PT Sandipala Arthaputra *v* STMicroelectronics Asia Pacific Pte Ltd and others [2015] SGHC 301

Case Number	: Suit No 542 of 2012 (Summonses Nos 3342 of 2015 and 4013 of 2015)
Decision Date	: 25 November 2015
Tribunal/Court	: High Court
Coram	: George Wei J
Counsel Name(s)	: Govintharasah s/o Ramanathan and Sarah Kuek Xin Xin (Gurbani & Co LLC) for the plaintiff; Danny Ong, Yam Wern-Jhien and Eugene Ong (Rajah & Tann LLP) for the first and third defendants.
Parties	: PT SANDIPALA ARTHAPUTRA — STMICROELECTRONICS ASIA PACIFIC PTE LTD — OXEL SYSTEMS PTE LTD — VINCENT, PIERRE, LUC, COUSIN — PAULUS TANNOS — CATHERINE TANNOS — LINA RAWUNG

Civil Procedure – Costs

25 November 2015 Judgment reserved.

George Wei J:

Costs

1 This is my decision on costs for Summons No 3342 of 2015 ("SUM 3342") and Summons No 3725 of 2015 ("SUM 3725"). Both summonses concern applications for anti-suit injunctions taken out by the first and third defendants against the plaintiff in Suit No 542 of 2012 ("the Singapore Action"). To provide some context to my decision on costs, I shall first set out a brief overview of what transpired in the proceedings.

2 The plaintiff commenced the Singapore Action in 2012. Almost three years later, in early 2015, the plaintiff commenced a fresh action in Jakarta ("Jakarta Action") against, *inter alia*, the third defendant and the parent company of the first defendant. In response to this development, the first and third defendants applied, in SUM 3342, for a final anti-suit injunction to restrain the plaintiff's pursuit of the Jakarta Action against the third defendant and the parent company of the first defendant. This application was taken out on the basis that the plaintiff's pursuit of two simultaneous and duplicative actions was vexatious and oppressive.

3 As there was reason to believe that the court in Jakarta may delve into the merits of the case prior to the hearing of the application for the final anti-suit injunction, the first and third defendants sought an interim anti-suit injunction ("the Interim Order") to preserve the status quo pending the hearing of the application for the final anti-suit injunction. This was the subject matter of SUM 3725. The application for the Interim Order was heard and granted on 4 August 2015.

4 On 28 August 2015, I heard the application for a final anti-suit injunction ("the Final Order"). I found that the plaintiff's pursuit of two similar (if not identical) actions in Singapore and Jakarta was vexatious and oppressive and granted the Final Order. After delivering my decision on SUM 3342 on 4 September 2015, I directed parties to tender brief submissions to the court on the appropriate basis for the costs award. After perusing the submissions that the parties have tendered, I am of the considered view that costs should be awarded on an indemnity basis.

The arguments

5 In so far as the Interim Order is concerned, the first and third defendants submit that an award of indemnity costs is warranted as the application for the Interim Order was entirely necessitated by the plaintiff's unreasonable conduct. The instances of unreasonable conduct cited include *inter alia*:

(a) The plaintiff's failure to respond to a letter requesting the plaintiff to confirm that it would not take any further steps in the Jakarta Action pending the hearing of the application for the Final Order.

(b) The plaintiff's refusal to amend its statement of claim in the Jakarta Action so as to ensure that the court documents for the Jakarta Action were properly served on the third defendant in Singapore.

6 In so far as the Final Order is concerned, the first and third defendants submit that an award of indemnity costs would be appropriate because the grant of the injunctive relief is premised on a finding that the respondent's conduct is vexatious or oppressive (or unconscionable). The first and third defendants also argue that an award on the indemnity basis is particularly warranted given the plaintiff's egregious conduct — it had participated substantively in a hearing in the Jakarta Action on 12 August 2015 in breach of the Interim Order.

7 In response, the plaintiff argues that an award of indemnity costs is inappropriate. In a nutshell, the plaintiff contends that the court's discretion to award indemnity costs should only be exercised in exceptional circumstances and that there are no such exceptional circumstances in the present case. To that end, the plaintiff submits that it had not acted in bad faith and had not abused the process of the court in any manner.

