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

[2025] SGHC 139

Originating Application No 317 of 2025

Between

DLS

… *Claimant*

And

DLT

… *Defendant*

GROUNDS OF DECISION

[Arbitration — Challenge against arbitrator — Apparent bias]
[*Res Judicata* — Issue estoppel]

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Andre Maniam J:

Introduction

1 These are the grounds of my decision dismissing the claimant's application to challenge an arbitrator for apparent bias. This challenge application was brought after my earlier decision (as between the same parties) that apparent bias was a hopeless basis on which to set aside a partial award in the arbitration.

Background

The Arbitration and the First Partial Award

2 The claimant ("Contractor") and respondent ("Sub-Contractor") are involved in a Singapore-seated ICC arbitration ("the Arbitration"), with a three-member arbitral tribunal ("the Tribunal"). The Tribunal issued a First Partial

Award on 19 June 2024 to which some corrections were made on 9 October 2024.

The application to set aside the First Partial Award

3 In November 2024, by Originating Application 1185 of 2024 ("OA 1185"), the Contractor applied to set aside two of the decisions in the First Partial Award. In February 2025, the Contractor filed Summons 316 of 2025 ("SUM 316") seeking permission to introduce, as a new basis for setting-aside, apparent bias on the part of one of the arbitrators.

4 On 27 March 2025, I decided as follows:

(a) I dismissed SUM 316 on the ground that apparent bias as a new basis for setting-aside could not succeed: it was hopeless, and as such the Contractor should not be allowed to introduce it: *DLS v DLT* [2025] SGHC 61 ("the Setting-Aside Decision") at [107]–[180], [186], [189(b)];

(b) in particular, the circumstances of the matter did not support an inference of apparent bias: the Setting-Aside Decision at [118]–[175];

(c) if I had granted SUM 316 and allowed the Contractor to introduce apparent bias as a new basis for setting-aside, I would have rejected that on the merits: the Setting-Aside Decision at [187], [189(c)];

(d) accordingly, I dismissed the setting-aside application in its entirety: the Setting-Aside Decision at [186], [189(a)].

The challenge application

5 The next day, 28 March 2025, the Contractor filed this challenge application ("OA 317"), challenging the subject arbitrator on the ground of apparent bias, and asking the court to terminate his mandate.

6 The Contractor had in the first instance brought a challenge before the ICC Court pursuant to Art 14 of the ICC Rules 2021 which governed the Arbitration. The ICC Court dismissed that challenge on the merits on 27 February 2025, finding that the circumstances did not give rise to reasonable doubts as to the subject arbitrator's impartiality or independence: the Setting-Aside Decision at [111]–[117].

7 This challenge application was filed on 28 March 2025, pursuant to Art 13(3) of the UNCITRAL Model Law on International Commercial Arbitration (read with s 3 of the International Arbitration Act 1994 ("IAA")), which provides as follows:

> (3) If a challenge under any procedure agreed upon by the parties or under the procedure of paragraph (2) of this Article is not successful, the challenging party may request, within thirty days after having received notice of the decision rejecting the challenge, the court or other authority specified in Article 6 to decide on the challenge, which decision shall be subject to no appeal; while such a request is pending, the arbitral tribunal, including the challenged arbitrator, may continue the arbitral proceedings and make an award.

8 Pursuant to s 8 of the IAA, the General Division of the High Court in Singapore is taken to have been specified in Article 6 of the Model Law as courts competent to perform the functions referred to under Art 13(3) and various other articles.

The foreign proceedings

9 Art 13(3) of the Model Law (quoted at [7] above) provides that while the challenging party's request (for the court to decide on the challenge) is pending, "the arbitral tribunal, including the challenged arbitrator, may continue the arbitral proceedings and make an award".

