IN THE SINGAPORE INTERNATIONAL COMMERCIAL COURT
OF THE REPUBLIC OF SINGAPORE

[2023] SGHC(I) 19

Suit No 4 of 2021 (Summons No 33 of 2023)

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*

ORAL JUDGMENT

[Civil Procedure — Stay of execution of judgment pending appeal]

Ivanishvili, Bidzina and others
v
Credit Suisse Trust Ltd

[2023] SGHC(I) 19

Singapore International Commercial Court — Suit No 4 of 2021 (Summons No 33 of 2023)
Patricia Bergin IJ
2 November 2023

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Patricia Bergin IJ:

1 This is an application brought by the defendant for a stay of the Court's judgment delivered on 26 May 2023 in *Ivanishvili, Bidzina and others v Credit Suisse Trust Limited* [2023] SGHC(I) 9 (the "Merits Judgment"), and the Court's judgment on 19 September 2023 in *Ivanishvili, Bidzina and others v Credit Suisse Trust Limited* [2023] SGHC(I) 14 (the "Quantum Judgment"). The defendant was ordered to pay a sum of US$742.73m plus interest. It was also ordered to pay the plaintiffs' costs of S$7,298,893.43 plus interest.

2 The defendant has filed an appeal, and I understand from the parties that that appeal is probably to be heard around the first week of April 2024.

3 It is not in issue that both the Court of Appeal and the Singapore International Commercial Court (the "SICC") have concurrent jurisdiction to hear applications for a stay of a judgment. It is also not in issue that under the

previous O 57 r 16(4) of the Rules of Court (2014 Rev Ed) (the "ROC 2014") and the current O 18 r 35(2) of the Rules of Court (2021 Rev Ed), notwithstanding that concurrence, the Court of Appeal has indicated that it would not exercise its jurisdiction unless the Court of first instance exercises its jurisdiction in respect of the stay first. There has been recent authority in respect of that concurrency after the establishment of the SICC, referring to this approach of the Court of Appeal to the concurrent jurisdiction: *CPIT Investments Ltd v Qilin World Capital Ltd and another* [2017] 5 SLR 148. It may be that having regard to O 110 r 53 of the Rules of Court and the constitution of the courts in the SICC, the requirement that the Court at first instance exercise its jurisdiction first before the Court of Appeal will exercise its jurisdiction may develop over time, in considering the need for the efficiency of a commercial court and the need to ensure a just, quick and relatively cheap litigation.

4 The affidavits in support of the application for the establishment of a right to a stay included the affidavits filed by the applicant of Mr Martin Eichmann of 16 August 2023 and 19 October 2023, of Mr Vasil Bibilashvili of 16 August 2023, of Mr William Bowring of 22 August 2023, and of Mr James Nicholson, who was an expert who gave evidence in the trial. Mr Nicholson's report of 9 October 2023 is attached to his affidavit. The plaintiffs, respondents to this application, relied upon the affidavit evidence of Sarah Caroline Rees, sworn on 18 September 2023 and 19 October 2023.

5 There were numerous issues raised in respect of the application, however, I am able to deal with those issues shortly because the plaintiffs are, in principle, prepared to consent to a stay of execution of the judgments if the applicant pays into Court the judgment sum, costs and interest.

6 The defendant applicant's position is that it is prepared to furnish security to cover the entire judgment sum, but that it is adequate and practical for security to be furnished by way of an on-demand bank guarantee issued by UBS AG ("UBS"), or alternatively, if the Court considered that such a guarantee was inadequate security, by way of payment into an escrow account.

7 The applicant made very clear the point that was made in the Merits Judgment and the Quantum Judgement that there was to be no double recovery in respect of damages in this suit and the Bermuda proceedings. As the defendant applicant said in its written submissions, the only issues now in dispute are the form of security and the steps to be taken to avoid double recovery in respect of damages in this suit and the Bermuda proceedings.

8 The principles to be applied to this matter have been referred to by both parties as being in line with the principles relating to the provision of security for costs. The applicant relied upon the decision in *Hyflux Ltd (in compulsory liquidation) and others v Lum Ooi Lin* [2023] SGHC 113 ("*Hyflux*"), in support of its submissions that the bank guarantee, or alternatively, the escrow account, is adequate security in this instance.

9 The defendant's reliance upon *Hyflux* included emphasis on [26] as follows:

> At the end of the day, as Mr Tan submitted, it bears repeating that the overarching consideration is whether the proposed form of security is adequate to ensure that the defendant will recover the costs of the action if he succeeds. That being said, there will be some forms of security that are more readily characterised as being adequate either due to their inherent advantages or historical usage. It may be easier for a plaintiff to establish adequacy in respect of these forms of security. However, this does not mean that forms of security outside of these traditional ones can never be adequate; it all depends on

> their characteristics and how they apply to the facts of the case at hand.

As can be seen from the above extract, it is important to refer to the characteristics of the security and "how they apply to the facts of the case at hand".

