

IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2017] SGCA(I) 2

Civil Appeal No 189 of 2016 (Summons No 9 of 2017)

Between

**(1) YUANTA ASSET MANAGEMENT
INTERNATIONAL LIMITED**

(2) YEH MAO-YUAN

*... Respondents in CA/SUM 9/2017
/Appellants in CA/CA 189/2016*

And

**(1) TELEMEDIA PACIFIC GROUP
LIMITED**

(2) HADY HARTANTO

*... Applicants in CA/SUM 9/2017
/Respondents in CA/CA 189/2016*

In the matter of SIC/Suit No 2 of 2015

Between

**(1) TELEMEDIA PACIFIC GROUP
LIMITED**

(2) HADY HARTANTO

... Plaintiffs

And

**(1) YUANTA ASSET MANAGEMENT
INTERNATIONAL LIMITED**

(2) YEH MAO-YUAN

... *Defendants*

ORAL JUDGMENT

[Civil Procedure] — [Costs] — [Security]

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**Yuanta Asset Management International Ltd and another
v
Telemedia Pacific Group Ltd and another**

[2017] SGCA(I) 2

Court of Appeal —Civil Appeal No 189 of 2016 (Summons No 9 of 2017)
Andrew Phang Boon Leong JA
10 February 2017

10 February 2017

Andrew Phang Boon Leong JA:

1 This is an application pursuant to O 57 r 3(4) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) (“the Rules”), which states that “[t]he Court of Appeal may at any time, in any case where it thinks fit, order further security for costs to be given”. In particular, the applicants (who are, of course, the Respondents, in the appeal) have applied for the quantum of security for costs to be increased from \$30,000 to \$80,000 (in respect of the Appellants’ appeal against the decisions of Patricia Bergin IJ in *Telemedia Pacific Group Ltd and another v Yuanta Asset Management International Ltd and another* [2016] 5 SLR 1 and *Telemedia Pacific Group Ltd and another v Yuanta Asset Management International Ltd and another* [2016] SGHC(I) 6). They have also applied for such additional security (of \$50,000) to be furnished within 14 days of the date of this court’s order by way of a solicitor’s undertaking, failing which the appeal will be deemed to be withdrawn or stayed pending provision of the

said additional security. They also seek the costs of the present application.

2 That security for costs *must* be furnished for an appeal is, of course, a *given* (see O 57 r 3(3) of the Rules as well as the decision of this court in *Lee Hsien Loong v Singapore Democratic Party and others and another suit* [2008] 1 SLR(R) 757 (“*Lee Hsien Loong*”), especially at [116] and [124]). More importantly, as this court noted in the decision just mentioned, this requirement that security for costs be furnished in this context “balances the need to avoid constraining the right of appeal unnecessarily with the contrasting (albeit no less important) need to deter frivolous appeals that constitute an abuse of process” (see *Lee Hsien Loong* at [117]).

3 As this court pointed out in *Ooi Ching Ling Shirley v Just Gems Inc* [2002] 2 SLR(R) 738 (“*Ooi Ching Ling Shirley*”), further security may be provided whenever it is “just” to do so; in the words of Chao Hick Tin JA, delivering the grounds of decision of the court (at [18]):

[Order 57 r 3(4) of the Rules] gives an unfettered discretion to the court to make such orders as it thinks “fit”. It seems to us that the term “fit” must encompass the concept of what is “just” in all the circumstances. We do not think it would be desirable, nor possible, to circumscribe such a wide discretion by any specific categorisation or criteria, other than the broad concept that further security should only be ordered where in all the circumstances it is “just” to do so.

4 Prof Jeffrey Pinsler has, in his seminal treatise, *Singapore Court Practice 2017* (LexisNexis, 2017), Vol 2 at para 57/3/7 aptly (and helpfully) observed as follows:

... The court may take into account any circumstances for the purpose of making this determination including the financial means of the appellant, foreign residency, the merits of the appeal, the conduct of the appellant (for example, whether he has acted in a manner which shows a clear intention to avoid

potential liability for costs), potential difficulties in enforcing a judgment for costs including delay and expense and whether the application for further security is made promptly.

Put simply, the inquiry on the part of the court in this regard depends, in the final analysis, on the precise facts and circumstances before it. There is – and can be – no magic formula as such.

5 I also note that an application pursuant to O 57 r 3(4) of the Rules must be made promptly – a point that is both fair as well as commonsensical (see, for example, the Malaysian Federal Court decision of *Menon v Abdullah Kutty* [1974] 1 MLJ 130 at 131 and *Ooi Ching Ling Shirley* at [20]).

6 Turning, then, to the relevant facts and circumstances in the present proceedings, it is pertinent to note that the Respondents have set out three specific reasons as to why the quantum of security for costs ought to be increased. They argue, first, that the Appellants are not resident in Singapore, and do not appear to have any assets of value within Singapore. Second, they argue that the Appellants’ pattern of behaviour shows that they are evasive and likely to resist the enforcement of any order of costs made against them. Thirdly, the Respondents argue that the Appellants’ Notice of Appeal is expansive.

