



SUCCESSFULLY RESISTED A SECURITY FOR COSTS APPLICATION

Work Highlight

Our Partners, **Chuck Siew Ka Wai** and **Tan Soo Yew** had successfully represented the Plaintiff, a Singapore global provider for a subsea solutions company, in resisting a security for costs application made by the Defendant. The Defendant sought to apply for a Security for Costs (“SFC”) amounting to RM500,000.00 in the High Court of Malaya in Shah Alam.

Allegations raised by the Defendant to support the application are, among other things:

- The Plaintiff is a foreign company that is not registered under the Companies Commission of Malaysia;
- The Plaintiff would not be able to enforce its judgment as the Plaintiff is a foreign company, having no assets within Malaysia; and
- Doubt as to the Plaintiff's ability to pay for costs in the event the Plaintiff's claim is dismissed whilst the Defendant's counterclaim is allowed.

The High Court disagreed with the Defendant's position. In rejecting the Defendant's application for Security for Costs, the High Court agreed with our submissions and reaffirmed the position that SFC ought not be allowed if the Defendant's counterclaim raises essentially the same issue with its defence against the Plaintiff's claim. The submissions advanced are as follows:

- The Defendant's defence against the Plaintiff's claim for the payment of work done rests upon the same issues in the counterclaim (i.e. that the work was purportedly not satisfactorily completed by the Plaintiff). As such, the costs that the Defendant is incurring to defend themselves are equally the same as the costs for the Defendant to prosecute their counterclaim. This factor alone warrants a dismissal of the Defendant's SFC Application (see ***Berjaya Air Sdn Bhd & Anor v Malaysia Airports Sdn Bhd & Anor* [2023] MLJU 1999** at [46]).
- The Defendant's concerns that it would not be able to enforce its judgment in Malaysia as the Plaintiff has no assets within Malaysia is superfluous as there exists reciprocal enforcement of judgments between Singapore and Malaysia, enabling the Defendant to enforce its judgment in Singapore. (see ***Pacific Bunkers Pte Ltd v Owners of the Ships Or Vessels Geniki Sarawak & Anor (No 1)* [2015] MLJU 0136**). See also **Section 4 of the Singapore's Reciprocal Enforcement of Foreign Judgments Act 1959 read together with section 2(1) and the Schedule of the Reciprocal Enforcement of Foreign Judgments (United Kingdom and the Commonwealth) Order 2023**.
- The Defendant's doubts on the Plaintiff's ability to pay for costs are without merit as the Defendant bears the burden of proving that the Plaintiff is impecunious / insolvent, and no such evidence was led by the Defendant by way of affidavits (see ***Dirijohan Sdn Bhd v Multazam Development Sdn Bhd & Ors* [2020] MLJU 1429**).

This decision reaffirms the guiding principle governing the Court's exercise of discretion in awarding security for costs, that the application must be made *bona fide* for a security, and not as a tactical move intending to stifle the Plaintiff's claim to benefit/advance the Defendant's case.

For more insights into the areas of law discussed by the judgment, please contact our Partners:

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