10 It is therefore appropriate to refer to some aspects of the background to the dispute between these parties and the nature of this litigation. There is no doubt that this case is an example of extremely adversarial litigation. Every point available to be taken and even some that may have not been available were taken. The litigation has spanned many years; it commenced in 2017. The Merits Judgment refers to the background between the parties, and it is unnecessary to detail it again, but that judgment should be read with these reasons.

11 The chaotic process of the lack of production of documents and the actual late production of documents during the trial was an example of the way in which the parties related to each other. The late admission on day 10 of the trial and the various disputes between the parties as to the nature of the duty between the plaintiffs and the defendant over the years demonstrated that very little could be agreed between these parties. The fact that it was on day 10 that the admission of breach of duty was made is, in one sense, to be applauded, but on the other, it is to be seen in the light of a very long history of putting the plaintiffs to proof of many of the facts that one would have thought would not be necessary for them to have to prove. As the plaintiffs have put it in their submissions, the defendant fought tooth and nail to resist any liability for the claims made by the plaintiffs.

12 The other aspect of the background to this litigation is the lack of trust between the plaintiffs, who provided over US$1bn for the trust estate to be managed by the defendant. The lack of trust that was referred to by the plaintiff, Mr Bidzina Ivanishvili, that was reached in 2016, which is referred to in the evidence, continues. The affidavit evidence that was filed in this application demonstrates a mutual lack of trust between all the parties.

13 There is a backdrop of political machinations that has been referred to in the affidavits with which I thankfully do not have to deal at this stage. But it is referred to for the purposes of concluding that these parties are unable to agree on matters in a prompt fashion. That is a relevant matter to one of the proposals that the defendant has put, in respect of the escrow account, to which I will come.

14 The plaintiffs have submitted that there is a demonstrative and consistent pattern of obstructive behaviour by the defendant. It is said that this is evidenced by the failure by the defendant applicant to distribute the remaining funds in the Mandalay Trust. This has been referred to in the other judgments that have been delivered, in short, by suggesting that the plaintiffs had suffered difficulties in achieving the distribution of the remaining funds that were held by the defendant.

15 There is some history about this matter in the affidavits into which I will not descend save to say only that, notwithstanding that the application was made by the plaintiffs a year ago for the distribution of the funds and notwithstanding the defendant's various explanations as at today it remains undistributed. This is another aspect of the background of the parties' relationship to be considered in line with the observations in *Hyflux*, in respect of the characteristics of the security and how they apply to the facts of the case at hand.

16 The relevant principles in relation to the security for costs are relied upon as to adequacy and the defendant applicant submits that a bank guarantee adequately provides security for the plaintiffs. If the plaintiffs are successful in resisting the appeal, it is said that monies will be available *via* the bank guarantee. Of course, the applicant in a security for costs application is usually pursuing an application where the other party is impecunious, in circumstances where the nature and extent of the litigation is not certain, nor is the obvious outcome of the litigation. In this instance, it is quite different. It has been established that the plaintiff is a wealthy litigant who entrusted the very large amount of money for the trust estate to be looked after by the defendant. In this instance the applicant defendant is the impecunious party. Be that as it may, those principles to which both parties referred are taken into account.

17 The bank guarantee that the defendant submits should be the appropriate mechanism as a condition of a stay is contained in the joint bundle of documents (Volume 3 at page 606). It is not necessary to detail the whole of that document, but the guarantee is to be provided by UBS AG, the Zurich office of UBS.

18 One of the matters to which the plaintiffs refer is the dispute resolution mechanism on page 607, which provides as follows:

> Any dispute arising out of or in connection with this guarantee, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration administered by the Singapore International Arbitration Centre ("SIAC") in accordance with the Arbitration Rules of the Singapore International Arbitration Centre ("SIAC Rules") for the time being in force, which rules are deemed to be incorporated by reference in this clause.

19 There was a request made by the plaintiffs for the defendant to secure from UBS an undertaking that it would not resist payment out under the guarantee for things other than failure to comply with the required

documentation. The defendant indicated that it could not seek that undertaking from UBS. The plaintiffs submit that the uncertainty of what would happen if the bank guarantee had to be utilised for security purposes is unsatisfactory.

20 The consequence of having to move into an arbitration mode in accordance with the Singapore International Arbitration Centre Rules with the following uncertainty is, for the plaintiffs, a most unsatisfactory outcome after they have spent years securing a judgment. And if there be some disputation, the plaintiffs would find themselves litigating not with the party that has been in the litigation but with a third party who, at this stage, it would appear, has not been properly identified.

21 As the arguments developed today in this application, Mr Lee, Senior Counsel for the defendant, indicated that there would be a need for 30 days to prepare the bank guarantee. The plaintiffs submitted that once again, this is part of the defendant's *modus operandi* of delay. However, the defendant seeks to argue that the adequacy of a bank guarantee, an on-demand bank guarantee, satisfies the authorities in respect of security for costs applications, and the Court should be persuaded that this is enough security for the plaintiffs.

