# AZT and others *v* AZV
# [2012] SGHC 116

**Case Number** : Originating Summons No 153 of 2012 (Summons No 2037 of 2012)

**Decision Date** : 24 May 2012

**Tribunal/Court** : High Court

**Coram** : Andrew Ang J

**Counsel Name(s)** : Kristy Tan and Margaret Ling (Allen & Gledhill LLP) for the plaintiffs; Wendy Lin (WongPartnership LLP) for the defendant.

**Parties** : AZT and others — AZV

*Civil Procedure – Sealing of Court Documents*

24 May 2012 Judgment reserved.

**Andrew Ang J:**

**Introduction**

1 The parties to the present application were co-respondents in a Singapore arbitration. The claimant in the arbitration, [C], belongs to a group of private equity funds. The arbitration concerned a dispute surrounding a shareholders' agreement between AZV and [C], entered into in 1999, in respect of their shareholding in a company in Korea, [D].

2 In October 2003, one of the companies in the AZT group (collectively "AZT") acquired a 51% stake in AZV. Subsequently, in November 2003, AZV and [C] entered into a share purchase agreement whereby AZV bought out [C]'s stake in [D].

3 In 2008, [C] commenced the Singapore arbitration claiming breach of both the 1999 shareholders' agreement and the 2003 share purchase agreement, and seeking to void the sale of its shares to AZV. While AZT (as majority shareholder of AZV) was not party to the arbitration agreement between [C] and AZV, it agreed to be joined as co-respondents.

4 The arbitral award found in favour of [C], with AZT and AZV being jointly and severally liable for damages and costs. The award, however, did not apportion liability as between AZT and AZV, as it was not part of the Terms of Reference of the arbitration. On 20 February 2012, AZT, by an Accord Agreement with [C], agreed to pay [C] $65m in full satisfaction of the arbitral award. AZT now seeks contribution from AZV in the present Originating Summons ("OS") action.

**Present application**

5 AZT is seeking to seal the court documents in the present OS action, the affidavit in support of which has not been filed in light of the present application. It points out that the following matters canvassed in the Singapore arbitration will have to be ventilated in the OS action:

(a) The arbitration award;

(b) The transcripts of the arbitration hearing;

(c) Written submissions tendered in the arbitration;

(d) The Terms of Reference; and

(e) The 1999 shareholders' agreement and the 2003 share purchase agreement.

The Accord Agreement would also have to be disclosed.

6 Accordingly, AZT argues that the court documents should be sealed in order to preserve the confidentiality of the arbitration proceedings.

**Issue**

7 This judgment addresses the following issue: whether AZT's application for the sealing of court documents, so as to preserve the confidentiality of the arbitration proceedings the parties were involved in, should be granted?

**The law**

***The need for open justice must be weighed against the need to preserve the confidentiality of the arbitration***

8 The principle that the courts must administer justice publicly is well settled in the common law: *Scott v Scott* [1913] 1 AC 417 ("*Scott*"). In Jeremy Bentham's words (quoted by Lord Shaw of Dunfermline in *Scott* at 477): "Publicity is the very soul of justice. ... It keeps the judge himself while trying under trial".

9 This principle, however, is subject to exceptions. The exceptions reflect the "yet more fundamental principle that the chief object of Courts of justice must be to secure that justice is done" (see judgment of Viscount Haldane LC in *Scott* at 437–438). Consistently with this view that there is a more fundamental principle that prevails over that of open justice, *ie*, that the chief object of courts of justice is to ensure that justice is done, the principle of publicity must yield in the appropriate cases where to sit in public would destroy the subject matter of the dispute (see *Re JN Taylor Holdings Ltd (in liquidation)* [2007] SASC 193 at [6], applying numerous English decisions).

10 *Department of Economics, Policy and Development of the City of Moscow v Bankers Trust Co* [2005] QB 207 ("*Moscow*") was a case in which the defendant (London Bankers Trust Co) succeeded in arbitration against another claimant but failed against the plaintiff (the Moscow government). The arbitral award was published only to the parties. London Bankers Trust Co's application to the English court to set aside the arbitral award was dismissed. In light of the dismissal by the English court of the application to set aside the arbitral award, the Moscow government sought publication of the judgment to demonstrate to the international financial community that the arbitral award, holding that it had not committed any financial default, had been the subject of detailed scrutiny by the English courts.

11 Mance LJ said, at [32] of his judgment, in relation to the English position:

> 32 The rule makers clearly deduced from the principles of the Arbitration Act 1996 that any court hearing should take place, so far as possible, without undermining the reasons of, inter alia, privacy and confidentiality for which parties choose to arbitrate in England. Their conclusion in this regard has not been challenged. It may be justified on the simple basis that arbitration

represents a special case, in relation to which there has been very considerable development during recent years. An alternative and overlapping consideration is that parties may be deterred from arbitrating or at any rate from invoking the court's supervisory role in relation to arbitration if their understanding regarding arbitral confidentiality is ignored. ...

