IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2016] SGCA 48

Civil Appeal No 199 of 2015

Between

LIKPIN INTERNATIONAL LTD

… *Appellant*

And

(1) SWIBER HOLDINGS LTD
(2) SWIBER OFFSHORE CONSTRUCTION PTE LTD

… *Respondents*

EX-TEMPORE JUDGMENT

[Admiralty and Shipping] — [Admiralty jurisdiction and arrest]
[Civil Procedure] — [Striking Out]
[Civil Procedure] — [Costs]

Likpin International Ltd
v
Swiber Holdings Ltd and another

[2016] SGCA 48

Court of Appeal — Civil Appeal No 199 of 2015
Sundaresh Menon CJ, Chao Hick Tin JA and Andrew Phang Boon Leong JA
25 July 2016

Sundaresh Menon CJ (delivering the judgment of the court *ex tempore*):

Background

1 In Civil Appeal No 199 of 2015 ("CA 199/2015"), the appellant, Likpin International Ltd ("the Appellant"), appeals against the decision of the High Court judge ("the Judge") in Registrar's Appeal No 239 of 2015. The Judge struck out the Appellant's writ against Swiber Holdings Limited ("the 1st Respondent") and Swiber Offshore Construction Pte Ltd ("the 2nd Respondent") (collectively "the Respondents") in relation to Admiralty *in Personam* No 113 of 2015. His written judgment is reported as *Likpin International Ltd v Swiber Holdings Ltd and another* [2015] 5 SLR 962 ("the Judgment").

2 The Appellant's claim against the 1st Respondent alleges that a procurement agreement was concluded between the Appellant and the 1st Respondent in respect of the intended charter of a pipe-laying vessel ("the Procurement Agreement"). The Appellant's claim against the 2nd Respondent

alleges that the latter procured or induced the breach of or unlawfully interfered with the Procurement Agreement. The facts are set out in full in the Judgment and it is not necessary for us to reprise them here.

Our decision on the merits

3 The central issue in this appeal is whether the Appellant's claims against the Respondents are legally and factually unsustainable so that it is plain and obvious that they should not be allowed to proceed to trial. The Judge thought so and largely for the reasons he gave, we agree.

4 However, there are a couple of points that we think we should note in this Judgment. The Appellant submitted in the court below that its claim in relation to the Procurement Agreement fell under s 3(1)(*h*) of the High Court (Admiralty Jurisdiction) Act (Cap 123, 2001 Rev Ed) ("the HC(AJ)A") (see Judgment at [9]). That section of the HC(AJ)A brings within the High Court's admiralty jurisdiction "any claim arising out of any *agreement relating to the carriage of goods in a ship or to the use or hire of a ship*" [emphasis added]. In so submitting, the Appellant *expressly acknowledged* in the court below that the Procurement Agreement was in substance a charterparty for the use or hire of *Swiber Conquest*, a vessel owned by the 2nd Respondent.

5 Before us, counsel for the Appellant, Mr Kenneth Tan SC ("Mr Tan"), has sought to characterise the Procurement Agreement not as a charterparty in itself, but as an agreement between the 1st Respondent and Appellant for the former to procure the 2nd Respondent to enter into a charterparty with the Appellant on terms, among other things, that one of the vessels, namely, *Swiber Concorde* or *Swiber Conquest*, would be delivered by 20–22 May

2009. This characterisation of the Appellant's claim is somewhat different from the way the case was put before the Judge.

6 On the basis of Mr Tan's characterisation, the Procurement Agreement would be an agreement to procure a charterparty. In other words, it would be *an agreement to procure an agreement relating to the use or hire of a ship*. We asked Mr Tan if the claim as characterised by him would still fall within s 3(1)(*h*) of the HC(AJ)A.

7 We refer in this regard to the decision of the High Court in *The "Catur Samudra"* [2010] 2 SLR 518 ("*The Catur Samudra*") in which the ambit of the expression "relating to" in s 3(1)(*h*) of the HC(AJ)A was discussed. This discussion is potentially material in determining whether the Procurement Agreement could be said to fall within that section. The plaintiff in that case entered into an agreement with a third party ("H") to purchase the vessel *Mahakam*. On the same day, it entered into a bareboat charter party ("the Charterparty") to lease the *Mahakam* to H for 60 months. It was a condition precedent under the Charterparty that the defendant execute a guarantee in favour of the plaintiff to secure the due performance and payment of H's obligations under the Charterparty. The defendant executed the guarantee. When H defaulted on its payment obligations under the Charterparty, the plaintiff terminated the Charterparty and obtained possession of the *Mahakam*. It further invoked the admiralty jurisdiction of the High Court under s 3(1)(*h*) of the HC(AJ)A to arrest the *Catur Samudra*, a vessel owned by the defendant.

8 The defendant applied to strike out the writ of summons filed by the plaintiff, and to set aside the arrest of the *Catur Samudra*. Among other things, the issue before the High Court was whether the guarantee was an agreement relating to the hire of ship, such that it fell within s 3(1)(*h*) of the HC(AJ)A.

The plaintiff relied on the fact that under the Charterparty, it was a condition precedent that the defendant execute the guarantee. On this basis, it was submitted that the guarantee must be an agreement relating to the hire of a ship since without the guarantee, there would have been no charterparty of the *Mahakam*. The High Court rejected the plaintiff's argument and allowed the defendant's application to strike out the writ of summons and set aside the arrest.

