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

**[2021] SGHC 69**

Suit No 990 of 2020 (Registrar's Appeal No 11 of 2021)

Between

CJY

… *Plaintiff*

And

CJZ and others

… *Defendants*

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# GROUNDS OF DECISION

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[Arbitration] — [Stay of court proceedings]

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## [2021] SGHC 69

General Division of the High Court — Suit No 990 of 2020 (Registrar's Appeal No 11 of 2021)
Andre Maniam JC
5 February 2021

26 March 2021

**Andre Maniam JC:**

**Introduction**

1 Where an arbitration is underway between a contractor and an employer, should the contractor be allowed to pursue parallel proceedings in court about matters that are in issue in the arbitration – against the employer's head of finance, the quantity surveyors, and the architects? Or should the court proceedings be stayed until the determination of the arbitration?

2 In the present case, a stay was granted by a senior assistant registrar ("the Registrar") on the application of the 1st defendant in HC/SUM 4854/2020 ("Summons 4854"), and I upheld the Registrar's decision on appeal. The plaintiff has appealed against my decision, and these are my full grounds of decision.

3 To preserve the confidentiality of the arbitration, parties' names and identifying details have been anonymised.

## Background

### *The project*

4 The "Employer" engaged the plaintiff, a construction company, for a construction project ("the Project") under a contract which provided for disputes between them to be resolved in arbitration ("the Arbitration Agreement").[1]

5 In connection with the Project, the Employer obtained three performance bonds – two from the plaintiff, and a third from a subcontractor of the plaintiff (collectively, the "Performance Bonds").

6 All the defendants in this suit were involved in the Project:

(a) the 1st defendant is the Employer's country manager of Singapore, and regional head of finance;[2]

(b) the 2nd defendant is the Project's quantity surveyor, and a representative of the 3rd defendant, a quantity surveying company engaged by the Employer for the Project (I will refer to the 2nd and 3rd defendants collectively, as the "Quantity Surveyors");[3]

(c) the 4th defendant, an architect, is the qualified person for the Project, and a representative of the 5th defendant architectural firm

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1 1st Affidavit of the 1st defendant ("1D's 1st Affidavit") at paras 15–16.

2 1D's 1st Affidavit at para 6(b).

3 1D's 1st Affidavit at paras 6(c)–(d).

engaged for the Project (I will refer to the 4th and 5th defendants collectively, as the "Architects").

***The schedule of defects***

7 On 28 April 2017, the Architects issued a schedule of defects (the "SOD") to the plaintiff,[4] which has since become the subject of:

(a) arbitration between the plaintiff and the Employer; and

(b) the suit between the plaintiff and the defendants.

***The Employer's calls on the Performance Bonds***

8 On 18 May 2017, having regard to the SOD and the estimated costs of rectifying those defects, the Employer called on the Performance Bonds (the "Calls"), and received payment thereunder.[5]

9 On 9 June 2017, the Architect issued an architect's direction to which the SOD was appended.[6]

10 The plaintiff tried but failed to recover the sums which the Employer had received from the Performance Bonds, through adjudication and High Court proceedings between them. An appeal was then filed by the plaintiff to the Court

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4 1D's 1st Affidavit at para 8; Employer's Statement of Defence and Counterclaim in Arbitration ("Arbitration D&CC") at paras 17(a) and 77–78, and Appendix C in 1D's 1st Affidavit at pp 137–138, 155, and 180; Plaintiff's Reply and Defence to Counterclaim in Arbitration ("Arbitration Reply") at paras 13(g) and (j) in 1D's 1st Affidavit at pp 261–262; Plaintiff's Statement of Claim ("SOC") at paras 27–28.

5 1D's 1st Affidavit at para 10; Plaintiff's Affidavit at para 36.

