Fees amount to S$2,382,893.25. The defendant has counter-proposed costs of S$1,750,000.

147 The defendant's complaint in relation to a lack of particularisation in respect of the Quantum Experts' Fees was responded to by the plaintiffs supplying its experts' supporting invoices as an attachment to their earlier submissions.[33]

148 The plaintiffs complained that the defendant had not adduced any evidence to justify its counter-proposal of S$1,750,000. That submission was met by the defendant supplying the amount of the fees charged by their experts in their earlier submissions.[34] This information is in tabular form for specific periods without any detail of the nature of the work carried out in those periods. Those tables are as follows:

Table A – Fees incurred by parties' experts on the forensic accounting workstream

SN	Approximate time period	Plaintiffs		CST	
		GBP	SGD	USD	SGD
1.	Mar 2022	251,947.25	433,349.25		
	Apr 2022	34,387.50	59,146.50		
	May 2022	23,300.25	40,076.43		
	Subtotal	**309,635.00**	**532,572.20**	**1,125,493.00**	**1,596,905.69**

[33] Plaintiffs' submissions on costs dated 18 July 2023, Tab 8.

[34] Defendant's reply submissions on costs dated 1 August 2023, para 24.

2.	Jun 2022	221,177.50	380,425.30		
	Jul 2022	103,596.50	178,185.98		
	Aug 2022	132,426.75	227,774.01		
	Sep 2022	187,290.75	322,140.09		
	Subtotal	**644,491.50**	**1,108,525.38**	**327,923.00**	**436,137.59**
3.	late-Sep 2022 – mid-Feb 2023	77,007.55	132,452.99		
	Subtotal	**77,007.55**	**132,452.99**	**20,104.00**	**26,738.32**
	TOTAL		**1,773,550.57**		**1,959,781.60**

Table B – Fees incurred by parties' experts on the investment management workstream

SN	Approximate time period	Plaintiffs		CST	
		GBP	**SGD**	**USD**	**SGD**
1.	Mar 2022	97,364.00	167,466.08		
	Apr 2022	1,947.50	3,349.70		
	May 2022	0.00	0.00		
	Subtotal	**99,311.50**	**170,815.78**	**700,293.00**	**1,204,503.96**
2.	Jun 2022	73,377.50	126,209.30		
	Jul 2022	58,242.50	100,177.10	**247,195.00**	**425,175.40**

	Aug 2022	43,437.50	74,712.50		
	Sep 2022	79,900.00	137,428.00		
	Subtotal	**254,957.50**	**438,526.90**		
3.	late-Sep 2022 – mid-Feb 2023	0.00	0.00		
	Subtotal	**0.00**	**0.00**	**11,078.00**	**19,054.16**
	TOTAL		**609,342.68**		**1,648,733.52**

149 The defendant's Quantum Experts' Fees total S$3,608,515.12, which is S$1,225,620.87 greater than the plaintiffs' Quantum Experts' Fees. Notwithstanding this fact, the defendant robustly submitted that the plaintiff's Quantum Experts' Fees were "excessive",[35] "staggering",[36] "plainly unreasonable",[37] and "exorbitant".[38] It will be necessary to determine whether these epithets are appropriate in the circumstances.

150 The defendant submitted that although it "incurred higher costs overall" for its experts than the plaintiffs' experts "over the entire period", the bulk of its costs were incurred in the preparation of the experts' reports in the period from the end of February 2022 to the end of May 2022.

151 The defendant submitted that the plaintiffs' experts were familiar with the factual background and relevant details of the matter because they were involved in the Bermuda Proceedings and that there was some direct overlap in

35 Defendant's reply submissions on costs dated 1 August 2023 at para 24.

36 Defendant's reply submissions on costs dated 1 August 2023 at para 25(b).

37 Defendant's reply submissions on costs dated 1 August 2023 at para 25(c).

38 Defendant's reply submissions on costs dated 1 August 2023 at para 26.

the work performed by the experts. It was submitted that the plaintiffs' experts had an ability to "leverage off" the work done in Bermuda.