12 However, Mance LJ was also quick to caution at [40] and [41] that it is ultimately a matter of balance:

> 40 The factors militating in favour of publicity have to be weighed together with the desirability of preserving the confidentiality of the original arbitration and its subject matter. ...
>
> 41 ... The limited but necessary interface between arbitration and the public court means that more cannot be expected. There can be no question of withholding publication of reasoned judgments on a blanket basis out of a generalised, and in my view unfounded, concern that their publication would upset the confidence of the business community in English arbitration.

It should also be noted that the discussions in *Moscow* pertained to the publication of judgments.

13 In Singapore, the High Court (per Chan Seng Onn J) had in *AAY v AAZ* [2011] 1 SLR 1093 ("*AAY*") affirmed that confidentiality in arbitration is accepted as a general principle. Furthermore, ss 22 and 23 of the International Arbitration Act (Cap 143A, 2002 Rev Ed) ("IAA") reflect the public policy of keeping arbitrations, and all proceedings related to arbitration, confidential. Sections 22 and 23 of the IAA state:

> **Proceedings to be heard otherwise than in open court**
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> 22. Proceedings under this Act in any court shall, on the application of any party to the proceedings, be heard otherwise than in open court.
>
> **Restrictions on reporting of proceedings heard otherwise than in open court**
>
> 23. —(1) This section shall apply to proceedings under this Act in any court heard otherwise than in open court.
>
> (2) A court hearing any proceedings to which this section applies shall, on the application of any party to the proceedings, give directions as to whether any and, if so, what information relating to the proceedings may be published.
>
> (3) A court shall not give a direction under subsection (2) permitting information to be published unless —
>
> (*a*) all parties to the proceedings agree that such information may be published; or
>
> (*b*) the court is satisfied that the information, if published in accordance with such directions as it may give, would not reveal any matter, including the identity of any party to the proceedings, that any party to the proceedings reasonably wishes to remain confidential.
>
> (4) Notwithstanding subsection (3), where a court gives grounds of decision for a judgment in respect of proceedings to which this section applies and considers that judgment to be of major legal interest, the court shall direct that reports of the judgment may be published in law reports and professional publications but, if any party to the proceedings reasonably wishes to conceal any matter, including the fact that he was such a party, the court shall —

(*a*) give directions as to the action that shall be taken to conceal that matter in those reports; and

(*b*) if it considers that a report published in accordance with directions given under paragraph (a) would be likely to reveal that matter, direct that no report shall be published until after the end of such period, not exceeding 10 years, as it considers appropriate.

14 Thus, in deciding whether to seal the court documents in the present case, the principle of open justice must be weighed against the need to preserve confidentiality in arbitration, with the latter being an important factor in the court's exercise of discretion (see *AAY* at [53]).

**The decision**

15 In my view, the following factors militate in favour of allowing the application for sealing of the court files:

(a) Both AZT and AZV were party to the arbitration. The confidentiality of the arbitration should not be compromised by the present proceedings between the parties;

(b) Having perused the documents, there is nothing to indicate that there is a legitimate public interest in not sealing the court documents;

(c) While AZV had earlier been recorded as opposing the sealing application, it subsequently clarified that since it is reserving the right to apply to stay the OS action on the ground that the court lacks jurisdiction, it neither opposes nor consents to the application.

16 In addition, in *R v Legal Aid Board Ex p Kaim Todner* [1999] QB 966, the English Court of Appeal, in discussing exceptions to the general principle of open justice, stated at 978:

6. In deciding whether to accede to an application for protection from disclosure of the proceedings it is appropriate to take into account the extent of the interference with the general rule which is involved. ...

7. The nature of the proceedings is also relevant. If the application relates to an interlocutory application this is a less significant intrusion into the general rule than interfering with the public nature of the trial. Interlocutory hearings are normally of no interest to anyone other than the parties. ...

17 While the present OS action is not an interlocutory application, it is a chambers proceeding which is heard "otherwise than in open court" pursuant to s 22 of the IAA: the sealing of court documents would thus be "a less significant intrusion" into the principle of open justice.

***No legitimate public interest***

18 It should also be pointed out that many of the relevant authorities dealt with judgments and the need to make judgments dealing with challenges to arbitral awards public. For instance, in *AAY v AAZ* [2011] 2 SLR 528 ("*AAY 2*") at [28], the court found that there was legitimate public interest in making the judgment in *AAY* ([13] *supra*) public, albeit with appropriate redaction, as the judgment discussed the latest jurisprudence on the issue of confidentiality in arbitration. The sealing of court documents, however, would not stifle the development of arbitration jurisprudence in Singapore.

19 Neither is there any legitimate public interest in the subject matter of the dispute. Having examined the affidavit in question, it is evident that the dispute between the parties is purely commercial, with nothing to suggest that there is any countervailing and legitimate public interest weighing in favour of disclosure. Accordingly, there is no reason to compromise the confidentiality of the arbitration and related proceedings which had been bargained for and/or agreed to by the parties.

**Conclusion**

20 For the foregoing reasons, I allow the plaintiff's application. No order as to costs.