6 1D's 1st Affidavit at para 11.

of Appeal,[7] but a settlement was reached between the plaintiff and the Employer on 14 May 2018 (the "Settlement") and the appeal was withdrawn.[8]

***The Arbitration***

11 On 31 January 2018, the plaintiff commenced arbitration against the Employer (the "Arbitration").[9] The plaintiff's Notice of Arbitration, addressed to the Employer as respondent, was marked for the attention of the 1st defendant and another (both of whom were named as the Employer's contact persons in the section on "details of the parties").[10]

12 The plaintiff filed its Statement of Case in the Arbitration ("Arbitration SOC") on 13 July 2018,[11] after the Settlement was reached with the Employer on 14 May 2018. The plaintiff named the 2nd to 5th defendants among the "other parties involved in [the] Project".[12] The plaintiff asserted that the Calls were wrongful, and sought payment of interest on the sum in question for a certain period.[13] Specifically, the plaintiff claimed $460,405.40, or such other sum as may be reasonably assessed and determined by the tribunal.[14]

13 In its Defence and Counterclaim in the Arbitration ("Arbitration D&CC") filed on 24 August 2018,[15] the Employer asserted that the plaintiff

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7 1D's 1st Affidavit at para 12.

8 1D's 1st Affidavit at para 13.

9 1D's 1st Affidavit at para 14.

10 Notice of Arbitration at p 2 in 1D's 1st Affidavit at p 23.

11 Arbitration SOC in 1D's 1st Affidavit at p 31.

12 Arbitration SOC at para 4 in 1D's 1st Affidavit at p 32.

13 Arbitration SOC at para 56 in 1D's 1st Affidavit at p 55.

14 Arbitration SOC at para 60(g) in 1D's 1st Affidavit at p 58.

15 Arbitration D&CC in 1D's 1st Affidavit at p 127.

could not pursue its claim about the Calls because of the Settlement.[16] The Employer also said that the Calls were justified because of the *defects*, particularly those in the SOD.[17] The Employer counterclaimed for the cost of rectifying the outstanding defects, including new defects discovered since the SOD was issued.[18]

14 The plaintiff, in its Reply and Defence to Counterclaim in the Arbitration ("Arbitration Reply") dated 30 November 2018, disputed the Employer's assertions regarding defects and rectification costs, and maintained that the Employer's Calls were wrongful, indeed fraudulent.[19]

15 In the Arbitration, the issues between the plaintiff and the Employer thus included:

(a) whether the Employer's Calls were wrongful; and

(b) whether the plaintiff was responsible for the defects in the SOD, and associated rectification costs.

***The Suit***

16 On 14 October 2020, the plaintiff commenced the present suit against the defendants (the "Suit").

17 The plaintiff asserted that:

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16 Arbitration D&CC at paras 27(a)–(b) and (g) in 1D's 1st Affidavit at pp 140–141.

17 Arbitration D&CC at paras 17(f) and 20(b) in 1D's 1st Affidavit at pp 138–139.

18 Arbitration D&CC at paras 74–81 in 1D's 1st Affidavit at pp 153–155.

19 Arbitration Reply at paras 13, 17(d) and 35–36 in 1D's 1st Affidavit at pp 260–263, 265 and 275–276.

(a) the defendants were responsible for the SOD being issued in bad faith and with the intention to cause the plaintiff loss and damage;[20]

(b) the defendants had fabricated and inflated the cost of rectification of defects;[21] and

(c) the defendants had colluded and conspired to cause the Employer to make the Calls wrongfully.[22]

18 The plaintiff raised various tortious claims against the defendants: conspiracy;[23] breach of duties allegedly owed to the plaintiff;[24] deceit;[25] and unlawful interference with trade and/or contractual relations.[26] The plaintiff claimed damages to be assessed, interest, costs, and further or other relief.

19 The following issues were thus common between the Arbitration and the Suit:

(a) whether the Employer's Calls were wrongful; and

(b) whether the plaintiff was responsible for the defects in the SOD, and associated rectification costs.

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20 SOC at paras 27–28 and 30.

21 SOC at paras 52(c), (h), (j) and (k).

22 SOC at paras 52(e)–(i).

23 SOC at paras 52–61.

24 SOC at paras 62–67.

25 SOC at paras 68–72.

26 SOC at paras 73–78.

**Should the Suit be allowed to proceed in parallel with the Arbitration?**

***Principles relating to case management stays***

20 Where there are overlapping (or potentially overlapping) court and arbitration proceedings, the court may exercise its case management powers to ensure the efficient and fair resolution of the dispute as a whole: *Tomolugen Holdings Ltd and another v Silica Investors Ltd and other appeals* [2016] 1 SLR 373 ("*Tomolugen*") at [186]–[190]; *Rex International Holding Ltd and another v Gulf Hibiscus Ltd* [2019] 2 SLR 682 ("*Rex*") at [11] and [16].[27]

21 In doing so, the court will consider the extent and nature of overlap between the arbitration and the suit, in terms of the *parties*, the *issues*, and the *remedies*: *Rex* at [11].