152 The defendants compared the amount of fees incurred for preparing the plaintiffs' experts' reports of S$703,387.98 and the amount incurred following the preparation of the reports of S$1,547,052.28.[39]

153 The defendant contrasted these figures with the fees of its own experts who were "freshly instructed" and had to spend "considerable time getting up on the matter".[40] The defendant submitted that it incurred higher experts' fees than the plaintiffs' experts over the course of the entire engagement "largely due to the fees incurred in the preparation of the expert reports".

154 It was the comparison of the work done between 1 June and 26 September 2022 that was the basis for the defendant to submit that the plaintiffs' expert fees were "exorbitant". As can be seen from the tables above, the defendant's costs were S$436,137.59 and the plaintiffs' costs were S$1,108,525.38. The defendant submitted that this was about 2.5 times the cost of the defendant's experts. If one simply applies the analysis that the defendant has adopted in respect of these fees, then the same could be said of the defendant's experts' fees in relation to the work done up to May 2022.

155 The comparison between the amounts that the experts collectively incurred for preparing the experts' reports compared to the amounts incurred thereafter by the plaintiffs' experts was the basis for the defendant's description that the plaintiffs' fees were "staggering". Once again, this is a comparison of

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39 Defendant's reply submissions on costs dated 1 August 2023 at para 25(b).

40 Defendant's reply submissions on costs dated 1 August 2023 at para 25(c).

amounts without considering the detail of the structure of the proceedings and what had to be done by the experts during the proceedings.

156 One matter of significance to be considered in assessing whether the use of the defendant's epithets is appropriate is the evidence that was filed and served by the defendant in respect of the defendant's restated financial statements of the Trust and Meadowsweet for the period 2006 to 2014. These were disclosed on 3 December 2021.[41]

157 The defendant had originally indicated that it would call Mr Patrick Guldimann to give evidence and had served his affidavit of 18 April 2022. As discussed in the Judgment at [39]–[46], details from Mr Guldimann's affidavit and his report/analysis were included in both the oral and documentary evidence of the experts. The plaintiffs' experts had to review Mr Guldimann's material and the fees in respect of that work are included within the relevant period. The plaintiffs' experts' work on the restated financial statements resulted in a supplemental expert report of Mr Davies on 11 August 2022.[42]

158 It is not appropriate to simply compare the breakup of the fees in particular periods, without more, and to then deploy the epithets that the defendant has in respect of the plaintiffs' experts' fees. It is also significant that the defendant's experts' fees are greater than the plaintiffs' experts' fees. If one were to apply the defendant's approach to matters, then it may perhaps be appropriate to apply the defendant's epithets to its own experts' fees. That would not be fair.

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41 Plaintiffs' reply submissions on costs dated 1 August 2023 at para 51.

42 Plaintiffs' reply submissions on costs dated 1 August 2023 at para 54.

159 In any event, in all the circumstances of the complexities of this case and the obvious professional and diligent approach adopted by the plaintiffs' experts to the task to assist the Court, these fees were, as the plaintiffs describe them, "eminently reasonable".[43]

160 It is appropriate to award the plaintiffs the amount claimed by them in respect of the Quantum Experts' Fees.

161 There will be an award in respect of the plaintiffs' Quantum Experts' Fees in the amount of S$2,382,893.25.

SUM 11

162 The application was heard on 20 May 2022 and judgment was delivered on 27 May 2022. Many of the proposed amendments were by consent.[44] The amendments that were disallowed were paragraphs 27D, 27E(a), the first sentence of paragraph 27H, and paragraphs 52A(g)(v) and 52A(i)(iv).[45]

163 The application was hard-fought, and the plaintiffs were substantially successful in those claims.

164 It is obvious that the defendant had to deal with consequential amendments to its defence by reason of the amendment to the Statement of Claim. The defendant claimed in its earlier submissions that the costs of those amendments far exceeded S$10,000, and "in all likelihood" would be "well in excess of the reasonable costs the plaintiffs are entitled to under SUM11".

