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

[2022] SGHC 26

Suit No 732 of 2016

Between

EFG Bank AG, Singapore Branch

… *Plaintiff*

And

(1) Surewin Worldwide Ltd
(2) Singfor Life Insurance Co Ltd
(3) EFG Wealth Solutions (Singapore) Ltd

… *Defendants*

JUDGMENT

[Civil Procedure] — [Costs]

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v
Surewin Worldwide Ltd and others

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10, 20 December 2021

31 January 2022 Judgment reserved.

Vinodh Coomaraswamy J:

Introduction

1 In *EFG Bank AG, Singapore Branch v Surewin Worldwide* [2021] SGHC 227 ("*EFG v Surewin*"), I upheld the plaintiff's security interest in what is now a fund of US$194m which the third defendant holds as trustee for the second defendant. This judgment deals with the costs of the action. This judgment should be read together with my judgment in *EFG v Surewin*.

2 The plaintiff, the second defendant and the third defendant have, following my decision in *EFG v Surewin* and pursuant to my directions, filed principal and reply submissions on the costs of the action. The first defendant is defunct. It took no part in this action and has filed no submissions on costs.

3 I deal first with the plaintiff's submissions on costs before turning to the third defendant's submissions on costs.

The plaintiff's submissions

4 Four points of principle are common ground as between the plaintiff and the second defendant in relation to the costs of this action. First, the event in this action went against the second defendant and in favour of the plaintiff. As such, it is the second defendant who is liable to pay the costs of this action to the plaintiff. Second, those costs should be assessed on the standard basis, not the indemnity basis. Third, those costs should be fixed by the court rather than taxed. Fourth, this is a case of sufficient complexity to warrant a departure from the Costs Guidelines in Appendix G of the Supreme Court Practice Directions ("Appendix G").

5 Even if those four points of principle were been common ground, I would have arrived at them as my findings.

6 Beyond these four points of principle, however, there is little agreement between the plaintiff and the second defendant, whether on principle or on quantum.

7 The plaintiff's submission on costs is as follows. The second defendant should pay the plaintiff's costs in full. This is because it cannot be said that the plaintiff raised any issues in this action which unnecessarily or unreasonably protracted these proceedings. A reasonable amount for all costs which the plaintiff reasonably incurred in this action is $588,500. A reasonable amount

for all disbursements which the plaintiff reasonably incurred in this action is a sum just over $1.7m.

8 I consider the plaintiff's case on costs separately from its case on the disbursements.

Costs

9 The starting point for the plaintiff's claim of $588,500 for costs is the figure of $555,000 which it set out in its costs schedule. That is the figure which the plaintiff disclosed to the second defendant and to the court, before it knew the event in this action, as the figure which the plaintiff would consider a reasonable amount for costs reasonably incurred if it were to succeed.

10 To arrive at the figure of $585,000 which it now claims, the plaintiff adds the following two figures to its starting point of $555,000: (a) $13,500 for costs in interlocutory matters where the court ordered the costs to be in the cause; and (b) $20,000 for work done after the plaintiff filed its costs schedule.

11 I take these three figures in turn.

$555,000 for work done up to filing the costs schedule

12 To assess the reasonableness of the $555,000 which the plaintiff claims in its costs schedule for all work done up to that date, I take three other figures into consideration.

13 First, I take the amount at stake in this action, which was US$194m. This figure is doubly relevant. Generally, the greater the amount at stake, the greater the importance of the dispute to the parties. And the greater the importance of the dispute to the parties, the greater the time, labour and costs which each party

can reasonably be expected to expend in order to secure victory, given natural human inclinations. The amount at stake is also relevant to the criterion of proportionality. The sum claimed of $555,000 is a little over 0.2% of the amount at stake. That sum is, quite plainly, not disproportionate to the amount at stake. But that does not get the plaintiff home. The principle of proportionality does not mean that the court will allow costs as claimed so long as the claim does not exceed some arbitrary proportion of the amount at stake. The touchstone for the recoverability of costs is always reasonableness. Costs which are disproportionate to the amount at stake will, by definition, be unreasonably large compared to the amount at stake and will be disallowed. Costs which are proportionate to the amount at stake may still have been unreasonably incurred and could yet be disallowed.

14 Second, I take the maximum figure which the plaintiff would recover if this were not a case which warranted a departure from Appendix G. That is because, even in a case which warrants such a departure, the extent of the departure remains a relevant consideration. For this purpose, I classify this case as an equity and trusts claim, as the second defendant does, and not a commercial claim. I further accept the second defendant's submission that two of the days of trial which the plaintiff and the third defendant have counted as full days of trial were in fact half days. The number of days of trial were therefore 11 days and not 12 days. The most complex equity and trusts claim in which the court declined to depart from Appendix G and which culminated in an 11-day trial would yield a figure of $301,000 by way of costs to the successful party. The plaintiff's claim of $582,500 is just over 190% of that maximum figure.