***Overlap in parties***

22 There was some overlap in parties: the claimant in the Arbitration is the plaintiff in the Suit. Moreover, the defendants were all involved in the Project. The Notice of Arbitration was marked for the 1st defendant's attention, and she was named in it as one of the Employer's contact persons; all the other defendants were named as persons involved in the Project by the plaintiff in its Arbitration SOC.[28] Given that the defendants were all involved with the issuance of the SOD, the estimated rectification costs, and the Calls, one would also expect them to be involved in resolving the disputes over these matters.

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27 Plaintiff's Written Submissions ("PWS") at para 36; 1st Defendant's Written Submissions ("1DWS") at para 30.

28 Arbitration SOC at para 4 in 1D's 1st Affidavit at para 32.

***Overlap in issues***

23 There was some overlap in issues: indeed, there was considerable overlap – see [19] above.

24 Crucially, all of the plaintiff's causes of action in the Suit had *damage* as an element, and this was not disputed in the course of argument.[29] Damage was duly pleaded in relation to each of the plaintiff's causes of action; specifically, the plaintiff pleaded that the Calls had caused it damage.[30]

25 The Employer's position in the Arbitration is: the plaintiff cannot claim about the Calls because of the Settlement between them; in any event, the Calls were justified (see [13] above).

26 Whether the Employer's Calls were wrongful, and whether it is open to the plaintiff to assert that, are matters that cannot properly be decided in the absence of the Employer. It would not, however, be appropriate to join the Employer as a party to the Suit, because the plaintiff and the Employer have agreed to resolve such disputes in arbitration (see [4] above). Indeed, the resolution of those disputes is presently underway in arbitration, as it has been for more than two years before the plaintiff started the present suit (see [11]–[16] above).

27 The plaintiff contended that the issues of defects are different between the Suit and the Arbitration, and so there is no overlap between the two sets of proceedings.[31] I rejected this.

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29 Notes of Argument, 5 February 2021, p 9 line 9 to p 10 line 2.

30 SOC at paras 52–53, 57, 68 and 74.

31 PWS at paras 44–60.

28 First, even if the issues of defects were different, whether the Calls were wrongful would remain a common issue.

29 Second, the Employer contends that the Calls are justified because of the defects (in particular, those in the SOD) and associated rectification costs.[32] Thus, in the context of justifying the Calls – whether in the Arbitration or in the Suit – the issues of defects are *the same*. The plaintiff argued that the SOD is no longer relevant in the Arbitration, because the Employer has since produced a Defects Scott Schedule ("DSS"), with amendments and revisions thereto.[33] That contention was plainly incorrect. The Employer continues to rely on the defects known *at the time of the Calls* (for which the SOD was the most current defects list) to justify the Calls.

30 Third, the correspondence in the Arbitration did not support the plaintiff's contention that the SOD has become irrelevant. After the Employer produced the DSS, the plaintiff's counsel, in a letter dated 1 February 2019, sought to characterise it as having been directed by the tribunal in lieu of an order for particulars of paragraph 78 and Appendix C of the Arbitration D&CC (which contained the SOD). The plaintiff's counsel stated, "the DSS does not relate and/or make reference to the [alleged defects] listed in Appendix C of the [Arbitration D&CC]. There also appears [*sic*] to be several defects in the DSS which were not contained in [the Arbitration D&CC]".[34] The plaintiff's counsel asserted, "[t]he [Employer] should not be amending and/or expanding its Counterclaim by including items that deviate from its pleaded case".[35] The

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32 Arbitration D&CC at para 20 in 1D's 1st Affidavit at p 139;

33 Plaintiff's Affidavit at para 62; 2nd Affidavit of the 1st defendant ("1D's 2nd Affidavit") at paras 8–16.

34 1D's 2nd Affidavit at p 500.

35 1D's 2nd Affidavit at p 500.

plaintiff's counsel thus sought to hold the Employer to its originally pleaded case on defects, *ie*, defects as specified in the SOD.