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43 Plaintiffs' reply submissions on costs dated 1 August 2023 at para 60.

44 Judgment of 27 May 2022 at [100].

45 Judgment of 27 May 2022 at [101].

165 The defendant submitted that each party should bear their own costs, which was an adjustment from its position in the written submissions that were filed in 2022, which was for the sum of S$15,000 to be paid by the plaintiffs to the defendant.

166 The plaintiffs seek S$25,000, being an original claim of S$35,000 less an allowance of S$10,000 for the defendant's costs thrown away by reason of the amendments.

167 In all the circumstances and doing the best one can in respect of these matters without finer detail of the costs, it is fair and reasonable that the defendant should pay the plaintiffs' costs of S$15,000 in respect of SUM 11. There will be an order in those terms.

SUM 49

168 SUM 49 was a by consent administrative summons for directions which required the extraction of the order that reflected the parties' consent. An order was made on 24 August 2022 that, by consent, the costs of SUM 49 were to be costs in the cause. The plaintiffs are seeking costs of S$3,500. The plaintiffs submitted that the parties corresponded extensively and then had one meeting between counsel touching upon the directions to be sought in SUM 49.

169 It appears that the parties may have expended more costs on dealing with the difference between them in respect of these costs than either party seeks. However, in all the circumstances, the reasonable costs of the plaintiffs in respect of SUM 49 will be awarded in the amount of S$3,500.

Interest

170 The award of interest is to compensate the party entitled to costs "for the time value of the costs that have been ordered until payment is made". In *Kiri Industries Ltd v Senda International Capital Ltd and another* [2022] 3 SLR 174 at [120], the SICC observed as follows:

> It is clear that the common thread running through the constituents of O 59 r 37(1) is that interest is to run from the date that costs are assessed, fixed or agreed. We see no reason to take a different approach to interest on costs in the SICC.

171 The parties have agreed to interest on costs being fixed as simple interest at the rate of 5.33% per annum but disagree on the date from which interest should start to run.

172 The plaintiffs' position is that interest on the agreed costs should apply from the date of the parties' agreement on costs until the date of full payment. Accordingly, the plaintiffs submitted that interest has already started accruing for the agreed items and amounts to S$82.87 per day to the date of payment. The plaintiffs submitted that interest on the contested costs that are determined by the Court should apply from the date of the Court's order.

173 The defendant submitted that interest on both the agreed costs and the costs determined by the Court should run from the date of the Court's order to the date of full payment.

174 The plaintiffs submitted that the simple fact that an order had been made directing the parties to record any agreed orders did not suggest that it was intended to depart from the "position in law" that interest on costs agreed between the parties should run from the date of the parties' agreement. The plaintiffs also submitted that there was no certainty as to when an order on costs

would be made, and therefore, if the defendant's submission were to be accepted, when interest on the agreed costs would start to accrue. It was submitted that such an approach would be unfair to the plaintiffs.

175 The plaintiffs submitted that they should be appropriately compensated for the time value of the costs to which they are entitled, and that interest should run on the agreed costs from the date of agreement.

176 The direction to the parties was to bring in Short Minutes to reflect the findings in the Judgment and any other orders that are agreed between the parties. One matter that has been agreed is that the defendant is to pay the plaintiffs' costs of some of the applications and other aspects of the proceedings in the amount of S$567,471.45. The other costs upon which the parties could not submit an agreed order are the contested costs that have been determined in the plaintiffs' favour for the reasons outlined above.

177 Although the parties were able to agree on the interest rate, they asked the Court to determine the date from which interest should run on those agreed costs.

178 Order 59 rule 37 of the Rules does not apply to this determination and the SICC has complete discretion to award costs that are reasonable. It also has the same discretion to determine the date from which interest should accrue on costs that remain unpaid.