10 While the challenge application was still pending before the Singapore court, however, on 15 April 2025 the Contractor commenced a suit in a foreign court (the "Foreign Suit") seeking a declaration that the Sub-Contractor was not entitled to continue with the Arbitration with the present quorum/constitution of the Tribunal (*ie*, with the challenged arbitrator on the Tribunal), and a permanent injunction restraining the proceeding or continuing with the Arbitration as aforesaid.[1] The same day that it commenced the Foreign Suit, the Contractor also filed an application in the foreign court seeking an interim order in respect of the declaratory / injunctive relief sought in the suit (the "Foreign Interim Injunction Application"). I collectively refer to the Foreign Suit and the Foreign Interim Injunction Application as the "Foreign Proceedings".

11 On 30 April 2025, the foreign court deferred the hearing of the Foreign Interim Injunction Application to 6 May 2025, at which point the foreign court queried how the Contractor could pursue remedies simultaneously in both the challenge application in Singapore, and in the Foreign Proceedings.[2] In response, the Contractor indicated that it was considering withdrawing the pending proceedings before the Singapore court, *ie*, the challenge application.[3]

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1 The unsigned affidavit exhibited to the Sub-Contractor's solicitor's affidavit dated 22 May 2025, at page 1978, prayers A and B as sought in the Contractor's suit.

2 *Ibid*, at page 29, [58].

3 *Ibid*.

12 On 16 May 2025, the Contractor filed Summons 1344 of 2025 ("SUM 1344") seeking permission to discontinue the challenge application. SUM 1344 was fixed for hearing on 23 May 2025, when the challenge application itself was scheduled to be heard.

13 A third matter was then scheduled to be heard at the same hearing on 23 May 2025: the Sub-Contractor's application for an interim anti-suit injunction against the Contractor in relation to the Foreign Proceedings. On 22 May 2025, the Sub-Contractor first filed this application as SUM 1408/2025 in OA 317, *ie*, the challenge application. After the parties attended before the duty registrar, the Sub-Contractor filed a fresh originating application ("OA 519") for an anti-suit injunction, seeking an interim anti-suit injunction by SUM 1419/2025 ("SUM 1419") in OA 519.

14 In seeking an urgent hearing of its interim anti-suit injunction application, the Sub-Contractor informed the court that the Contractor too had sought urgent interim relief in the Foreign Proceedings, by filing a further urgent application for interim relief seeking an early hearing before the foreign court.

The hearing on 23 May 2025

15 At the hearing on 23 May 2025, I decided as follows:

(a) I granted an interim anti-suit injunction restraining the Contractor from maintaining and/or continuing the prosecution of the Foreign Proceedings.

(b) I made no order on SUM 1344: I did not allow the discontinuance sought, but instead indicated that I would deal with the challenge application on the merits. Pursuant to Art 13(3) of the Model

Law, the challenge against the subject arbitrator was a matter to be determined by the Singapore seat court. Allowing the discontinuance of the challenge might pave the way for the Contractor to say in the Foreign Proceedings that there were no longer parallel proceedings about the subject arbitrator's conduct, and so it was left to the foreign court to determine whether the Arbitration should continue with him on the Tribunal. Costs of SUM 1344 were reserved to the hearing of the challenge application.

(c) I adjourned the challenge application for further hearing. The Contractor's counsel had indicated that if I did not allow the challenge application to be discontinued, he would need to take instructions on what the Contractor wished to do with the challenge application.

Analysis and disposition

The hearing on 7 July 2025

16 The challenge application was fixed to be heard again on 7 July 2025.

17 In the early hours of that day, notice of change of solicitors was filed by new lawyers for the Contractor, who then appeared at the hearing to seek an adjournment of the challenge application. I did not allow the adjournment. I was informed that, in breach of the interim anti-suit injunction I had issued on 23 May 2025, the Contractor had proceeded with the Foreign Proceedings over several days of hearing from 26 May 2025, following which the foreign court reserved judgment. Moreover, it had been some six weeks since the challenge application had come up for hearing on 23 May 2025, when the Contractor's previous lawyers had asked for time to take instructions on the challenge application.

