Sheila Kazzaz and another *v* Standard Chartered Bank and others
[2020] SGHC(I) 19

Case Number : Suit No 4 of 2018

Decision Date : 31 August 2020

Tribunal/Court : Singapore International Commercial Court

Coram : Anselmo Reyes IJ

Counsel Name(s) : Chia Voon Jiet, Koh Choon Min, Sim Bing Wen and Grace Lim Rui Si (Drew & Napier LLC) for the plaintiffs; Tan Xeauwei, Melissa Mak, Daniel Seow and Marrissa Karuna (Allen & Gledhill LLP) for the defendants.

Parties : Sheila Kazzaz — Ahmed Kazzaz — Standard Chartered Bank — Laurence Black — Harish Phoolwani — Naushid Mithani

Civil Procedure – Costs

31 August 2020 Judgment reserved.

Anselmo Reyes IJ:

Introduction

1 This is my judgment on the costs of this action.

2 By a previous judgment dated 14 October 2019, I dismissed the Plaintiffs' claims against the Defendants. At the same time, I stated that, within 28 days of the judgment, the parties were to propose directions for dealing with the costs of this action. The Plaintiffs having thereafter appealed against my judgment, by agreement among the parties, the determination of the costs of this action was deferred pending resolution of the appeal. On 11 June 2020, the Court of Appeal dismissed the appeal, handing down its reasons on 13 July 2020. The Court of Appeal awarded the costs of the appeal (inclusive of disbursements) to the Defendants, fixing the amount at S$80,000. Following dismissal of the Plaintiffs' appeal, I restored the assessment of the costs of this action and directed that the costs be determined on the basis of the parties' sequential written submissions alone.

3 The Defendants having substantially prevailed, they should have their costs in the ordinary course of events. The real dispute among the parties is over quantum.

4 The Defendants claim (1) legal fees of S$1,100,000 (inclusive of the fees of counsel in the Dubai International Financial Centre ("DIFC") and Goods & Services Tax ("GST") and (2) disbursements of S$113,177.12, £178,672.23, AED88,844.73, and US$4,336.83. In support of their claim, the Defendants rely (among other grounds) on an indemnity clause ("Clause 14.1") in the client agreements which the Plaintiffs entered into with them. The Plaintiffs, on the other hand, argue that the Defendants should receive no more than legal fees of S$382,800 (or alternatively S$512,400 if costs are ordered on an indemnity basis) and disbursements of S$86,672.57, £90,538.02, AED88,844.73, and US$4,336.83. More specifically, in answer to the Defendants, the Plaintiffs make four submissions: (1) Clause 14.1 does not cover the present action; (2) Appendix G of the Supreme Court Practice Directions ("Appendix G") (which provides guidelines on the assessment of costs in proceedings before the Singapore High Court) should be given significant weight in my assessment of costs; (3) the Defendants did not succeed in every argument which they advanced at trial and so

should not be entitled to the costs incurred in respect of unsuccessful arguments; and (4) the Plaintiffs should have the reserved costs of certain interlocutory applications and such costs should be set-off against amounts payable to the Defendants.

Discussion

The application of Clause 14.1

5 Clause 14.1 stipulates:

> The Client will indemnify on a full indemnity basis and hold harmless the DIFC Branch, the Account Branch and any Group member, including their officers, employees, custodians, nominees, brokers, correspondents, and agents (each an Indemnified Party), and reimburse on demand, against all Losses which an Indemnified Party may suffer as a result of or in connection with the operation or provision of the Account(s), Facilities, Transactions and Services whether incurred directly or indirectly, including the purchase, sale, holding, switching and redemption of Securities, Derivatives and Investments, and any Loss resulting from: (i) any breach by the Client of its obligations under this Agreement or the relevant agreement between the Account Branch and the Client and/or (ii) the DIFC Branch performing or exercising its duties or discretions under this Agreement or acting on any instructions (including stop payment Instructions, and Instructions to sell or purchase Securities, Derivatives and Investments); and/or (iii) any default under the terms and conditions and any default in the repayment of the Client's liabilities, save to the extent that the Loss is the direct result of an Indemnified Party's gross negligence, willful default or fraud.