15 I consider the extent of that variance to be reasonable, bearing in mind the complexity of this case and the novelty of the issues which it gave rise to.

This action raised novel and complex issues of Taiwanese law and Jersey law as well of Singapore law, particularly on the issue of foreign illegality in light of *Teng Wen-Chung v EFG* [2018] 2 SLR 1145. This action also raised the issue of whether a Taiwanese arbitration award can give rise to an issue estoppel under Singapore law. That issue in turn required the parties to analyse not just the Taiwanese Award but also the effect of the Taiwanese court's decision to uphold the award and the Hong Kong court's decision to decline to enforce the award. Further, as the plaintiff points out, the documents in this action were voluminous, requiring much time and labour to be expended. The agreed bundle of documents spanned over 60 volumes and over 35,000 pages.

16 Third, I take the figure of $700,000 which the second defendant set out in its costs schedule as the quantum which the second defendant would consider a reasonable amount for costs which it reasonably incurred in defending this action if it had succeeded. The nature of this action is such that both pursuing the claim and defending the claim involved broadly the same amount of time, labour, care and attention. By comparison to the second defendant's figure of $700,000, the costs which the plaintiff claims appear reasonable also.

17 The second defendant submits, however, that it should have to pay the plaintiff only 50% of the costs which the plaintiff claims. The basis for this submission is that the plaintiff chose to contest a number of issues in the action on which the plaintiff lost and the second defendant won. I therefore find it necessary to look a little deeper into the issues in this action.

18 There were three broad issues in this action: (a) whether the Taiwanese Award gave rise to an issue estoppel; (b) whether EFG took its security interest under the SFIP-1 Pledge subject to the second defendant's beneficial interest in the charged assets; and (c) whether the SFIP-1 Pledge was illegal and therefore

unenforceable under Taiwanese law. I found in favour of the plaintiff on each of these three broad issues.

19 The second defendant submits that each of these broad issues in fact contained within it a number of subsidiary issues, all of which I determined against the plaintiff and in favour of the second defendant, *eg*:

(a) Whether cl 2.10(e) of the Trust Deed and Volaw's resolution dated 7 March 2008 amounted to the second defendant's prior consent in writing to the SFIP-1 Pledge for the purposes of cl 8.2.16 read with cl 17.1 of the Trust Deed.

(b) Whether cl 9.3 of the Trust Deed and Article 55 of the Trusts (Jersey) Law had the effect of leaving the plaintiff's rights under the SFIP-1 Pledge unaffected.

(c) Whether the SFIP-1 Unit Trust violated Article 146-4 of the TIA.

(d) Whether Mr Teng had actual authority to subscribe for units in the SFIP-1 Unit Trust under Taiwanese law.

(e) Whether Mr Teng had apparent authority to consent to the SFIP-1 Pledge by virtue of the Account Opening Booklet and the minutes of a board resolution apparently passed at a board meeting on 30 January 2008.

20 Because the plaintiff lost on all of these subsidiary issues, despite succeeding on all of the three broad issues, the second defendant submits that I should exercise my discretion under O 59 r 6A of the Rules of Court (2014 Rev Ed) to deprive the plaintiff of 50% of the costs of $555,000 which it claims and

which I have thus far found to be a reasonable amount for costs reasonably incurred.

21 I do not accept the second defendant's submission. Order 59 r 6A of the Rules of Court does not entitle the second defendant to divide each of the three broad issues in this action – on all of which the plaintiff succeeded – into a number of subsidiary issues, with each subsidiary issue becoming an event in itself for the purposes of awarding costs. In other words, simply failing on a subsidiary issue is not sufficient to engage the discretion under O 59 r 6A to depart from the usual rule that costs follow the event and to deprive the successful party in the overall litigation of the costs of that subsidiary issue.

22 Order 59 r 6A is engaged only if the successful party fails on a particular subsidiary issue *and* "has thereby unnecessarily or unreasonably protracted, or added to the costs or complexity of the proceedings…". The discretion under O 59 r 6A of the Rules of Court is not enlivened simply because a successful party has failed on a subsidiary issue. The touchstone continues to be the successful party's reasonableness in taking the position it did on the subsidiary issue: *Tullio Planeta v Maoro Andrea G* [1994] 2 SLR(R) 501 at [24]; *Element Six Technologies Ltd v IIa Technologies Pte Ltd* [2020] SGHC 140 at [30]. Each of the subsidiary issues which the plaintiff raised in this action and failed upon was at least arguable. Each subsidiary issue had at least *some* prospects of success. I therefore cannot say that the plaintiff raised any of these subsidiary issues unreasonably, particularly bearing mind the amount at stake and the natural desire, as a result, to take all arguable points.