18 At the hearing on 7 July 2025, after checking with instructing solicitors, the Contractor's present lawyers said that their instructions were: not to make any submissions at all. In similar vein, despite the court's direction on 23 June 2025 that written submissions be filed by 30 June 2025, the Contractor filed no written submissions.

19 I proceeded to deal with the challenge application on the merits.

20 The Sub-Contractor contended that the challenge application should be dismissed, because:

> (a) There was *res judicata* (specifically, issue estoppel): the challenge application concerned facts and matters which had already been decided against the Contractor in the Setting-Aside Decision, which the Contractor could not re-litigate; moreover, the Contractor sought to make additional allegations which it had not raised in the ICC Court challenge, which the Contractor could not thereafter raise in its Art 13(3) Model Law challenge application – or at least, not without good reason; and
>
> (b) in any event, the challenge application was substantively without merit.

21 I address these in turn.

Res judicata / issue estoppel

22 By SUM 316 in OA 1185, the Contractor sought to raise apparent bias as new basis for setting-aside aspects of the First Partial Award. On 27 March 2025, SUM 316 was dismissed because the allegation of apparent bias was

hopeless; I also decided if the Contractor had been allowed to raise apparent bias, it would have failed on the merits. No appeal was filed by the Contractor against my decisions of 27 March 2025, and the time for appealing has passed.

23 In SUM 316, the Contractor's allegation of apparent bias was based on the subject arbitrator not disclosing that he had been an arbitrator in a prior arbitration (the "Prior Arbitration") where the Sub-Contractor's chairman was the claimant, represented by the same law firm / lawyers that represented the Sub-Contractor (the claimant in the present arbitration). The appointments were more than four years apart, the Sub-Contractor's chairman's involvement in the Prior Arbitration was in his personal capacity, and there was no connection between the two arbitrations in terms of facts, subject matter, or issues.

24 The ICC Court held a challenge based on the Prior Arbitration would have failed, and the Contractor did not dispute this in SUM 316; instead, the Contractor's case on apparent bias in SUM 316 was based on the subject arbitrator's conduct in relation to non-disclosure, *ie*, his non-disclosure of the Prior Arbitration when he came to know that the claimants in the two arbitrations were related: the Setting-Aside Decision at [118]–[119].

25 The challenge application was likewise based on apparent bias. However, in SUM 316 the court had already decided that the Contractor's case on apparent bias was hopeless, and in any event would have failed on the merits. The Contractor's challenge application was, in the face of that final and conclusive (and now unappealable) decision, an attempt to re-litigate the same issue of apparent bias.

26 The requirements of issue estoppel are met here:

(a) there must be a final and a conclusive judgment on the merits;

(b) the judgment must be of a court of competent jurisdiction;

(c) there must be identity between the parties to the two proceedings; and

(d) there must be an identity of subject matter in the two proceedings.

(*Lee Tat Development Pte Ltd v MCST Plan No 301* [2005] 3 SLR(R) 157, at [14]–[15]; cited in *Goh Nellie v Goh Lian Teck* [2007] 1 SLR(R) 453 ("*Goh Nellie*") at [26].)

27 There are no special circumstances here to avoid the application of issue estoppel. In particular, with reference to the dicta of Lord Keith in *Arnold v National Westminster Bank plc* [1991] 2 AC 93 at 108–109 (cited in *Goh Nellie* at [43]), this is not a case where "there has become available to a party further material relevant to the correct determination of a point involved in the earlier proceedings, whether or not that point was specifically raised and decided, being material which could not by reasonable diligence have been adduced in those proceedings". Indeed, the challenge application was filed the next day after SUM 316 was dismissed on 27 March 2025, and the Contractor did not contend that anything it raised in the challenge application could not, by reason of diligence, have been raised by it at the hearing of SUM 316 the previous day.

