

**IN THE SINGAPORE INTERNATIONAL COMMERCIAL COURT
OF THE REPUBLIC OF SINGAPORE**

[2025] SGHC(I) 13

Originating Application No 15 of 2023 (Summons No 1 of 2024)

Between

- (1) Hii Yii Ann
- (2) Alliance Lumber (PNG) Limited

... Claimants

And

- (1) Tiong Thai King
- (2) Everrise Cooperation Pte Ltd

... Defendants

Counterclaim of 1st Defendant

Between

Tiong Thai King

... Claimant in Counterclaim

And

- (1) Hii Yii Ann
- (2) Alliance Lumber (PNG) Limited
- (3) Everrise Cooperation Pte Ltd

... Defendants in Counterclaim

JUDGMENT

[Civil Procedure — Costs — Principles]

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Hii Yii Ann and another
v
Tiong Thai King and another and another matter

[2025] SGHC(I) 13

Singapore International Commercial Court — Originating Application No 15
of 2023 (Summons No 1 of 2024)
Thomas Bathurst JJ
21 March 2024

22 April 2025

Judgment reserved.

Thomas Bathurst JJ:

Introduction

1 By SIC/SUM 1/2024, a summons filed on 5 January 2024 (“the Summons”), the second defendant, Everrise Cooperation Pte Ltd (“the Second Defendant”) sought to strike out the counterclaim brought against it by the first defendant, Tiong Thai King (“the First Defendant”) in its entirety.

2 By judgment dated 10 July 2024 I dismissed the Summons and ordered the Second Defendant to pay the First Defendant’s costs of it.

3 This is my judgment on the First Defendant’s claim for costs. It should be read in conjunction with my judgment of 10 July 2024.

The Second Defendant's application to vary the costs order

4 Without any formal application, the Second Defendant sought that the orders made by me on 10 July 2024 be varied to provide that the costs of the Summons be costs in the cause. In support of that contention, the Second Defendant submitted that the First Defendant chose to belatedly bring his counterclaim approximately four weeks after the Second Defendant applied for a default judgment.¹ Although the submission was cast in those terms it was not the Second Defendant who applied for default judgment. Rather, it was the claimants who sought default judgment against the Second Defendant. There is nothing to suggest that the First Defendant was aware of this application having been made at the time he filed his counterclaim. This submission provides no basis for an application to vary the costs order.

5 The Second Defendant submitted that the email of Mr Ling of 22 December 2022² and what was described in the submissions as the First Defendant's or his nominee's failure to take timeous action in bringing the counterclaim featured prominently in the Second Defendant taking the view that the First Defendant had waived his rights to the monies claimed and the action of the First Defendant in launching his subsequent claim "smacked of unfairness and bad faith".

6 This submission also provides no basis to vary the order I made. I set out the chronology leading up to the entry of default judgment against the Second Defendant in [17] of my judgment of 10 July 2024. That chronology shows that prior to the issue of default judgment, each of the claimants and the Second Defendant was aware of the First Defendant's claim. It was after the

¹ See para 2(a) of the Second Defendant's submissions on costs.

² See [14] of the judgment of 10 July 2024.

First Defendant served his counterclaim that the claimants requested that their application for default judgment be dealt with urgently. In those circumstances it does not seem to me there was anything done by the First Defendant that was unfair or in bad faith.

7 In these circumstances I would refuse the application to vary the costs order.

The First Defendant's costs

The relevant principles to be applied

8 The principles to be applied in assessing costs in the Singapore International Commercial Court (“SICC”) were not in dispute. Order 22 r 3 of the Singapore International Commercial Court Rules 2021 (“the SICC Rules”) deal with the assessment of costs. It is in the following terms:

- (1) Without affecting the scope of the Court's discretion in Rule 2(1), and subject to any provisions to the contrary in these Rules, a successful party is entitled to costs and the quantum of any costs award will generally reflect the costs incurred by the party entitled to costs, subject to the principles of proportionality and reasonableness.
- (2) In considering proportionality and reasonableness, the Court may have regard to all relevant circumstances, including —
 - (a) the complexity of the case and the difficulty or novelty of the questions involved;
 - (b) the skill, specialised knowledge and responsibility required of, and the time and labour expended by, the counsel;
 - (c) the urgency and importance of the action to the parties;
 - (d) the number of counsel involved in the case for each party;
 - (e) the conduct of the parties, including in particular —

- (i) conduct before, as well as during the application or proceeding;
 - (ii) whether it was reasonable for a party to raise, pursue or contest a particular allegation or issue;
 - (iii) the manner in which a party has pursued or contested a particular allegation or issue; and
 - (iv) whether the conduct of the parties, including conduct in respect of alternative dispute resolution, facilitated the smooth and efficient disposal of the case;
- (f) the amount or value of the claim;
- (g) the stage at which the proceedings were concluded;
- (h) the existence of any offer to settle, the date the offer was made, the terms of the offer and the extent to which the claimant's judgment is more favourable than the terms of the offer to settle;
- (i) the existence of an agreement as to the amount of, basis for, or mechanics for, the determination of a costs award; and
- (j) the estimates provided in a costs schedule.
- (3) If the defendant pays the amount claimed within the time and in the manner required by the endorsement on the Originating Application, the costs allowed are to be fixed at \$10,000.
- (4) The party who discontinues any application, action or appeal wholly or partly must pay any other party the costs of the matter discontinued, unless the parties otherwise agree or the Court otherwise directs.
- (5) In the case of any proceedings transferred to the Court from the General Division, the Court will assess —
- (a) costs up to the date of transfer taking into account the circumstances of the case including that the General Division costs regime as set out in the domestic Rules of Court would have applied to those costs; and
 - (b) costs after the date of transfer taking into account the circumstances of the case and in this regard, the Court is not precluded from taking into

account the General Division costs regime as set out in the domestic Rules of Court.

