

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

[2024] SGHC 146

Originating Claim No 56 of 2022 (Summonses Nos 308 and 1189 of 2024)

Between

(1) Tjiang Giok Moy
(2) Ang Eileen

... Claimants

And

Ang Jimmy Tjun Min

... Defendant/Applicant

And

Citibank NA

... Non-Party/Respondent

JUDGMENT

[Civil Procedure — Costs — Principles]

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Tjiang Giok Moy and another

v

**Ang Jimmy Tjun Min
(Citibank NA, non-party)**

[2024] SGHC 146

General Division of the High Court — Originating Claim No 56 of 2022
(Summonses Nos 308 and 1189 of 2024)

Kwek Mean Luck J

22 April, 23, 29 May 2024

5 June 2024

Judgment reserved.

Kwek Mean Luck J:

Introduction

1 The Defendant in Originating Claim No 56 of 2024 (“OC 56”) applied for an order for production of documents against a non-party in Summons No 308 of 2024 (“SUM 308”) and for leave to amend SUM 308 in Summons No 1189 of 2024 (“SUM 1189”). The non-party, Citibank NA, objected to the production order and made submissions in support of its objections. The Claimants in OC 56 also made submissions objecting to the order for production of documents. I dismissed both SUM 308 and SUM 1189 on 23 May 2024.

2 The issue arising here is whether the Claimants, who are a party to OC 56 but who are not the subject of the production order, are entitled to costs for SUM 308 and SUM 1189.

Standing and entitlement to costs

The Claimants had standing to be heard

3 First, I consider whether the Claimants have *locus standi* to be heard in SUM 308 and SUM 1189. In *Xing Rong Pte Ltd (formerly known as Huadi Projects Pte Ltd) v Visionhealthone Corp Pte Ltd* [2010] 4 SLR 607 (“*Xing Rong*”), the Court of Appeal held at [19]–[21] that:

19 [...] O[rder] 24 r 6(2) of the Rules provides that a discovery application must be made by way of summons, which must be served on *every party to the proceedings*. **This must mean that every party to the proceedings has *locus standi* to make submissions where its interests in the main suit may be affected by the court order on the discovery of documents.** In so far as Xing Rong, a defendant in the main suit, was concerned, the discovery related to its bank account with BOC and thus it had every right to oppose the Discovery Application at the hearing before the AR.

20 If Xing Rong was entitled to be heard at the application before the AR to oppose it, it should also be entitled to appeal against a decision that did not favour its arguments ...

21 **Quite clearly a party to the main suit is entitled to object to a discovery application sought by the other party against it. By logical extension, the same rule must apply when the discovery order is sought against someone who is not a party to the proceedings because that order could likewise affect the interests of the party or parties to the main suit.** ...

[emphasis in original in italics; emphasis added in bold]

4 It is clear from the above decision of the Court of Appeal, that the Claimants have *locus standi* to make submissions and appear before the court in SUM 1189 and SUM 308. This is conceded by the Defendant, who initially objected and then withdrew their objections to the Claimants making submissions in SUM 308. The Defendant also concedes in written submissions that every party to the proceedings may have *locus standi* to make submissions.

5 For completeness, I note that although the Rules of Court 2021 (“ROC 2021”) adopts a different phrasing from the wording of O 24 r 6(2) of the Rules of Court 2014 (“ROC 2014”), there is no reason why this change should affect the Claimants’ standing to be heard in a matter that affects their interests.

(a) Order 3 r 5(8) of the ROC 2021 provides that:

All applications must be served on **all other parties to the application** except where the other party cannot or need not be served. [emphasis added]

(b) Order 24 r 6(2) of the ROC 2014 provides that:

(2) An application after the commencement of proceedings for an order for the discovery of documents by a person who is not a party to the proceedings shall be made by summons, which must be served on that person personally and **on every party to the proceedings**. [emphasis added]

In my view, the principle in *Xing Rong* that an order for production of documents by a non-party could affect the interests of parties to the main suit remains relevant, even though such applications no longer *need* to be served on every party to the main proceeding. It is a rule of natural justice, encapsulated in the maxim “*audi alteram partem*”, that parties must be given an opportunity to be heard: *SEF Construction Pte Ltd v Skoy Connected Pte Ltd* [2010] 1 SLR 733 at [49]; *PNG Sustainable Development Program Ltd v Rex Lam Paki and others* [2022] SGHC 188 at [60]. It therefore follows that where their property and interests are at stake, a party to the main proceedings should have an opportunity to be heard as a matter of principle, regardless of whether they were served with the application.