31 The Employer's counsel replied in a letter dated 1 February 2019, disagreeing that the Employer was limited to the defects listed in the SOD, and stated that "the DSS was intended to be a practical solution to ensure that *all alleged defects in issue* would be comprehensively addressed", and that "[a]ccordingly, the [Employer] was not bound to *only* reference the defects which were included in the [Arbitration D&CC]" [emphasis added].[36] Thus, in preparing the DSS, the Employer sought to "set out all alleged defective work '*to date*', which would '*stand as*' [the Employer's] pleadings in relation to its claim for defects" [emphasis in original].[37]

32 On 7 February 2019, the tribunal responded to say that the Employer's position was correct: the tribunal's directions "were meant to be a practical solution to ensure that *all defects* complained of by the [Employer] up to the date of the pleadings, be comprehensively dealt with. The [Employer] is not limited by the defects set out in [the Arbitration D&CC]" and further, "[t]he completed DSS with both parties' allegations and responses shall stand as pleadings in the [Arbitration]" [emphasis added].[38]

33 Far from indicating that the SOD had become irrelevant, the correspondence showed that the Employer was allowed to *add* to the defects listed in the SOD, to arrive at the DSS.

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36 1D's 2nd Affidavit at p 498.

37 1D's 2nd Affidavit at p 498.

38 1D's 2nd Affidavit at p 492.

34 Although the plaintiff's counsel had remarked in correspondence that the DSS did not relate and/or make reference to Appendix C of the Arbitration D&CC (*ie*, the SOD), that was in the context of an assertion that the DSS ought to be in the nature of particulars corresponding to the defects as listed in the Arbitration D&CC. The Employer did not agree, and evidently regarded itself as free to reorganise the list for the purpose of the DSS. The plaintiff's counsel's letter of 1 February 2019 ([30] above) provided no support for the plaintiff's contention that the SOD and the DSS are completely, or largely different. In particular, the plaintiff's counsel had written: "[t]here also appears [*sic*] to be *several* defects in the DSS which were not contained in [the Arbitration D&CC]" [emphasis added].[39] Indeed, if the two schedules of defects were entirely (or largely) different, the plaintiff's counsel would surely have said so, rather than just pointing to "several" defects in the DSS which appeared not to have been originally pleaded.

35 It was unlikely for the Employer to have abandoned all (or the vast majority) of the defects it had originally pleaded, and to put forward a different list altogether in the DSS. The fact that the 1st defendant's counsel had pointed to eight items of overlap by way of illustration, did not mean that that was the full extent of the overlap.[40] More fundamentally, it is properly for the tribunal, not the court, to undertake detailed scrutiny of the SOD and the DSS – at least at this stage.

36 In the Arbitration, it would be open to the plaintiff to attack the DSS by attacking the SOD. In turn, the SOD could be attacked by attacking the conduct

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39 1D's 2nd Affidavit at p 500.

40 1DWS at para 41.

of those involved in preparing it, *ie*, the defendants, as the plaintiff has sought to do in this Suit.

37 As reviewed above, the issues in the Suit relating to the Calls, the SOD, and the estimated rectification costs, were all issues in the Arbitration (or at least within the scope of the Arbitration Agreement).

***Overlap in remedies***

38 In both the Arbitration and the Suit, the plaintiff sought compensation for the Employer's allegedly wrongful Calls (which have their genesis in the allegedly false SOD, and fabricated and inflated rectification costs). In the Arbitration, the plaintiff has quantified its claim against the Employer, based on interest on the sum the Employer obtained from the Calls;[41] in the Suit, the plaintiff has more generally claimed damages to be assessed.[42] In substance, there is no difference.

39 The plaintiff argued that it might recover more from the defendants in the suit, than it might from the Employer in the Arbitration, because the tortious measure of damage would apply in the Suit, while the contractual measure of damage would apply in the Arbitration.[43] It was never properly articulated, though, what additional damages the plaintiff might recover from the defendants, beyond the compensation sought from the Employer in the Arbitration. Just pointing to different measures of damages is not meaningful,

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41 Arbitration SOC at para 59 in 1D's 1st Affidavit at p 56.