6 The Plaintiffs submit that Clause 14.1 does not cover the situation where (as was the case here) the Defendants are sued by a client in respect of circumstances leading to the taking up of banking services. I am unable to agree.

7 By Clause 14.1 the Plaintiffs agreed to compensate the Defendants on "a full indemnity basis" for "all Losses which [the Defendants] may suffer as a result of or in connection with the operation or provision of the Account(s), Facilities, Transactions and Services whether incurred directly or indirectly". The present action essentially concerned the Plaintiffs' complaints about the way in which the Defendants operated the Plaintiffs' Accounts, Facilities, and Transactions and the way in which the Defendants provided services in respect of those matters. The Plaintiffs alleged that, when providing services, the Defendants negligently misled the Plaintiffs about the scope, nature and suitability of the same for the Plaintiffs' needs. On its terms, Clause 14.1 does not distinguish between services and advice rendered by the Defendants before or after the Plaintiffs took up a banking product or entered into a particular transaction. Clause 14.1 thus applies where (as here) the Defendants have incurred loss (in the form of legal expenses and disbursements) as a result of defending themselves against the Plaintiffs' wrongful allegations about the way in which the Defendants' went about providing their advice and services. The Defendants are consequently entitled to be indemnified in full for their legal fees and disbursements under Clause 14.1.

The application of Appendix G

8 Order 110, r 46(1) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("Rules of Court") provides that:

> **46.**—(1) The unsuccessful party in any application or proceedings in the [SICC] must pay the reasonable costs of the application or proceedings to the successful party, unless the Court orders otherwise.

9 However, when transferring the action to the SICC, the Registrar directed that "Appendix G shall continue to be relevant to the assessment of costs in respect of all proceedings in and arising from this suit after its transfer to the SICC". In some cases, applying O 110, r 46(1) of the Rules of Court can lead to significantly greater costs being awarded than would be the case by applying Appendix G. This is such a situation. In their Pre-Trial Checklist, the Plaintiffs estimated their costs of this action to be between S$1m and S$1.1m, exclusive of closing submissions and GST. At that time, the Plaintiffs had incurred some S$850,000 in costs. The Plaintiffs' estimate is not far off from the S$1.1m being claimed as legal fees by the Defendants for the entire action. The Defendants point out that their claim is inclusive of the legal fees of DIFC counsel and GST, while the Plaintiffs' estimate in their Pre-trial Checklist was exclusive of GST and in all likelihood also excluded the cost of instructing DIFC counsel to deal with the points of DIFC law canvassed at the trial. Whether or not it includes the cost of DIFC counsel, the Plaintiffs' estimate of between S$1m and S$1.1m for legal fees suggests that the S$1.1m now claimed by the Defendants is eminently reasonable.

10 How then should I give effect to the Registrar's direction that "Appendix G shall continue to be relevant" to these proceedings? The Plaintiffs calculate (and I accept) that, if Appendix G were to be strictly adhered to and on the premise (as I have held) that Clause 14.1 applies, the Defendants should only recover S$512,400 in legal fees. Nevertheless, Appendix G is only a guideline. The Registrar's direction does not require me to apply Appendix G to the strict letter. I must simply pay heed to Appendix G. The difficulty is that the S$1.1m sought by the Defendants is more than twice the amount suggested by Appendix G. I doubt that I would be paying sufficient heed to the Registrar's direction if, without more, I was simply to allow S$1.1m to the Defendants as representing their "reasonable costs" within the terms of O 110, r 46(1) of the Rules of Court. It seems to me that, if they are to be awarded the S$1.1m claimed, the Defendants must point to one or more special factors justifying a significant departure from the S$512,400 indicated by Appendix G.