22 The uncertainties identified by the plaintiffs, the prospect of another 30 days before the reality of what really is to be provided, taken into account with the background to which reference has been made, convinces me that such security is not adequate in the circumstances of this particular case.

23 It is not controversial that bank guarantees can be and are provided in many cases and that they are part and parcel of the commercial realities of business. But in this case, with these facts and this background, it seems to me that it would be inappropriate to make it a condition of a stay that the on-demand

bank guarantee or the bank guarantee proposed by the defendant applicant is appropriate. I am satisfied that it is not appropriate and it does not provide the adequate security for the plaintiffs.

24 The defendant also submitted that the alternative to the bank guarantee is a payment into an escrow account. It complained that it was not able to progress the negotiations in respect of this proposal with the plaintiffs because they had flatly refused to even consider this as a reasonable option.

25 The plaintiffs have analysed the differences between what is being proposed by the defendant and what they propose of a stay conditioned upon payment into Court. They highlight the differences between a simple, quick-to-implement process of payment into Court with what seems to be a slow, costly and uncertain process. There is no evidence of the nature of the escrow account. There is no evidence that any escrow agent has been approached, albeit that Mr Lee valiantly suggested from the Bar table that he could inform me of such, which was a process that I suggested would be unfair at this stage of the application.

26 The complications that may occur with such a process were also highlighted by the plaintiffs. What has happened between these parties just over the last year has demonstrated the difficulties of reaching a considered outcome that is fair for both parties. It is obvious that in this application, it is necessary to consider both parties' interests. What the defendant is seeking is an accommodation. The submission put by the plaintiffs is that when the Court considers both parties' interests, the only sensible and fair alternative is the payment into Court.

27 The plaintiffs relied upon the decision of the Court of Appeal in *Turf Club Auto Emporium Pte Ltd and others v Yeo Boong Hua and others and another appeal and other matters* [2017] SGCA 21, in respect of the approach adopted by the Chief Justice in delivering the judgment of the Court. In support of their submission that payment into Court provides certainty of the outcome in respect of the monies the plaintiffs emphasised the observations of Chief Justice Sundaresh Menon that parties in that case stood to "get their money absolutely almost immediately and without risk of non-recovery" (see [199(c)]). That is a very attractive proposition, having regard to the uncertainties that these parties have experienced over the last nearly seven years that the litigation has been on foot.

28 If moneys are paid into Court, the successful party on appeal, be it the defendant or the plaintiffs, will be in a position to either receive or recover their monies respectively, "absolutely almost immediately and without risk of non-recovery". Mr Lee submitted that the Court is not in a position to handle this amount of money. I am not aware of any evidence in that respect, and it is not a proposition that needs to be further dealt with other than to say if there are concerns, then the Court will raise it with the parties.

29 Orders have been made that there is to be no double recovery, and the parties are fully aware of that order, having regard to the submissions they have made in this application. The effect of the orders that have been made will ensure that there is no double recovery.

30 Mr Lee submitted that there should be an adjustment to the escrow arrangement in Bermuda. One of the aspects of that litigation is that there has been judgment at first instance and appeal, both of which were in favour of the plaintiffs. There are now, as I understand it, proceedings before the Privy

Council. It is not clear to me what status that litigation has reached. In any event, it is unnecessary for me today to make any ruling in respect of that escrow arrangement, because I am comfortably satisfied that the fairest course in the granting of a stay is for the monies to be paid into Court. It is obvious that should there be any adjustment needed, then the parties can of course approach the Court of Appeal which now has the proceedings before it.

31 So far as the payment of interest is concerned, there were detailed submissions in relation to the defendant's claim that it would suffer the prospect of not being able to earn interest on the amount if it is paid into Court, because it would only earn 0.1% interest on the monies that are paid into Court, whereas it was suggested, albeit that there is not a great deal of evidence on this aspect of the matter, that interest could be earned at a higher rate in the commercial field. Notwithstanding that, I am not satisfied that this is a matter that would justify payment into an escrow account rather than into Court. In the circumstances, the money is to be paid into Court.

32 The orders that will be made in respect of this application are that the stay of the judgments will be granted on the conditions that: (1) the defendant pays into Court within 21 days of 2 November 2023 the full amount of the judgment sums plus post-judgment interest that has accrued since 26 May 2023, such interest being simple interest to the rate of 5.33% per annum; and (2) pending disposal of the appeal, the defendant also pays into Court, on the last working day of every month after the payment referred to above, post-judgment interest that is accrued during that month. Those orders can be prepared in the form of Minute which can be filed with the Court within seven days.

Patricia Bergin
International Judge

Cavinder Bull *SC*, Tan Yuan Kheng, Kelly Tseng Ai Lin, Gerald Paul Seah Yong Sing and Liang Fang Ling Elisabeth (Drew & Napier LLC) for the plaintiffs;
Lee Eng Beng *SC* and Disa Sim (Rajah & Tann Singapore LLP) (instructed), Kenneth Lim Tao Chung, Wong Pei Ting, Yeow Yuet Cheong (Allen & Gledhill LLP) for the defendant.