IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1996] SGHC 41

OS 1043/1995

Between

KS Oriental Trading Pte Ltd

… *Applicant*

And

Defmat Aerospace Pte Ltd

… *Respondent*

GROUNDS OF DECISION

Civil Procedure — Costs — Security

Version No 1: 29 Oct 2026 (23:45 hrs)

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KS Oriental Trading Pte Ltd v Defmat Aerospace Pte Ltd

[1996] SGHC 41

OS 1043/1995
Warren Khoo L H J
12 March 1996

1 Cur Adv Vult

2 This is an application by the respondents for security for costs in a pending arbitration. The claim against the respondents is for the sum of US$1.46m, the balance of the price of four helicopters sold by the claimants to the respondents. The facts are not absolutely clear, and there is a risk that any statement about any material matters is liable to be contradicted. The affidavits filed by the respondents in support of their application are rather sketchy, and are not very specific in what they say, although a large amount of documents are annexed. At the risk of being contradicted, I take the facts largely as recounted in the affidavit filed by the claimants.

3 The contract was entered into on 14 December 1992. It provided for the sale by the claimants to the respondents of the four helicopters, of Russian origin, at the price of $3.46m f o b Russian port (all sums herein are in US dollars). The contract provided for the payment of an initial sum of $2m by letters of credit, the balance of $1.46m to be paid as to half of it on the issue of a flying test certificate and the balance within 21 days thereafter. It is not

disputed that the initial sum of $2m was paid, apparently between signing of contract and delivery. The goods were delivered to Vientiane, Laos in the early part of 1993. According to the claimants, although inspection and tests were duly carried out according to the contract, the respondents neglected to pay the balance of $l.46m. The claimants filed their claim in the arbitration on 19 November 1993. In their defence filed on 20 December 1993, the respondents resisted the claim on the ground that the helicopters did not conform to the description in the contract; that they were not reasonably fit for their purpose and that the flying test certificate was not in accordance with the contract. However, on 29 September 1994, the respondents amended their defence and included an allegation that the amount claimed had been paid on 21 July 1993.

4 In the affidavit of evidence in chief of Mr Chang, a director of the respondents, it is alleged that the defects were discovered and complaints made to the claimants in April 1993 and there are allegations of matters giving rise to suspicion on the part of the respondents as to the bona fides of the documents issued about the helicopters, including the flying certificate. The thrust of the affidavit is that the defects were never rectified. Nothing is said about the alleged payment of the claimed balance of the purchase price. However, at the hearing of the application for security before me, counsel for the respondents said that the respondents still relied on the alleged payment as their defence or one of their defences. He referred to a letter dated 22 July 1993 purportedly signed by a Korean, Pak Gil Nam, as representative of the claimants acknowledging receipt of $1.46m from a Mr Ham of the North Korean embassy in Pakistan. The claimants allege that this letter is a forgery. I asked counsel for the respondents why the respondents should pay the balance if the defects remained unrectified. He said it was the North Koreans who paid. I was left to wonder why the North Koreans should pay on the respondents` behalf if they

Version No 1: 29 Oct 2026 (23:45 hrs)

had not been authorized by the respondents to pay, and why the respondents should have given such authorization if the alleged defects were substantial and remained unrectified. There was also the question of the authority of Mr Pak to receive the money on behalf of the claimants. It was also strange that it had taken the respondents so long to put forward this defence of payment.

5 At the end of the hearing, I entertained considerable doubts about the bona fides of the defence. The application for security was on the basis of the claimant company`s inability to pay costs in the event of their failing to make good their claim. There was a winding-up petition against the claimant company on the ground of inability to pay debts. I accepted as correct the view of the majority of their Lordships in the English Court of Appeal case of ***Sir Lindsay Parkinson & Co Ltd v Triplan Ltd*** [1973] 2 All ER 273 that under the equivalent of s 388(1) of the Companies Act (Cap 50, 1944 Ed), the court retains a discretion to be exercised in all the circumstances of a case whether security for costs should be ordered. See also Lim Teong Qwee JC`s judgment in **Sembawang Engineering Pte Ltd v Priser Asia Engineering Pte Ltd** [1992] 2 SLR 806 . The impecuniosity of the claimant company is certainly a factor to be taken into consideration. In this respect, I am not in a position to accept the contention of the claimants that the impecuniosity of the claimants has been due to the defaults of the respondents. But the circumstance I am entitled to take into account is the relative strengths of the parties` respective case, the weakness of one being the strength of the other. I am not impressed by the rather inconsistent defences of the respondents, and the vague and evasive way they have put them forward, particularly the defence of payment. I would have expected a more coherent account of their position. I was not persuaded that the respondents should have the security they asked for. I, therefore, dismissed their application with costs.

Version No 1: 29 Oct 2026 (23:45 hrs)

6 ***Application dismissed.***

Warren Khoo L H J

Bevin Netto and Magdalin Netto (Cheong & Cheong) for the claimants
Chan Hian Young and Leonard Goh (Allen & Gledhill) for the respondents

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Version No 1: 29 Oct 2026 (23:45 hrs)