42 SOC at p 29.

43 PWS at paras 61–69.

if what can be (and has been) claimed is the same. Moreover, the plaintiff had in the Arbitration accused the Employer of acting fraudulently.[44]

40 Accordingly, there was an overlap in remedies: the remedies sought in the Suit, are also sought in the Arbitration.

***The whole suit should be stayed***

41 If the plaintiff were to fail in its claim in the Arbitration that the Employer's Calls were wrongful, that would be fatal to its claims in the Suit. The decision against the plaintiff in relation to the Calls would be final and binding; with leave of court, it could be enforced in the same manner as a judgment or an order of the court to the same effect (s 46(1) of the Arbitration Act (Cap 10, 2002 Rev Ed) ("the AA"), and indeed judgment could be entered in terms of the award (s 46(2) of the AA).

42 If the plaintiff failed in its claim in the Arbitration that the Employer's Calls were wrongful, it could not then procure the opposite outcome from the court, *ie*, a judgment (in the Employer's absence) that the Employer's Calls were wrongful. That would be an impermissible collateral attack on the arbitration award against the plaintiff (which might also become a court judgment in the same terms), and an abuse of process: see *Goh Nellie v Goh Lian Teck and others* [2007] 1 SLR(R) 453 at [21]–[22]; *Lim Geok Lin Andy v Yap Jin Meng Bryan and another appeal* [2017] 2 SLR 760 at [38]; *Ong Han Nam v Borneo Ventures Pte Ltd* [2021] SGCA 21 at [69]–[77].

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[44] Arbitration Reply at para 17(d) in 1D's 1st Affidavit at p 265.

43 For good measure, the 1st defendant agreed to be bound by the Arbitration.[45] This did not, however, satisfy the plaintiff; nor did the plaintiff offer likewise to be bound.[46] This was telling: it indicated that if the plaintiff were to lose the Arbitration, it intended nevertheless to try to snatch victory from the jaws of defeat by pressing on with the Suit. Indeed, the plaintiff might be hoping that it might *first* win the Suit, and then use that to influence the outcome of the Arbitration. It had, however, agreed with the Employer that the disputes which were in issue in the Suit, would be resolved in the Arbitration between them, and that Arbitration was underway ([26] above).

44 In *Tomolugen* ([20] *supra*), the Court of Appeal emphasised that the plaintiff's right to sue whoever he wants and where he wants, albeit a fundamental right, is not absolute (*Tomolugen* at [187]; *Rex* ([20] *supra*) at [9]). In appropriate cases, that right may be curtailed where it is necessary to prevent a plaintiff from circumventing the operation of an arbitration clause, holding him to his obligation to arbitrate where he has agreed to do so (*Tomolugen* at [188]). The basis for granting a stay of court proceedings the outcome of which depends on the resolution of a related arbitration stems not from the mere ***existence*** *of common issues*, but from the fact that proper ventilation of the issues in the court proceedings is ***dependent*** on the resolution of the related arbitration (*Rex* at [11]).

45 In this case, the plaintiff had agreed with the Employer to arbitrate disputes that included the common issues of the Calls, defects and rectification, and a stay of the Suit would hold the plaintiff to this agreement. This stay would be lifted upon the Arbitration being determined, and if the plaintiff succeeded

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45 Notes of Argument, 8 January 2021, p 26 lines 25–27.

46 Notes of Argument, 8 January 2021, p 27 lines 2–32 and p 28 lines 2–13.

in its claim in the Arbitration that the Employer's Calls were wrongful, the plaintiff could then proceed against the defendants in the Suit. As a practical matter, though, if the plaintiff received from the Employer what was awarded in relation to this claim, the plaintiff would not stand to recover any more by pressing on with the Suit.

46 The outcome of the Arbitration would either have the effect of resolving the Suit because it was dispositive of the common issues, or at least pave the way for the Suit to be resolved as between the parties. I have discussed the consequences of the plaintiff losing in the Arbitration, at [41]–[42] above. Conversely, if the plaintiff were to win in the Arbitration, it might not be open to the defendants (despite them not being parties to the Arbitration Agreement) to challenge any adverse finding from the Arbitration on the common issues – that may amount to an abuse of process, for it would be contrary to the stance of seeking a stay of the Suit pending the Arbitration (see *Tomolugen* ([20] *supra*) at [142] and [189(b)(iii)]). This was particularly so for the 1st defendant (the applicant for the stay). The 1st defendant implicitly accepted this, and at the hearing of Summons 4854 she readily agreed to be bound by the Arbitration (see [43] above).