Decision

8 It is trite that costs may be awarded on an indemnity basis if there are exceptional circumstances justifying such an award. In *Tan Chin Yew Joseph v Saxo Capital Markets Pte Ltd* [2013] SGHC 274 ("*Tan Chin Yew*"), Vinodh Coomaraswamy J commented, at [97], that "[t]he burden on a party who seeks an order for indemnity costs as a matter of discretion is… a high one". Coomaraswamy J went on to cite with approval the following remarks of Millett J in *Macmillan Inc v Bishopsgate Investment Trust plc* (10 December 1993, unreported) (at [98]):

> The power to order taxation on an indemnity basis is not confined to cases which have been brought with an ulterior motive or for an improper purpose. *Litigants who conduct their cases in bad faith, or as a personal vendetta, or in an improper or oppressive manner, or who cause costs to be incurred irrationally or out of all proportion as to what is at stake, may also expect to be ordered to pay costs on an indemnity basis if they lose*, and have part of their costs disallowed if they win. Nor are these necessarily the only situations where the jurisdiction may be exercised; the discretion is not to be fettered or circumscribed beyond the requirement that taxation on an indemnity basis must be 'appropriate'.
>
> [emphasis added]

9 The first and third defendants contend that Millett J's remarks apply to the present case. They also rely on the case of *Australian Commercial Research and Development Ltd v ANZ McCaughan Merchant Bank Ltd* [1989] 3 All ER 65 ("*ANZ*") to support their claim for indemnity costs. That case concerned an application for leave to stay proceedings on the ground that there were duplicative

proceedings in England and Australia. Sir Nicolas Browne-Wilkinson VC (as he then was) allowed the plaintiff's application to stay the English proceedings but ordered the plaintiff to pay costs on an indemnity basis. He remarked at 73c:

> … The plaintiff should not have commenced two sets of proceedings relating to the same subject matter, either in the same jurisdiction or in two different jurisdictions. By so doing it has duplicated the costs which will have to be incurred by the defendant. In those circumstances, it seems to be right that the defendant should recover fully the costs thrown away since they need never have been incurred at all but for the plaintiff's act.

10 The first and third defendants also rely on the Court of Appeal's decision in *Beckkett Pte Ltd v Deutsche Bank AG and another* [2011] 2 SLR 96 ("*Beckkett*"). In that case, the appellant's action in Singapore was dismissed by the High Court. The appellant appealed. After substantive submissions had been made on appeal and during the period that the Court of Appeal took to deliberate over matters, the appellant commenced an identical action in Indonesia. The respondent then applied for and obtained an injunction to restrain the appellant from proceeding with the action in Indonesia. The Court of Appeal upheld the grant of the injunction, stating that it would have granted costs on an indemnity basis and stressed that it did not do so only because the respondent's conduct was also deplorable (at [26]). The plaintiff, on the other hand, seeks to distinguish *Beckkett* on the basis that its conduct was not as egregious as that of the appellant in *Beckkett*.

11 I am satisfied that indemnity costs are appropriate for both SUM 3342 and SUM 3725. My reasons are as follows.

12 First, whilst the facts of *Beckkett* are not on all fours with the present case, it was nevertheless wasteful and oppressive for the plaintiff to have commenced proceedings on the same/similar subject matter in two separate jurisdictions when it had clearly no good reasons for doing so. The applications for the Interim Order and the Final Order would not have been necessary but for the fact that the plaintiff sued in one place too many. I do not, however, place weight on the first and third defendants' assertion that the plaintiff had breached the Interim Order because no material has been tendered in support of that assertion.

13 Second, the plaintiff drew my attention to the cases of *Koh Kay Yew v Inno-Pacific Holdings Ltd* [1997] 2 SLR(R) 148 and *John Reginald Stott Kirkham and others v Trane US Inc and others* [2009] 4 SLR(R) 428 in which anti-suit injunctions were granted and costs were awarded on a standard basis. However, in my judgment, both cases do not assist the plaintiff. Those cases involved situations where the plaintiffs had only started one action. This must be contrasted with the present case in which the plaintiff had commenced actions concurrently in two jurisdictions when it should not have done so.

14 Finally, I stress that it does not necessarily follow that indemnity costs would be appropriate in every case where an anti-suit injunction is granted. Each case turns strictly on its own individual facts.

15 For the foregoing reasons, costs are to be paid by the plaintiff to the first and third defendants, and are to be agreed or taxed on an indemnity basis.

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