23 I therefore allow the plaintiff's claimed costs in full at **$555,000**.

$13,500 for interlocutory matters for which costs were ordered to be in the cause

24 The plaintiff initially claimed $13,500 for a number of interlocutory applications for which costs were ordered to be in the cause. Having taken into consideration the second defendant's costs submissions, the plaintiff dropped one interlocutory application and reduced this claim to $13,000. I allow this claim in full. A description of those applications, and my decision on them, is as follows.

(1) HC/SUM 515/2018

25 This was the plaintiff's application to renew the writ of summons. I allow the plaintiff **$2,000** for this application as claimed. The plaintiff incurred these costs because the second defendant succeeded in setting aside the plaintiff's initial service of the writ on the second defendant in Taiwan. The order setting aside service was made expressly on certain conditions which allowed the plaintiff to re-serve the writ. Those conditions were satisfied. However, because the second defendant filed its setting aside application after the writ had expired for service, the plaintiff had to apply to renew the writ before it could re-serve. These costs are reasonable in amount and were reasonably incurred.

(2) HC/SUM 1652/2018

26 This was the plaintiff's application to seal the court file in view of the references in it to the Taiwanese Award. I allow the plaintiff **$2,500** for this application as claimed. The arbitration which gave rise to the award was commenced by the second defendant against the plaintiff. Both parties were therefore bound to maintain the confidentiality of that award. These costs are reasonable in amount and were reasonably incurred.

(3) HC/SUM 2241/2018

27 This was the plaintiff's application to amend the pleadings in this action following its successful application to join the third defendant. I allow the plaintiff **$3,000** for this application as claimed. Insofar as these amendments related to the joinder of the third defendant, the joinder was necessitated by the second defendant's successful application to set aside service. Insofar as the amendments went beyond that and dealt with the Taiwanese Arbitration, the second defendant does not suggest that those amendments were unreasonable or unnecessary. These costs are reasonable in amount and were reasonably incurred.

(4) HC/SUM 2765/2018

28 This was the plaintiff's application for leave to serve the writ of summons out of the jurisdiction. I allow the plaintiff **$3,000** for this application as claimed. The second defendant has left the quantum of the costs for this application to the court. These costs are reasonable in amount and were reasonably incurred.

(5) HC/SUM 429/2020, HC/SUM3336/2020 & HC/SUM3395/2020

29 These were three applications for the second defendant's and the plaintiff's witnesses give evidence at trial by video link. I allow the plaintiff **$2,500** for these three applications as claimed. The second defendant has left the quantum of the costs for these three applications to the court. These costs are reasonable in amount and were reasonably incurred.

$20,000 for work done after filing the plaintiff's costs schedule

30 I consider this sum also to be a reasonable amount for costs reasonably incurred. The work which the plaintiff's solicitors did after filing the plaintiff's costs schedule was to file affidavits and two sets of written submissions in relation to the effect of the certain post-submission decisions in Hong Kong and Taiwan on the status of the Taiwanese Award for the purposes of the issue estoppel argument. The parties filed these written submissions in order to comply with my directions dated 21 December 2020 and 6 January 2021. The sum claimed of $20,000 is, in all the circumstances, a reasonable amount for costs reasonably incurred.

31 I now turn to consider the plaintiff' claim for disbursements incurred in this action.

Disbursements

32 The plaintiff claims just over $1.7m in disbursements. Of this, almost $1.6m is for the plaintiff's experts' fees:

(a) The plaintiff claims US$68,400 for the fees of Professor Huang, the plaintiff's expert on Taiwanese law;

(b) The plaintiff claims £196,225.03 for the fees of Mr Gleeson, the plaintiff's expert on Jersey law;

(c) The plaintiff claims US$475,605.28 for the fees of Mr Mark, the plaintiff's expert on banking law; and

(d) The plaintiff claims £276,388.02 for the fees of Ms Melis, the plaintiff's expert on banking law.

33 The plaintiff claims that all of these sums are reasonable fees for expert witnesses who were reasonably engaged. The second defendant submits that some of these fees were unreasonably incurred and that all of the fees are excessive in quantum. I agree with the second defendant.

34 As the second defendant points out, I did not accept the expert evidence of Professor Huang and Mr Green on a number of issues, on which I preferred the expert evidence of the second defendant's expert. Further, the plaintiff's experts' fees are consistently higher than the equivalent expert called by the second defendant. That is, of course, only a qualitative indication of the reasonableness of the plaintiff's experts' fees. I also accept the second defendant's submission that: (a) there was no need for the plaintiff to have called two banking experts; and (b) a large part of the banking expert's evidence was either not directly relevant to the issues in this action or overlapped with the other banking expert's evidence.