11 The Defendants have put forward the following as special factors: (1) Clause 14.1; (2) the need to deal with questions of DIFC law; (3) the fact that the Plaintiffs' allegations spanned events and issues involving Singapore, Dubai, the UK, Guernsey, the Cayman Islands, Jersey, France and Iraq; and (4) the fact that one of the four Defendants was no longer employed by the 1st Defendant. I do not find factor (4) to be a compelling basis for departing from Appendix G. However, in my view, the fact that Clause 14.1 entitles the Defendants to a "full indemnity" (that is, factor (1)) and the complexities arising from factors (2) and (3) sufficiently justify a departure from the S$512,400 posited by Appendix G to the extent of the S$1.1m claimed by the Defendants.

12 There is an additional factor which I believe ought to be taken into account. I should also have regard to the fact that, right through the trial and until just before their initial round of closing submissions, the Plaintiffs maintained that the Defendants were liable for fraudulent misrepresentation and exerting undue influence. This is despite (as I noted in [11] of my previous judgment) there being "no evidence whatsoever that the Defendants, whether individually or collectively, had acted in a fraudulent manner or had exerted undue influence on either of the Plaintiffs". In short, the allegations of fraud should never have been made in the first place. The Defendants' reputations being at stake as a result of the Plaintiffs' unwarranted allegations, it was reasonable and hardly surprising that the Defendants would vigorously defend themselves and thereby incur much more in legal fees than the levels envisaged by Appendix G.

13 That leaves disbursements. The Defendants claim the following as disbursements:

(a) Disbursements in relation to the airfare and hotel accommodation of the Defendants' expert, Mr Bassem Snaije ("Mr Snaije"): S$5,814.14.

(b) Disbursements & expenses in relation to AEIC notarisation and the trial (including travel and hotel expenses): AED88,844.73.

(c) Disbursements & expenses incurred by the Defendants' DIFC law counsel, Mr Michael Black QC: £398.02.

(d) Professional fees of Mr Snaije: £178,134.21. This comprises:

(i) Review of documents and preparation of expert report: £88,540.

(ii) Review of documents, including the expert report of the Plaintiffs' expert Dr Thomas Walford ("Dr Walford"), and preparation of a supplementary expert report: £70,394.21

(iii) Preparation for and attendance at trial and travel to and from Singapore: £19,200.

(e) Disbursements and expenses in relation to the notarisation of the AEIC of Mr Clive Harrison and his giving of evidence by video: US$4,336.83 + £140.

(f) Miscellaneous expenses: photocopying and printing fees S$32,178.60; other filing and transmission fees S$973.00; transportation fees S$8,082.87; telephone and fax fees S$3,399.31; interpretation and translation fees S$618; attestation fees S$840; postage, mail delivery and courier fees S$275.06; transcription fees S$17,970.70; court hearing fees S$15,800; SICC video conferencing fees S$250; incidentals and others S$7,964.94.

14 The foregoing items add up to S$113,177.12, £178,672.23, AED88,844.73 and US$4,336.83. The Plaintiffs say that I should only allow disbursements in the amounts of S$86,672.57, £90,538.02, AED88,844.73 and US$4,336.83. The dispute is accordingly in respect of the S$ and £ amounts.

15 The Plaintiffs contend that the amount for photocopying and printing is excessive. Assuming a printing cost of S$0.15 per page pursuant to the Law Society Practice Direction 3.7.1, the Plaintiffs calculate that "an astonishing 214,524 pages were printed". They suggest that there should only have been need for minimal printing as documents were transmitted electronically. The Plaintiffs say that there were at most only 41,947 pages of documents in this case. Therefore, applying a printing cost of S$0.15 per page and assuming that the Defendants printed each document only once, the Plaintiffs submit that the relevant amount should be no more than S$6,292.05. The Plaintiffs further submit that, as the witnesses were all conversant in English and the Plaintiffs provided translated versions of foreign language documents, the Defendants should not have incurred interpretation or translation fees. The Plaintiffs observe that Mr Snaije's report was 46 pages long, while his reply report was 20 pages long. The amount claimed in respect of those reports is accordingly said to be excessive. They suggest that the amount charged for Mr Snaije's travel and attendance at trial is likewise too high. The Plaintiffs point out that Mr Snaije gave live evidence at trial for some three hours and even then his evidence did not feature in my previous judgment. In the circumstances, the Plaintiffs argue that a reasonable sum for Mr Snaije's evidence would be no more than £90,000.