47 The common issues in the present case fell within the scope of the plaintiff and the Employer's Arbitration Agreement, and their resolution in the Arbitration would be crucial to the eventual outcome of the Suit. A similar situation was also present in *Tomolugen*. Proceedings for relief under s 216 of the Companies Act (Cap 50, 2006 Rev Ed) had been commenced by the plaintiff against multiple defendants for alleged oppressive conduct against it as the minority shareholder of a company, of which the 2nd defendant was a shareholder. The plaintiff had acquired shares in that company from the 2nd defendant by way of a share sale agreement, which contained an arbitration

clause. The plaintiff advanced four distinct allegations, only one of which was within the scope of the arbitration clause – the "MP allegation" (see *Tomolugen* at [16]). Notwithstanding that, the Court held that the court proceedings in relation to the *three remaining allegations not falling within the scope of the arbitration clause were also to be stayed* pursuant to its inherent powers of case management if the plaintiff were to pursue the MP allegation against the 2nd defendant by arbitration (*Tomolugen* at [190(c)]).

48 In *Tomolugen*, the MP allegation would have been as dispositive of a finding of minority oppression as the three remaining allegations would, and it made no practical sense for the former to be proceeded with in arbitration *concurrently* with the latter three in court. Similarly, in this case, the common issues of the Calls, defects and rectification costs, are dispositive of the plaintiff's claims against the defendants in the Suit. It would not make practical sense for the same issues to *concurrently* be fought over – in arbitration, and in court. Instead, these common issues ought first to be resolved in the Arbitration (which has been underway for more than three years now), in accordance with the Arbitration Agreement between the plaintiff and the Employer. I was thus satisfied that "the proper ventilation of the issues in the court proceedings *depended* on the resolution of the related … arbitration" (*Rex* ([20] *supra*) at [11] [emphasis in original]) – that was what would ensure the efficient and fair resolution of the dispute as a whole.

49 The plaintiff contended that any overlap between the Arbitration and the Suit could be accommodated by bifurcating the suit into liability and quantum phases, and only staying the quantum phase.[47] That does not work. As mentioned above (at [24]), *damage* is an element of all the plaintiff's causes of

[47] PWS at para 68.

action in the Suit. Liability cannot be determined in the plaintiff's favour without a determination that the plaintiff has suffered damage: *Tan Woo Thian v PricewaterhouseCoopers Advisory Services Pte Ltd* [2021] SGCA 20 at [6]–[12]. The plaintiff cannot obtain interlocutory judgment for damages to be assessed by only focusing on the conduct and state of mind of the defendants, without resolving the issues of whether the Calls were wrongful, whether the SOD was false, and whether the estimated rectification costs were fabricated or inflated, and ultimately, whether the defendants have caused the plaintiff damage.

50 A stay of court proceedings pending the outcome of arbitration was also granted in *CKR Contract Services Pte Ltd v Asplenium Land Pte Ltd* [2020] 5 SLR 665 ("*CKR v Asplenium*"). More than a year after the plaintiff CKR had commenced arbitration against its employer Asplenium Land and while the arbitration was still pending, CKR sued Asplenium Land and eight other parties involved in the project. A stay application was brought by six of the nine defendants, which CKR resisted. After hearing arguments, a case management stay was granted by the Court (see *CKR v Asplenium* at [20]).

51 The plaintiff in the present case sought to distinguish *CKR v Asplenium* on the basis that in that case, there was a concession by CKR's counsel that if CKR succeeded in the arbitration, the suit would be discontinued (see *CKR v Asplenium* at [20]).[48] I saw that concession as simply acknowledging that CKR would be sensible and not press on with the suit, if it should obtain all the (overlapping) relief sought in the suit by winning the arbitration. The fact that no similar concession was given here, was not a good basis for distinguishing *CKR v Asplenium*. Nor was it a good reason for not staying the present Suit.

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[48] Notes of Argument, 5 February 2021, p 4 lines 15–17.

52 For the above reasons, I concluded that it would be appropriate to stay the Suit as a whole pending the determination of the Arbitration.

