IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2024] SGHC 197

Suit No 629 of 2019 (Summons No 4105 of 2022)

Between

BTHMB Holdings Pte Ltd

… *Plaintiff*

And

Kim Byung Gun

… *Defendant*

JUDGMENT

[Equity] — [Remedies] — [Account]
[Civil Procedure] — [Costs] — [Indemnity costs]
[Civil Procedure] — [Costs] — [Certificate of costs for three solicitors]

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BTHMB Holdings Pte Ltd
v
Kim Byung Gun

[2024] SGHC 197

General Division of the High Court — Suit No 629 of 2019 (Summons No 4105 of 2022)
Andre Maniam J
28, 29, 30 November 2023, 2 May 2024

2 August 2024 Judgment reserved.

Andre Maniam J:

Introduction

1 The defendant ("Dr Kim") was ordered to provide an account to the plaintiff ("BTHMB") of what became of the US$22,596,913.76 in proceeds of sale of BXA Coin cryptocurrency that Dr Kim had been entrusted with (the "Sale Proceeds"): *BTHMB Holdings Pte Ltd v Kim Byung Gun* [2023] 4 SLR 449 (the "Judgment") at [136]. This decision addresses whether Dr Kim has since provided a proper account.

Background

2 In the Judgment, I stated at [136]:

> …I order Dr Kim to provide an account to BTHMB of what became of the US$22,596,913.76 in BXA Coin sale proceeds. I note that Dr Kim has provided Mr Wong's expert opinion that,

> having conducted a tracing exercise, US$18,490,836.92 of the sale proceeds was paid to BTHMB as part of the Defence Transactions. Dr Kim may rely on Mr Wong's expert opinion as an account for what happened to that amount of sale proceeds. However, there remains a shortfall of US$4,106,076.84 (being US$22,596,913.76 less US$18,490,836.92) that Dr Kim still has to account for. BTHMB may seek directions from a registrar regarding the provision of that account, and if it should appear that by retaining the sale proceeds Dr Kim has profited beyond the amount of interest awarded to BTHMB, BTHMB may seek an order for payment of the difference.

3 Pursuant to Summons No 4105 of 2022 ("SUM 4105"), directions were given for Dr Kim to provide the requisite account. The matter proceeded to a hearing at which Dr Kim testified, and the parties made submissions thereafter.

4 BTHMB seeks a declaration that Mr Kim has breached his obligation to account for the Sale Proceeds, and costs on an indemnity basis with a certificate of costs for three solicitors.[1]

5 Dr Kim resists the declaration sought by BTHMB. He acknowledges that he should pay costs, but argues that costs should be on a standard basis without a certificate of costs for three solicitors.[2]

Had Dr Kim provided a proper account?

Overview

6 The account Dr Kim provided comprised documents provided by him, affidavit evidence, and oral testimony.

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1 BTHMB's Closing Submissions dated 22 February 2024 ("BTHMB's Closing Submissions") at [7].

2 Dr Kim's Closing Submissions dated 4 April 2024 ("Dr Kim's Closing Submissions") at [6].

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7 In its submissions, BTHMB contends that Dr Kim breached his obligation to account by failing to provide a proper, complete, and accurate account.[3] An accounting party has the duty of providing a "complete, proper and accurate" account with "sufficient supporting evidence, oral or documentary depending on the nature and quantum of such expenses": *Baker, Michael A (executor of the estate of Chantal Burnison, deceased) v BCS Business Consulting Services Pte Ltd and others* [2023] 1 SLR 35 ("*Michael Baker*") at [1], [24] and [30]. BTHMB says Dr Kim's account fell short of what was required, and seeks a declaration to that effect.

8 Dr Kim says that this declaration should not be granted, not so much because he *had* provided a proper, complete, and accurate account, but rather because the requirements for granting a declaration are not met.[4]

9 I first consider BTHMB's criticisms of Dr Kim's account, and Dr Kim's response to that; and then whether the declaration sought by BTHMB should be granted.

BTHMB's criticisms of Dr Kim's account

10 In relation to the US$557,050.77 that Dr Kim says came from sales by a cryptocurrency broker called Harbour, BTHMB says: Dr Kim produced no documentary evidence of sales by Harbour, who the sales were made to, and who received and spent the proceeds; instead, Dr Kim relied on hearsay from unnamed persons, and admitted that there was relevant evidence "not filed yet".[5]

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3 BTHMB's Closing Submissions at [7], [13(a)] and [151]; BTHMB's Reply Submissions dated 2 May 2024 ("BTHMB's Reply Submissions") at [4].