7 Turning to the first reason proffered by the Respondents, whilst it is a factor that ought to be considered, as this court observed in *Ooi Ching Ling Shirley* (at [19]), “it ... does not follow that just because an appellant is resident abroad, that security must be ordered against him”. Therefore, the foreign residency of the appellants, taken on its own, is at best a neutral factor. Rather, as this court went on to explain, “[t]he rationale for such an order against a foreign resident is the delay or expense that will arise in enforcing the costs order abroad”. I now turn to consider whether there would be delay or expense

in enforcing a costs order should the Appellants be unsuccessful in their appeal. This brings me to the second argument raised by the Respondents, which covers factors pertaining to delay and expense in enforcing costs orders.

8 In my view, there is some evidence that the Respondents may face delay and expense in enforcing any costs order they obtain should they prevail in the appeal. First, I note that they have had difficulties in procuring the release of the Appellants' solicitors' undertaking for the sum of \$60,000 in partial satisfaction of the Respondents' costs of the counterclaim in the court below. Whilst I note that the costs of the proceedings in the court below have yet to be agreed or taxed, the manner in which the Appellants have conducted themselves with regard to the aforementioned undertaking is telling. In particular, after the Respondents had made another written demand in respect of the said undertaking, the Appellants did not respond directly to that demand and instead applied to stay the execution of the judgment in the court below, *including the costs orders, within a few days of the said written demand*. Indeed, in their written submissions in respect of the present application, the Appellants rely, in response to the Respondents' submissions on this particular issue, simply upon the stay application just referred to (and which constitutes a mere single paragraph in their written submissions). Whilst ostensibly (and literally) a single instance, it still suggests dilatory conduct on the part of the Appellants in respect of the costs orders. I do acknowledge that it could be argued, on behalf of the Appellants, that their application for a stay of execution of the judgment was also in response to another letter from the Respondents enclosing a draft judgment as well as a demand for payment of damages. However, balanced against this is the fact that there had already been an earlier written demand from the Respondents in respect of the said undertaking.

9 Secondly, I consider it relevant that there is no reciprocal enforcement of judgments between Singapore and the three countries in which the Appellants may have assets. This was a point which the Court of Appeal took into account in *Ooi Ching Ling Shirley* (at [26]). In this case, it is highly likely that the Respondents may need to seek enforcement of any judgments or orders in these countries given that the Appellants have no assets in Singapore. This will certainly lead to additional expense for the Respondents.

10 On a separate note, I think that for the purpose of this application, little weight should be placed on the findings of dishonesty or adverse credit findings against the Appellants in the Judgment of the trial judge below. Whilst the merits of the appeal might be relevant (especially where, on the extreme end of the spectrum, the appellant concerned has a patently weak case), the court must be careful not to delve too deeply into the merits themselves. In this regard, many of the points raised by the Respondents that, they allege, constitute a pattern of behaviour on the part of the Appellants which shows that they (the Appellants) are evasive and likely to resist the enforcement of any order of costs made against them (including the point referred to at the end of [8]) *engage directly the substantive merits* of the appeal itself and it would, in the circumstances, be prudent not to pronounce upon them (even if obliquely) in the present proceedings.

11 Finally, the third reason relied upon by the Respondents is, with respect, too general and vague. In any event, the Appellants are perfectly entitled to take all the points they wish to in their appeal.

12 On the whole, whilst some factors point in favour of the Appellants or are neutral, the obstacle placed in the path of the Respondents with regard to the

release of the Appellants' solicitors' undertaking (as noted above at [8], and which included a prompt application for a stay of execution of the judgment below (including the costs orders)), coupled with the fact that there is no reciprocal enforcement of judgments between Singapore and the various countries in which the Appellants may have assets, are, in my view, of critical significance in the context of the present application and the present application is therefore allowed.

13 The *quantum* of *additional* security which the Appellants will have to provide will be \$20,000, thus making a total of \$50,000 as security for costs of the appeal. In arriving at this quantum, I considered that there was force both in the Appellants' submission that the trial in the court below took fewer than 10 days, and the Respondents' submission that the trial was factually complex. The additional security for costs of \$20,000 is to be furnished within 14 days of the date of this court's order by way of a solicitor's undertaking, failing which the appeal will be deemed to be withdrawn or stayed pending provision of the said additional security. I will hear the parties on costs of this application.

Andrew Phang Boon Leong
Judge of Appeal

Josephine Chee and Paul Tan (Rajah & Tann Singapore LLP) for the
applicants in CA/SUM 9/2017/respondents in CA/CA 189/2016;
Toh Wei Yi and Jaclyn Leong (Harry Elias Partnership LLP) for the
respondents in CA/SUM 9/2017/appellants in CA/CA 189/2016.