9 The High Court held (following the decision of the House of Lords in *Gatoil International Inc v Arkwright-Boston Manufacturers Mutual Insurance Co (The Sandrina)* [1985] AC 255 at 271) that to be considered "an agreement relating to the use or hire of a ship" the agreement in question must have some "reasonably direct connection with such activities" (the "Direct Connection Test"). In this regard, the court held (at [37]) that although the guarantee was a condition precedent of the Charterparty, this could not render the guarantee an agreement relating to the use or hire of a vessel.

10 As noted above, we put the issue to Mr Tan. In fairness to him, it has to be said that the point has not been taken by the Respondents and so Mr Tan was taken by surprise. In any event, it is not necessary for us to make a ruling on this question. Nonetheless, we observe, *provisionally*, that the words "relating to" in s 3(1)(*h*) of the HC(AJ)A should be read narrowly to exclude a collateral or separate agreement independent of the charterparty or bill of lading unless it is "intrinsically related to the use or hire of a vessel" (*The Catur Samudra* at [43]). We are attracted to this view because the successful invocation of the admiralty jurisdiction of the court carries with it a number of consequences and it seems to us appropriate that something more than an indirect connection to the relevant limb of s 3(1) of the HC(AJ)A should be demonstrated. However, as we have said, it is not necessary for us to base our

decision on this and we leave the point open for full argument in an appropriate case.

11 Turning to the substantive merits of the appeal, the Judge succinctly and carefully analysed the relevant material and, at [38]–[79] of the Judgment, set out the reasons for his view that the Appellant's claims against the Respondents are legally and factually unsustainable. Mr Tan's efforts have not undermined the reasoning of the Judge in any way. We therefore affirm the Judge's decision in its entirety and dismiss the appeal in CA 199/2015.

Our decision on costs

12 In relation to costs, counsel for the Respondents, Mr Jimmy Yim SC ("Mr Yim"), has referred us to the costs schedules submitted by the parties. In these schedules, the Respondents have estimated their costs to be $80,000 plus $2,310.30 in disbursements whereas the Appellant has estimated its costs to be $60,000 plus $3,932.80 in disbursements. Mr Yim also notes that increased security for costs of $60,000 has been ordered against the Appellant in this appeal. Mr Yim seeks an order for costs in the sum indicated in the Respondents' costs schedule.

13 While Mr Tan accepts that an estimate in the sum of $60,000 was indicated in the Appellant's costs schedule, he points out that the Appellant's initial estimate was $45,000; this amount was increased to $60,000 to reflect the increase in the security for costs that was provided by the Appellant. Mr Tan submits that the appeal turned purely on the facts. He contends that, in truth, the appeal did not warrant a costs award even for the sum of $60,000.

14 Instead, he submits that the costs in this case should not exceed the Appellant's initial estimate of $45,000. Indeed, he contends that, given the

nature of the appeal, an award of costs in this amount would already be generous.

15 As stated in paragraph 99B(1) of the Supreme Court Practice Directions (1 January 2013 release) ("PD"), solicitors making submissions on party-and-party costs or preparing their costs schedules may have regard to the costs guidelines set out in Appendix G of the PD (the "Costs Guidelines"). The Costs Guidelines serve only as a general guide and the precise amount to be awarded remains at the discretion of the court making the costs award. Nonetheless, they are there for a purpose: to guide the court in making costs awards and therefore to guide counsel so that they may prepare costs schedules that are *genuine estimates* of their party-and-party costs and *defensible at the outset without regard to the outcome of the appeal.* This requires counsel to, among other things, fairly assess their client's case, the legal and factual complexity of the live issues, and the nature and complexity of the arguments that have to be canvassed and/or responded to and then in this light to consider the guidance provided in the Costs Guidelines.

16 It has to be said that we think that the present appeal is a relatively simple matter; it is a case that essentially concerns the legal sustainability of an intended claim on the basis of certain asserted facts. In fact, we did not even require Mr Yim to rise in response to Mr Tan's arguments. The entire substantive appeal was disposed of within an hour. We note also that the costs below were fixed by the Judge in the sum of $20,000. We therefore find ourselves in agreement with Mr Tan's submission that having regard to the Costs Guidelines, even an award of $45,000 for costs would be generous.

17 However, we also consider that the court may and often should take into account and assign the appropriate weight to the submissions of each of

the parties on costs as part of the multi-factorial analysis that undergirds the exercise of its discretion in assessing and awarding costs. This, of course, is subject to its overriding duty to ensure that any costs order is not *unduly prejudicial* to the paying party.

18 Given that the Appellant's own claim for costs would have been on the high side (at $60,000) had it prevailed, we consider this to be a factor that should be taken into account in deciding the costs payable by it now that it has failed. We therefore fix costs at $50,000 all-in (inclusive of reasonable disbursements) and make the usual consequential orders.

19 We wish to take this opportunity to remind counsel to take account of the guidance we have provided at [15] above. Counsel who submit costs schedules that are excessive and indefensible and reflect disregard for this guidance might find themselves open to sanctions including (without limitation) being made to bear the costs of any argument on costs personally. We have endeavoured to provide clarity and enhance consistency and predictability of costs awards through the publication of the Costs Guidelines and the imposition of the requirement for costs schedules to be submitted. It is now for counsel to help make these initiatives work as they should for the benefit of the litigating public.

Sundaresh Menon	Chao Hick Tin	Andrew Phang Boon Leong
Chief Justice	Judge of Appeal	Judge of Appeal

Kenneth Tan, SC (Kenneth Tan Partnership) (instructed counsel), Leonard Chia (Asia Ascent Law Corporation) for the appellant; and Jimmy Yim, SC, Mahesh Rai and Ben Chia (Drew & Napier LLC) for the respondents.