4 Dr Kim's Closing Submissions at [53]–[55].

5 BTHMB's Closing Submissions at [27]–[30]; NE 30 November 2023, 16:22–27.

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11 In relation to the US$18,490,836.92 that Dr Kim says was paid to BTHMB as part of the Defence Transactions (as described in the Judgment), for which Dr Kim relies on the conclusion of his expert Mr Wong who had conducted a tracing exercise, BTHMB says:

(a) for a sum of US$10,000,000 withdrawn from Dr Kim's RHB USD account, which Dr Kim says was transferred to a RHB USD account of BTHMB's, BTHMB cannot confirm the flow of funds from the bank documents produced by Dr Kim (which do not state transferor or transferee names, as the case may be);[6] and

(b) for a sum of US$9,522,908.45 which Dr Kim says was paid from BKSG to BTHMB, BTHMB likewise cannot confirm the flow of funds from the bank documents produced by Dr Kim (which do not state transferor or transferee names, as the case may be).[7]

12 In relation to the balance of US$4,106,076.84 in Sale Proceeds, that Dr Kim says was transferred to "other personal bank accounts" (which could include "company bank accounts" that Dr Kim had authority over), and used to pay Dr Kim's "personal expenses, such as but not limited to legal expenses in both Singapore and Korea, daily living expenses, and operating expenses for [his] clinics"[8], BTHMB says:

(a) Dr Kim did not adduce documentary proof that sale proceeds were used to pay his "daily living expenses" – he did not identify

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6 BTHMB's Closing Submissions at [37]–[41].

7 BTHMB's Closing Submissions at [42]–[46].

8 2nd Affidavit of Evidence-in-Chief of Kim Byung Gun at [19]-[20]; NE 29 November 2023, 10:22–25, 11:1–16.

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particular cash withdrawals, or provide credit card statements, did not disclose bank statements of his accounts with Woori Bank or Shinhan Bank, and he did not explain if he had used Sale Proceeds to pay rent of his last known residence in Singapore;[9]

(b) Dr Kim did not provide receipts to explain the nature and purpose of expenses paid out of BK Hospital's UOB SGD account, to the extent that those came from sale proceeds; and to the extent that Dr Kim received payments or other benefits from BK Hospital referrable to Sale Proceeds, what benefits did he receive and what became of them;[10] and

(c) in relation to payment of legal expenses, Dr Kim did not trace what had come from Sale Proceeds, he did not disclose all relevant transaction advices for such payments, and he did not disclose his Woori bank account statements.[11]

13 BTHMB elaborates on the above criticisms in its reply submissions.[12]

Dr Kim's response to BTHMB's criticisms of his account

14 In Dr Kim's closing submissions (filed in response to BTHMB's closing submissions), he does not substantively rebut BTHMB's criticisms of the account he had provided. Instead:

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9 BTHMB's Closing Submissions at [49].

10 BTHMB's Closing Submissions at [50]

11 BTHMB's Closing Submissions at [51]–[63].

12 BTHMB's Reply Submissions at [13]–[44].

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(a) Dr Kim maintains that the sum of US$557,050.77 was used over "the period of 2019 to 2021 … for staff welfare, to pay bonuses to staff, and to pay the lawyers", and that he had not required BK Korea Clinic's accounting staff to provide him with receipts for the staff welfare expenditure and so he did not have such receipts;[13]

(b) Dr Kim continues to rely on the report of his expert Mr Wong Joo Wan ("Mr Wong") for the conclusion that the sum of US$18,490,836.92 was paid to BTHMB as part of the Defence Transactions;[14] and

(c) Dr Kim says that he has accounted for the sum of US$4,106,076.84 to the best of his recollection – at the time of his 16th affidavit, he had sought to trace the sum of US$18,842,666.26 from his Signature Bank USD account into his various personal accounts, but he was unable to fully trace the funds; thereafter, he provided further information in his 18th affidavit, his 2nd AEIC and his Supplemental AEIC.[15]

15 In the next section, I address Dr Kim's objections to the declaration sought by BTHMB before considering whether a finding should be made as to whether Dr Kim had provided a proper account.

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13 Dr Kim's Closing Submissions at [31]; Supplemental Affidavit of Evidence-in-Chief of Kim Byung Gun ("Dr Kim's SAEIC") at [10]–[11].

14 Dr Kim's Closing Submissions at [33]–[37].

15 Dr Kim's Closing Submissions at [38] to [46].

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Should the declaration sought by BTHMB be granted?