16 I am not persuaded by the Plaintiffs' contentions. For example, as the Defendants submit, the assumption that the Defendants would only make a single copy of the documents in the case is unrealistic. Multiple sets of documents were printed, given the number of defendants and lawyers (including DIFC counsel) involved. Further, there was also material requiring translation by the Defendants from Arabic into English. In relation to Mr Snaije, he did not only consider his own report, but also reviewed and commented on Dr Walford's report. It seems to me that, taken in the round, the disbursements claimed by the Defendants are reasonable.

The lack of success on certain issues

17 While it is correct that the Defendants did not succeed on every sub-issue before me, the fact is that the Defendants prevailed in relation to every misrepresentation, breach of the common law duty of care, and breach of DIFC regulatory law alleged by the Plaintiffs. Determining the incidence of costs cannot be a mechanical exercise of adding up the arguments on which a party has succeeded and awarding that party a percentage of its costs by reference to the ratio that its successful arguments bear on the totality of arguments advanced in a case. The attribution of costs hinges instead on the court stepping back and considering overall whether, as here, one party has clearly succeeded. In the absence of good reason to the contrary, that party should have its costs in keeping with the rule that costs should normally follow the event. I am unable to accept the Plaintiffs' contention that, because the Defendants did not succeed on every argument in this case, they should be deprived of some of their costs.

The costs of certain interlocutory applications

18 The Plaintiffs claim the reserved costs of certain summonses. They say that they should be entitled to set-off such costs against sums payable to the Defendants. In respect of SIC/SUM 41/2018, which was the Plaintiffs' application for specific discovery and which was allowed in part, the Plaintiffs submit that there should be no order as to costs. I agree. On SIC/SUM 42/2018, which was the Plaintiffs' application to amend their Statement of Claim (Amendment No. 2) and Reply (Amendment No. 1), the amendments were allowed. The Plaintiffs submit that they should have their costs of the summons. I disagree. The Plaintiffs were seeking the court's indulgence. Conventionally, they should pay the costs of and occasioned by their amendment. However, the Defendants having resisted, it seems to me that the most appropriate order would be no order as to costs. The Plaintiffs claim the costs of the Defendants' application to strike out parts of Dr Walford's expert report. I made no striking-out order. But that was on the basis that the issues arising from the impugned parts of Dr Walford's report could more properly be canvassed at the trial. The costs of the striking-out application should thus effectively be treated as being in the cause. The Defendants having prevailed in the action, the costs of the striking-out application should go to the Defendants.

19 The result of the foregoing analysis is that there is nothing to be set-off against the Defendants' costs.

Miscellaneous

20 In their cost submissions, the Defendants ask for "an order that the Plaintiffs not be allowed to bring any other action or claim in respect of the same subject-matter as the Withdrawn Claims (whether in Singapore or any other jurisdiction)". By the "Withdrawn Claims," the Defendants refer to the allegations of fraudulent misrepresentation and undue influence which the Plaintiffs withdrew by notice to the Defendants on 22 March 2019. In my view, it would not be appropriate to make the order sought by the Defendants. It is unclear, for example, how such an order can be enforced against the Plaintiffs who are not resident in Singapore. More pertinently, in the event (if at all) any such claim as described by the Defendants is brought before some court by the Plaintiffs in the future, it would be for that court to determine whether the claim is barred by laches or constitutes an abuse of process on the basis of issue estoppel, *res judicata* or analogous doctrines. The Defendants' application is consequently refused.

Conclusion

21 The Plaintiffs are to bear the Defendants' legal fees of S$1,100,000 and disbursements of

S$113,177.12, £178,672.23, AED88,844.73, and US$4,336.83. Simple interest at 5.33% per annum is to run on all such amounts from the date of this Judgment until payment by the Plaintiffs.