35 Viewing matters in the round, I consider that the sums claimed by the plaintiff for the fees of its expert witnesses were unreasonably incurred as to 30%. I therefore allow the plaintiff's claim for the fees of each expert witness only to the extent of 70% of the sum claimed.

36 As for the remainder of the disbursements which the plaintiff claims, I consider that they are all reasonable amounts for disbursements reasonably incurred. To the extent that the plaintiff had to engage solicitors in other jurisdictions to invigilate witnesses who were giving evidence by video link, I consider that those costs were reasonably incurred, even in respect of the plaintiff's own witnesses. The pandemic has made it difficult if not impossible to continue the usual practice of sending a lawyer from the plaintiff's solicitors

in Singapore to the foreign location to invigilate that testimony. It was not unreasonable to engage foreign solicitors for that purpose.

The third defendant's submissions

37 It is common ground, as between the second defendant and the third defendant, that any costs payable to the third defendant should be assessed on the standard basis, not the indemnity basis, and should be fixed by the court rather than taxed.

38 The third defendant's position on costs is as follows. The second defendant should pay the third defendant its costs of this action because the third defendant advanced a positive case on the validity of the SFIP-1 Pledge which the court accepted. A reasonable amount for the costs reasonably incurred by the third defendant is $380,000 for costs and just under $300,000 for disbursements. The third defendant also claims the costs of its application for leave for its witness to give evidence by video link.

39 In my view, the third defendant is not entitled to recover the costs and disbursements it expended in this action from any party. It is true that I upheld the SFIP-1 Pledge in my judgment. And in that sense, the positive case which the third defendant advanced in this action succeeded. But there was no necessity whatsoever for the third defendant to advance that positive case. The third defendant was joined to this action simply because, as the trustee of the SFIP-1 Unit Trust, it is the legal owner of the assets subject to the SFIP-1 Pledge. It was therefore necessary for the parties and the court to ensure that the third defendant would be bound by the court's judgment on the validity of the SFIP-1 Pledge, whichever way that judgment went. The important point, however, is that neither the plaintiff nor the second defendant sought any

substantive relief against the third defendant. Therefore, the plaintiff's success would not have diminished the third defendant's liabilities. And the second defendant's success would not have increased the third defendant's liabilities. All of the authorities which the third defendant cites to support its claim for costs against the second defendant can be distinguished on that basis.

40 As the second defendant submits, once joined, the third defendant could simply have informed the court that: (a) it was a neutral party on all of the issues before the court; (b) that it would abide by any order the court might make as regards the validity of the SFIP-1 Pledge; and (c) that it would take no further part in the proceedings. The third defendant's legal and economic interests would not have been prejudiced in any way by taking that stance. But the third defendant did not to do that. The third defendant chose to advance a positive case. It was not compelled to advance that case in order to protect its own legal or economic interests. It did so entirely voluntarily. To that extent, the third defendant behaved unreasonably. The third defendant cannot cast on to the second defendant the costs which the third defendant incurred thereby.

41 None of this is intended as criticism of third defendant's counsel or legal team. They presented the positive case which they were instructed to advance entirely reasonably and with due economy, bearing in mind that the plaintiff was doing the heavy lifting on that case in its own interest. What leads me to disallow the third defendant's costs is not that the costs are unreasonable in amount but that the third defendant incurred the costs entirely voluntarily, and therefore unreasonably.

Conclusion

42 In summary, I hold as follows:

(a) The second defendant shall pay to the plaintiff its costs of and incidental to this action in the sum of $588,000 as claimed;

(b) The second defendant shall pay to the plaintiff its disbursements of and incidental to this action as claimed, save only that the second defendant shall pay to the plaintiff only 70% of the fees which the plaintiff claims in respect of each of its expert witnesses; and

(c) The third defendant shall not be entitled to recover any of its costs or disbursements of or incidental to this action from the second defendant.

Vinodh Coomaraswamy
Judge of the High Court

Alvin Yeo SC, Chou Sean Yu, Lionel Leo, Yu Kanghao, Alvin Tan, Dennis Saw and Daryl Kwok (WongPartnership LLP) for the plaintiff;
William Ong, Fay Fong, Melissa Mak, Wong Pei Ting and Dion Loy (Allen & Gledhill LLP) for the second defendant;
Chew Kei-Jin, Stephanie Tan and Lee Ji En (Ascendant Legal LLC) for the third defendant;
The first defendant absent and unrepresented.