28 From the Contractor's affidavit in support of the challenge application, it appeared that the Contractor was relying on the same facts and matters for its case on apparent bias, as it had in SUM 316, save for the following two aspects.

29 First, in the challenge application the Contractor relied on various documents in the arbitration to contend that the subject arbitrator should have made the connection between the claimants in the two arbitrations at an earlier point than he claimed to have done.[4]

30 Second, in the challenge application the Contractor asserted that the Sub-Contractor was "closely related to and also for all intents and purposes an alter ego of the party which had appointed [the subject arbitrator] in the [Prior Arbitration]".[5]

31 The first of these new contentions was raised by the Contractor in the ICC Court challenge, but the Contractor did not then mention in its written submissions for SUM 316. In oral submissions at the hearing of SUM 316 on 27 March 2025, the Contractor's counsel confirmed that the Contractor was not relying on this contention for SUM 316: the Setting-Aside Decision at [142]. Having abandoned the contention in relation to SUM 316 on 27 March 2025, the Contractor then purported to resurrect it the very next day, in the challenge application. The contention does not involve any material that had only become available to the Contractor after SUM 316 was decided: the material in question comprises arbitration documents that the Contractor, at all material times, had.

32 In any event, in deciding SUM 316, I had already stated that I would not have accepted that the mere fact that the Sub-Contractor's chairman's full name appeared in various documents in the arbitration meant that the subject arbitrator *knew* of the relationship between the claimants in the two arbitrations, at an

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4 The Contractor's challenge affidavit, at [71], in particular, sub-paras (a), (d), (e), and (f).

5 The Contractor's challenge affidavit, at [6(a)].

earlier point than October 2024 – the point at which he made the connection, as he said: the Setting-Aside Decision at [142].

33 The second new contention, that the Sub-Contractor was an alter ego of its chairman, was not made in the challenge before the ICC Court or in SUM 316. As with the first new contention, this contention does not involve any material that had only become available to the Contractor after SUM 316 was decided.

34 In any event, the Contractor's contention that the Sub-Contractor was the alter ego of its chairman was but a bare allegation. The facts do not support this allegation: in the first place, the chairman only owned 40% of the shares in the Sub-Contractor.[6]

35 The decision in SUM 316 thus gave rise to issue estoppel on the issue of whether there was apparent bias, and that was fatal to the challenge application which was based on apparent bias.

36 The Sub-Contractor further contended that in a challenge under Art 13(3) of the Model Law, the Contractor could not raise matters which were not raised at first instance in the ICC Court challenge, such as the "alter ego" contention mentioned above. Given my conclusion on issue estoppel, it is unnecessary for me to deal with this contention.

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6 The Sub-Contractor's challenge affidavit, at [53(b)].

In any event, whether there was merit in the challenge application

37 Even if the Contractor were not precluded by issue estoppel from challenging the subject arbitrator on the basis of apparent bias, I would have dismissed the challenge application for its lack of merit.

38 I had in the Setting-Aside Decision considered the Contractor's case on apparent bias and found it to be hopeless. There was nothing in the challenge application and its supporting affidavit to persuade me to reach a different conclusion. In so far as the Contractor sought to supplement its contentions in SUM 316, I have addressed those new contentions above at [28]–[34].

Conclusion

39 Having failed on its contention of apparent bias in an attempt to set aside aspects of the First Partial Award, the Contractor was precluded by issue estoppel from challenging the subject arbitrator on the same ground of apparent bias. In any event, I agreed with the ICC Court's conclusion that there was no apparent bias.

40 For the above reasons, I dismissed the challenge application, with costs.

Andre Maniam
Judge of the High Court

Mahesh Rai, Samuel Soo and Jolene Abelarde
(Drew & Napier LLC) for the claimant;
Chou Sean Yu, Oh Sheng Loong (Hu ShengLong), Wong Zheng Hui
Daryl and Neela Alagusundaram (WongPartnership LLP) for the
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