## Confidentiality

### *The plaintiff's oral application to expunge the 1st defendant's affidavits*

53 In the plaintiff's Notice of Appeal to the Court of Appeal dated 5 March 2021, the plaintiff has characterised my decision as encompassing "no order as to the expungement of the affidavits of the 1st Defendant dated 5 November 2020 and 29 December 2020, respectively".

54 That did not, however, feature in the Notice of Appeal for the appeal against the Registrar's decision, which I heard. That Notice of Appeal simply described the appeal as being against the Registrar's decision "[t]hat [the Suit] be stayed until the final determination of [the Arbitration] [and costs]".

55 The plaintiff had made an oral application at the hearing of Summons 4854 to expunge the 1st defendant's affidavits;49 The Registrar dismissed that oral application,50 and the plaintiff did not appeal against that decision.

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49 Notes of Argument, 8 January 2021, p 2 lines 13–31; p 3; p 4 lines 1–10.

50 Notes of Argument, 8 January 2021, p 12 lines 8–23.

***The 1st defendant's disclosures were justified***

56 In any event, I considered the plaintiff's confidentiality objection to be without merit.

57 The plaintiff contended that the stay application was procedurally deficient because it relied on confidential documents from the Arbitration without establishing that such disclosure was reasonably necessary.[51]

58 Our courts have accepted that the obligation of confidentiality in relation to arbitrations is not an absolute one. It has been recognised that disclosure is permissible "where it is reasonably necessary or where it is in the interests of justice": David St John Sutton & Judith Gill, *Russell on Arbitration* (Sweet & Maxwell, 22nd Ed, 2003) at para 5–198¸ quoted in *Myanma Yaung Chi Oo Co Ltd v Win Win Nu and another* [2003] 2 SLR(R) 547 at [9]. It has similarly been recognised that disclosure is permissible "where it is reasonably necessary for the protection of the legitimate interests of an arbitration party; [or] … where the interests of justice require disclosure, and also (perhaps) where the public interest requires disclosure" (*John Forster Emmott v Michael Wilson & Partners Ltd* [2008] 2 All ER (Comm) 193, *per* Lawrence Collins LJ at [107], quoted in *AAY and others v AAZ* [2011] 1 SLR 1093 at [64]).

59 The plaintiff contended that the exception for disclosures that are "reasonably necessary" applies only in the context of the protection of *an arbitration party's* legitimate interests.[52] The plaintiff thus accepted that the Employer could have made the disclosures which the 1st defendant did, if disclosure were reasonably necessary to protect the Employer's interests; but

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51 PWS at paras 5–29.

52 PWS at para 14.

the plaintiff argued that the 1st defendant herself could not do so.[53] I did not accept this. The 1st defendant was the Employer's head of finance, and it was artificial to say that she could not act to protect the Employer's interests, and only the Employer itself could do so.

60 It was not in the Employer's interests for the plaintiff to be seeking the court's determination, in the Employer's absence, of issues in the Arbitration. It was also not in the Employer's interest for its representative, the 1st defendant, and the Quantity Surveyors and the Architects, to be embroiled in concurrent litigation over these issues. It was reasonably necessary for the court to be informed of the overlapping Arbitration.

61 Moreover, it is recognised that disclosure in the interests of justice is *another* exception to confidentiality ([58] above). It was in the interests of justice for the court to be informed of the overlapping Arbitration, so that the court can exercise its case management powers to ensure the efficient and fair resolution of the dispute as a whole (see [20] above).

62 The plaintiff's conduct in relation to its confidentiality objection, also indicated that it was just trying to keep the facts from the *court*.

63 The 1st defendant applied for a stay by way of Summons 4854 on 5 November 2020, and in her affidavit the same day she disclosed the overlapping Arbitration. She also filed another application that day: HC/SUM 4853/2020

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[53] PWS at para 16.

("Summons 4853"), for the court file and all documents filed to be sealed, and for all proceedings to be held in camera.

64 Six days later, the court file was, by consent, administratively sealed at a pre-trial conference on 11 November 2020. This administrative sealing was expressed to be pending resolution of Summons 4853. Accordingly, outsiders to the Arbitration could not, by inspecting the court file, obtain confidential information about the Arbitration.