16 Dr Kim contends that the declaration sought by BTHMB should not be granted, because the requirements for granting such a declaration are not met:

(a) first, the declaration sought goes beyond the scope of the proceedings in SUM 4105 for Dr Kim to provide an account; and

(b) second, the declaration would not serve any practical purpose.[16]

17 I agree with BTHMB that these objections do not stand in the way of granting the declaration.

18 On the scope of the proceedings in SUM 4105:

(a) directions were given in SUM 4105 for Dr Kim's provision of the account;

(b) Dr Kim then purported to provide that account;

(c) BTHMB took issue with whether a proper, complete, and accurate account had been provided;

(d) the purpose of SUM 4105 was not limited to determining whether Dr Kim may have profited from the use of the Sale Proceeds beyond the amount of interest awarded against him (as Dr Kim contends in his closing submissions);[17] as stated in the Judgment at [136], another purpose was for BTHMB to know what had become of the Sale Proceeds (these twin purposes have been judicially recognised in *Lalwani Shalini*

16 Dr Kim's Closing Submissions at [47]–[55].

17 Dr Kim's Closing Submissions at [54].

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Gobind and another v Lalwani Ashok Bherumal [2017] SGHC 90 at [16] and *Michael Baker* at [25]);

(e) the court's role was thus not limited to determining if Dr Kim had profited from the use of the Sale Proceeds; the court could also resolve issues with the provision of the account – whether in relation to specific items in the account, or (more generally) in relation to whether a proper account had been provided.

19 On the utility of granting a declaration:

(a) there is a real controversy to be resolved, namely, whether Dr Kim has provided a proper account – BTHMB asserted that Dr Kim had not provided a proper account in his closing submissions, whereas Dr Kim maintained that he had accounted for the sum of US$557,050.77, that he had returned the sum of US$18,490,836.92 to BTHMB, and that he had accounted for the sum of US$4,106,076.84 to the best of his knowledge;[18]

(b) Dr Kim was ordered to provide an account to BTHMB, and there is a public interest in upholding the court's authority as expressed in court orders (see *Aero-Gate Pte Ltd v Engen Marine Engineering Pte Ltd* [2018] SGHC 267 at [206]); and

(c) whether or not Dr Kim had provided a proper account is relevant to the issue of costs.

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[18] Dr Kim's Closing Submissions at [26]–[46].

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20 For the reasons given by BTHMB, as summarised above (at [10]–[13]) and which Dr Kim has not substantively rebutted, I declare that Dr Kim has not provided a proper, complete, and accurate account.

Costs

Should Dr Kim be ordered to pay costs on an indemnity basis?

21 BTHMB seeks costs on an indemnity basis, having regard to the touchstone of unreasonable conduct: *Lim Oon Kuin and others v Ocean Tankers (Pte) Ltd (interim judicial managers appointed)* [2022] 1 SLR 434 at [36]. BTHMB submits that Dr Kim's conduct of the accounting process, including his conduct at the trial, was unreasonable or improper.[19]

22 In particular, BTHMB submits that:

(a) Dr Kim provided the account in a piecemeal manner, causing BTHMB to incur costs unnecessarily;[20]

(b) Dr Kim advanced baseless excuses to purport to explain his improper account;[21]

(c) Dr Kim maintained positions that had been rejected by the first instance court and appellate court;[22] and

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19 BTHMB's Closing Submissions at [71]–[72], [75], [78], [79]–[138].

20 BTHMB's Closing Submissions at [79]–[111].

21 BTHMB's Closing Submissions at [112]–[122].

22 BTHMB's Closing Submissions at [123]–[129].

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(d) Dr Kim's evidence was constantly shifting and internally inconsistent;[23]

23 In his closing submissions, Dr Kim says:

(a) it was not his intention to provide an account in a "piecemeal and belated fashion": he sought to provide information as soon as it was made available to him, and even after the hearing had concluded he continued to provide relevant documents and to offer an explanation of them in correspondence;[24]

(b) there are no factors to justify imposing indemnity costs;[25]

(c) prior to the Judgment, he had believed that he owned the BXA Coin cryptocurrency that was sold as well as the Sale Proceeds; thus, he was not "*constantly ready with his account*" but had to make efforts to obtain information, after the Judgment;[26] and

(d) BTHMB sought but was not awarded indemnity costs at trial.[27]

24 As BTHMB points out in its reply submissions, Dr Kim focused on his "continuous disclosure of information and documents", and did not rebut the other factors raised by BTHMB (at [22(b)]–[22(d)] above). BTHMB elaborated that Dr Kim had breached multiple court orders / directions,[28] and that he only

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23 BTHMB's Closing Submissions at [130]–[137].