9 In *Senda International Capital Ltd v Kiri Industries Ltd* [2023] 1 SLR 96 (“*Senda*”) the Court of Appeal pointed out at [32] the successful party’s entitlement to costs is to whatever costs that had in fact been sensibly and reasonably incurred. The court pointed out at [39] that the assessment of reasonable costs by definition entails an inquiry into whether the claimed costs were reasonably incurred and a reasonable amount.

The parties’ submissions

The First Defendant

10 The First Defendant provided a schedule setting out his costs incurred in defending the striking out application. The schedule itemised work done by individual counsel at the firm, the hours spent and the respective charge out rates. The costs totalled \$56,765 together with disbursements of \$1,461.

11 The First Defendant submitted the Court should fix a sum of \$40,000 (inclusive of disbursements) as his reasonable costs.

12 The First Defendant submitted this was reasonable as he succeeded on all issues raised in the application namely waiver, *res judicata*, issue estoppel, the extended doctrine of *res judicata* and abuse of process. He submitted they were significantly complex and difficult issues of law.

13 He submitted the position was further complicated by the fact it was not clear whether the Second Defendant was relying on cause of action estoppel, issue estoppel or both.

14 The First Defendant also submitted that a key plank in the Second Defendant’s striking out application was the judgment the claimants obtained against it. He submitted the attempt to strike out on this basis was highly unmeritorious, unreasonable and doomed to fail.

15 The First Defendant also pointed to the fact that the evidence in submissions was relatively voluminous. He pointed out that the Second Defendant’s affidavit in support of the application comprised 95 pages whilst the affidavits in reply comprised 61 pages and 70 pages, respectively. He also noted the Second Defendant’s submissions ran to 20 pages and the First Defendant’s to 27 pages which he submitted was reflective of the complexity of the issues in the application.

The Second Defendant

16 The Second Defendant referred to the remarks made by the Deputy Registrar on the transfer of this matter to the SICC that the Second Defendant may rely on O 22 r 3(5)(b) of the SICC Rules which would sufficiently protect the Second Defendant from a disproportionate costs order. It submitted the court should take into account the General Division Costs Rules including Appendix G to the Supreme Court Practice Directions 2021 (“Appendix G”). It pointed out that the range of costs for striking out applications in Appendix G was \$6,000 to \$20,000.

17 The Second Defendant submitted that in the present case the costs should be fixed at the low end of the Appendix G range, namely, \$6,000 for four reasons.

18 First, for reasons of proportionality given the small amount of the claim and the circumstances relied upon by it in support of its application to vary the costs award.

19 Second, the law concerning striking out applications was well established and there were no novel or complex questions.

20 Third, the striking out application was made on only two grounds, namely, that it was an abuse of process of the Court and the crossclaim should be struck out in the interests of justice.

21 Fourth, the hearing occupied less than 1½ hours.

Consideration

22 The question is whether the costs incurred or at least the \$40,000 claimed by the First Defendant were reasonably incurred and reasonable in amount.

23 Although considered in isolation, I would have had some doubt the costs of the preparation to the affidavits in reply (\$20,475) and the preparation of the written submissions (\$24,400) could be said to be reasonably incurred or reasonable in amount having regard to the issues involved, it must be remembered that the First Defendant is claiming some \$16,765 less than the actual costs incurred by him. If this deduction is applied to the two items, the total cost involved in preparation of the affidavits and written submissions is reduced from a total sum of \$44,875 to an amount of \$28,110. The amounts claimed need to be considered in that context as all other amounts claimed by the First Defendant seem to me to be reasonable and proportionate to the issues involved.

24 Although I have taken the range of costs in Appendix G into consideration as I am entitled to do by virtue of O 22 r 3(5)(b) of the SICC Rules, I do not think that consideration requires that any amount for costs be in the range specified in Appendix G much less the lower end of that range. Contrary to the Second Defendant's submissions, the matter was of some complexity evidenced by the detailed affidavits and extensive written submissions which it must be said had the desirable effect of substantially shortening the hearing. Further, I do not regard the matters raised by the Second Defendant in support of its application to vary the costs order to be of any assistance.

25 The crucial matter which remains is whether the costs claimed can be said to be proportionate to the issues involved having regard to the amount claimed in the counterclaim. On the one hand, costs of \$40,000 on an interlocutory application in respect of a claim of US\$103,645.98 could well be considered disproportionate to the amount involved. On the other hand, the application was to strike out the whole of the claim against the Second Defendant and the First Defendant was entitled to reasonably deal with the various submissions made by the Second Defendant in support of its application.

26 Taking all these matters into account, I consider the First Defendant should be allowed costs in the amount of \$35,000. That would result in an amount of costs excluding disbursements of \$33,539. Having regard to the issues raised, an award in this amount would be reasonable and proportionate.

Order

27 I order that the Second Defendant pay the First Defendant's costs of the Summons assessed in an amount of \$35,000.

Thomas Bathurst KC
International Judge

Teo Yi Hui (Kith & Kin Law Corporation) for the second defendant;
Ong Boon Hwee William, Xu Jiaxiong Daryl, Su Jin Chandran,
Nicholas Kam Xuan Wei and Matthew Soo Yee (Allen & Gledhill
LLP) for the first defendant.