179 Notwithstanding the defendant's submission that from a practical point of view it would be sensible to have interest accruing from one date (the date of the order of the Court) rather than numerous dates (the dates of the parties' various agreements), this outcome would not be reasonable in the

circumstances. The defendant has agreed to pay the plaintiffs costs which are amounts in respect of which they have been out of pocket for some time. The plaintiffs should be compensated from the date of those agreements and interest should accrue from the dates of the agreements to the date of full payment.

180 The respective dates of agreement for the various categories of costs are as follows:

(a) Costs of SIC/SUM 50/2022 in the amount of S$2,000: 4 July 2023.

(b) Costs of SIC/SUM 40/2022 in the amount of S$10,000: 4 July 2023.

(c) Costs of SIC/SUM 44/2022 in the amount of S$2,500: 7 July 2023.

(d) Disbursements in the amount of S$456,471.45: 12 July 2023.

(e) Costs of SIC/SUM 51/2022 in the amount of S$10,000: 12 July 2023.

(f) Pre-Transfer Costs in the amount of S$85,000: 14 July 2023.

181 An order will be made that interest is to accrue on the amount of agreed costs from the date of the respective agreements as to costs. Costs of S$1,500 in respect of SIC/SUM 21/2022 were ordered on 20 June 2022 and interest will accrue from that date.

Additional matter

182 The plaintiffs submitted that the Court should make a declaration that the Deed of Amendment and Restatement dated 5 July 2013 is void and/or unenforceable. As this was not a matter deemed necessary to determine (see [415] of the Judgment) it is not appropriate to make the declaration.

Orders

183 The Court makes the following Declaration and Orders:

(a) It is declared that the defendant breached its duty to the plaintiffs to safeguard the Trust assets as at 30 March 2008 and is liable to compensate the plaintiffs for their loss.

(b) The defendant shall pay to a Trust Fund, the trustee of such fund being identified by the plaintiffs to be the 2nd plaintiff, the sum of US$742.73m ("Compensation"), being the plaintiffs' losses calculated in accordance with Model 1B from 30 March 2008 to 26 May 2023 and taking into account the Settlement dated 1 December 2022.

(c) The parties are to ensure that there shall be no double recovery in relation to the Compensation recovered in this Suit and any sum recovered in the Bermuda Proceedings.

(d) The defendant shall pay to the 2nd Plaintiff as trustee of the Trust Fund post-judgment interest on the Compensation. Such post-judgment interest shall be simple interest at a rate of 5.33% per annum and shall accrue from 26 May 2023 to the date of the full payment.

(e) By consent the defendant is to pay the plaintiffs costs as agreed between the parties in the amount of S$567,471.45 ("Agreed Costs").

(f) Interest on the Agreed Costs shall be simple interest at a rate of 5.33% per annum and shall accrue from the dates of the parties' agreement on such costs to the date of full payment, save that interest on the costs of SIC/SUM 21/2022 shall accrue at the rate of 5.33% from 20 June 2022 to the date of full payment.

(g) The defendant shall pay to the plaintiffs costs fixed at S$6,731,421.98 plus simple interest on such costs at the rate of 5.33% per annum from the date of this judgment to the date of full payment.

(h) It is noted that the plaintiffs undertake to the Court on a without prejudice basis that they will not seek to enforce the Judgment prior to the hearing of the defendant's application for a stay in SIC/SUM 33/2023 which is listed for hearing on 2 November 2023.

Patricia Bergin
International Judge

Cavinder Bull SC, Woo Shu Yan, Tan Yuan Kheng, Fiona Chew Yan Bei, Kelly Tseng Ai Lin, Gerald Paul Seah Yong Sing and Liang Fang Ling Elisabeth (Drew & Napier LLC) for the plaintiffs;
Lee Eng Beng SC, Disa Sim and Torsten Cheong (Rajah & Tann Singapore LLP) (instructed), Kenneth Lim Tao Chung, Mak Sushan Melissa, Afzal Ali, Wong Pei Ting, Yeow Yuet Cheong, Gan Yun Han Rebecca and Justin William Jeremiah (Allen & Gledhill LLP) for the defendant.