24 Dr Kim's Closing Submissions at [62]–[63].

25 Dr Kim's Closing Submissions at [68]–[70].

26 Dr Kim's Closing Submissions at [71].

27 Dr Kim's Closing Submissions at [72].

28 BTHMB's Closing Submissions at [6(a)], [12] and [117].

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began making proper inquiries with the relevant banks on or around 20 October 2023, when the Judgment was issued more than a year earlier (on 26 August 2022).[29]

25 I agree with BTHMB that Dr Kim's conduct in providing the account is so unreasonable as to justify an award of indemnity costs.

26 A distinction may be drawn between Dr Kim disputing liability *at trial* (for which BTHMB was not awarded indemnity costs) and Dr Kim failing to provide a proper, complete, and accurate account *after trial*, when he had already been found liable to account.

27 The onus was on Dr Kim to provide a proper, complete, and accurate account. Because he fell short in that regard, BTHMB incurred more costs than it otherwise would have, in seeking to ascertain what happened to the Sale Proceeds from the information and documents that Dr Kim provided.

Should BTHMB be given a certificate of costs for three solicitors?

28 BTHMB also seeks a certificate of costs for more than two solicitors. Specifically, it seeks costs for three solicitors.

29 I agree with BTHMB that in relation to the accounting process, the services of more than two solicitors are "reasonably necessary": *Yong Kong Yoong Mark and others v Ting Choon Meng and another* [2022] SGHC 4 at [5], citing *Singapore Civil Procedure 2021* vol 1 (Cavinder Bull gen ed) (Sweet & Maxwell, 2021) at para 59/19/2. The work reasonably done by BTHMB's solicitors included not only the conduct of the hearing at which Dr Kim testified

[29] BTHMB's Reply Submissions at [49].

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and was questioned (and work done in preparation for that), but also work done in pressing Dr Kim to provide a better account, and work done in seeking to ascertain (from the information and documents provided by Dr Kim) what had happened to the Sale Proceeds in the sum of US$22,596,913.76.

30 The same considerations discussed in the preceding section that justify an award of indemnity costs, reinforce my decision that BTHMB should be allowed costs for three solicitors.

What quantum of costs should be awarded to BTHMB?

31 BTHMB seeks costs in the sum of S$245,000, excluding disbursements in the sum of S$56,395.37.[30] BTHMB contends that the sum of S$245,000 (excluding disbursements) is appropriate:

(a) having regard to cost precedents;

(b) with an uplift for:

(i) costs on an indemnity basis; and

(ii) a certificate for costs of three solicitors.[31]

32 Dr Kim says that *without an uplift*, the cost precedents indicate a range of S$60,000 to S$110,000; and he submits that no more than S$70,000 should be awarded in costs, excluding disbursements.[32] Dr Kim points out that the costs BTHMB obtained at trial (which were not on an indemnity basis, and without a

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30 BTHMB's Closing Submissions at [144] and [149].

31 BTHMB's Closing Submissions at [148]; BTHMB's Reply Submissions at [69]

32 Dr Kim's Closing Submissions at [81] and [85].

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certificate of costs for three solicitors) were S$270,000, excluding disbursements.[33]

33 Dr Kim contends that there should not be an uplift for (a) indemnity costs, or (b) a certificate of costs for three solicitors;[34] but he does not suggest what an appropriate costs figure would be, if an uplift were applied.

34 I consider the sum of S$245,000 claimed by BTHMB to be a reasonable sum, for work reasonably done in this matter, bearing in mind that:

(a) the court had already determined that BTHMB was entitled to an account from Dr Kim;

(b) Dr Kim had not provided a proper, complete, and accurate account; and

(c) BTHMB wished to ascertain what had happened to its Sale Proceeds in the sum of US$22,596,913.76.

35 I thus award BTHMB costs and disbursements as claimed: S$245,000 for costs, and S$56,395.37 for disbursements.

Conclusion

36 For the above reasons, I decide as follows:

(a) I declare that Dr Kim has not provided a proper, complete, and accurate account of what became of the Sale Proceeds;

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33 Dr Kim's Closing Submissions at [86]–[90].

34 Dr Kim's Closing Submissions at [82].

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(b) BTHMB is entitled to costs on an indemnity basis;

(c) BTHMB is granted a certificate of costs for three solicitors; and

(d) Dr Kim is to pay BTHMB costs of S$245,000 and disbursements of S$56,395.37.

Andre Maniam
Judge of the High Court

Chan Tai-Hui, Jason SC, Leong Yi-Ming, Wong Ling Yun, Jonathan Tan Ming En, Megan Chua (Allen & Gledhill LLC) for the plaintiff;
Thio Shen Yi SC, Kenneth Chua, Fu Wei Jun, Nicholas (TSMP Law Corporation) for the defendant.

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