65 On 1 December 2020, the plaintiff filed its affidavit, in which the deponent stated that the 1st defendant had disclosed some documents purportedly in relation to the Arbitration. The deponent further stated that it was questionable how the 1st defendant had obtained those documents as she was not a party to the Arbitration, and that there is a duty of confidentiality in arbitration proceedings.[54]

66 The plaintiff's affidavit further stated that what the 1st defendant had disclosed, ought not to be allowed into evidence. However, the plaintiff's affidavit went on to repeat the reliefs sought by the plaintiff in the Notice of Arbitration, and the claims and issues referred to the tribunal by the Employer's response.[55] From that, it was clear that the plaintiff was seeking compensation for the Employer's allegedly wrongful Calls, and that the Employer had framed as an issue for determination, "whether [the Employer] was justified in the calling of the [Performance Bonds], and retaining the sums thereby received".[56]

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54 Plaintiff's Affidavit at paras 8–9.

55 Plaintiff's Affidavit at paras 51–52.

56 Plaintiff's Affidavit at para 52.

It was also clear from the Employer's response, that the Employer was claiming against the plaintiff for defects.[57]

67 Even if the 1st defendant's affidavits were expunged (and they should not be), on the plaintiff's affidavit *alone*, a case management stay would be justified.

68 The plaintiff evidently had no issue with the 2nd to 5th defendants knowing about what the 1st defendant had disclosed, which the plaintiff itself reiterated to some extent in its own affidavit. Counsel for the 2nd to 5th defendants kept a watching brief at the hearing of Summons 4854, and the hearing of the appeal against the Registrar's decision.

69 When the plaintiff received the 1st defendant's affidavit of 5 November 2020, it did not then apply to expunge it, or any part of it.

70 The 1st defendant then proceeded to file her second affidavit on 29 December 2020, and the plaintiff also did not apply to expunge it, or any part thereof.

71 In the plaintiff's written submissions dated 4 January 2021 for the hearing of Summons 4854, however, it was submitted that the 1st defendant had, by her disclosures, procured, caused, or assisted the Employer to breach its implied duty of confidentiality, "and any reference to the [Arbitration] should be expunged".[58] That was taken a step further at the hearing of Summons 4854 on 8 January 2021, when counsel for the plaintiff submitted that the 1st

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57 Plaintiff's Affidavit at para 52.

58 Plaintiff's Written Submissions for HC/SUM 4854/2020 dated 4 January 2021 at para 14.

defendant's affidavits *as a whole* should be expunged.[59] Presumably, the plaintiff was hoping that if the 1st defendant were bereft of evidence, a stay might not be granted.

72 As I mentioned above at [55], the Registrar dealt with the plaintiff's objection as an oral application to expunge the 1st defendant's affidavits; that oral application was dismissed, and the plaintiff did not appeal against that decision.

73 The 1st defendant's sealing application by Summons 4853 remains pending. The other defendants are amenable to it, but the plaintiff is objecting. Why would the plaintiff object to the sealing application if it were truly concerned about confidentiality? Perhaps the plaintiff objected to sealing so that it could complain that the 1st defendant's disclosures might be seen by third parties. That would, however, be self-serving, and quite inconsistent with protecting confidentiality of the Arbitration. For the present, the file remains sealed. The plaintiff has asked that the sealing application only be dealt with after the resolution of the present appeal, and the 1st defendant has agreed to this. There is thus no present danger of arbitration confidentiality being breached in relation to outsiders to the Arbitration.

**Conclusion**

74 I upheld the case management stay which the Registrar had granted: this would ensure the efficient and fair resolution of the dispute as a whole. The issues in the Suit of whether the Employer's Calls were wrongful, whether the SOD was false, and whether the estimated rectification costs were fabricated or

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[59] Notes of Argument, 8 January 2021, p 8 lines 23–29.

inflated, were all issues in the Arbitration (or at least within the scope of the Arbitration Agreement). The Arbitration has been underway for more than three years now, and the plaintiff and the Employer ought properly to finish the Arbitration, before the plaintiff proceeds any further with the Suit.

75 On a related note, it was reasonably necessary, and in the interests of justice, for the court to have been informed of the overlapping Arbitration. Only then could the court make an informed decision on the matter as a whole.

Andre Maniam
Judicial Commissioner

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Melissa Heng Li Ya (MPillay) for the second and third defendants (watching brief);
Yong Tian Wei Jason (LVM Law Chambers LLC) for the fourth and fifth defendants (watching brief).