6 I therefore hold that the Claimants have *locus standi* to be heard in the Defendant’s application of production of documents against Citibank NA, as the Claimants’ interests as a main party to the proceedings are at stake.

The Claimants are entitled to costs as a successful party

7 Having established that the Claimants have standing to be heard in SUM 1189 and SUM 308, I next consider the second issue of the Claimants' entitlement to costs. Order 21 r 2(1) empowers the court to determine all issues relating to costs, with regard to all relevant circumstances. Order 21 r 3(2) of the ROC 2021 provides that:

The Court must, subject to this Order, order the costs of any proceedings in favour of a successful party, except when it appears to the Court that in the circumstances of the case some other order should be made as to the whole or any part of the costs.

8 Given that following *Xing Rong*, the Claimants have *locus standi*, to make submissions and to appeal against a decision that does not favour its arguments, the Claimants must necessarily be regarded as a party to SUM 308 and SUM 1189 for the purposes of assessing costs under O 21 r 3(2).

9 This is supported by *Singapore Civil Procedure* (Cavinder Bull gen ed) (Sweet & Maxwell, 2024) which states at para 21/3/4 that a respondent who exercises his right to appear and to be heard on an application for leave to appeal against an enforcement notice is normally entitled to his costs where his opposition to the grant of leave is successful. On the same principle, where the Claimants exercise their right to appear and their objections to SUM 308 and SUM 1189 are successful, they would normally be entitled to their costs.

10 The Defendant submits that it is the Claimants who should pay the Defendant costs, or that each party should bear its own costs, as the Claimants' decision to make submissions in SUM 308 and SUM 1189 had protracted the proceedings by requiring the Defendant to review the Claimants' submissions. This argument is untenable as (a) O 21 r 3(2) of the ROC 2021 requires the court

to generally order the costs of proceedings in favour of the successful party, *ie*, the Claimants; and (b) given that the Claimants have the right to be heard, their submissions are not an unnecessary protraction of the proceedings.

11 The Defendant also relies on *Xing Rong* at [34] where the Court of Appeal ordered parties to bear their own costs, to submit that parties should bear their own costs. However, it is clear from the decision in *Xing Rong*, that while the defendant succeeded in its appeal against the decision that it lacked *locus standi*, the Court of Appeal found that even if the defendant had *locus standi*, it would not have succeeded on the merits in its appeal against the Assistant Registrar’s decision to grant the discovery order. It was on this basis that parties were ordered to bear their own costs. Hence, the costs order in *Xing Rong* does not assist the Defendant.

12 In view of the above, following *Xing Rong* and O 21 r 3(2) of the ROC 2021, I find that the Claimants, as a successful party in SUM 308 and SUM 1189, would be entitled to costs in their favour.

Whether costs should be ordered on standard or indemnity basis

13 Third, the Claimants sought costs on an indemnity basis, rather than the standard basis. An order for costs on the indemnity basis is an exception, rather than a norm: *Airtrust (Hong Kong) Ltd v PH Hydraulics & Engineering Pte Ltd* [2016] 5 SLR 103 (“*Airtrust*”) at [17].

14 Specifically, under O 21 r 2(2)(f) of the ROC 2021, the court must have regard to the conduct of the parties in fixing costs. In *Airtrust* at [23], Chan Seng Onn J found there were four broad categories of conduct by a party, which may provide good reason for an order of indemnity costs to be made. These four categories were described by Chan J as follows at [23] of *Airtrust*:

Without attempting to be prescriptive, there are, from my review of the case law, the following broad categories of conduct by a party which may provide good reason for an order of indemnity costs to be made:

- (a) where the action is brought in bad faith, as a means of oppression or for other improper purposes;
- (b) where the action is speculative, hypothetical or clearly without basis;
- (c) where a party's conduct in the course of proceedings is dishonest, abusive or improper; and
- (d) where the action amounts to wasteful or duplicative litigation or is otherwise an abuse of process.

15 Chan J also considered that whether the party's conduct caused prejudice to the other party, the context and nature of the dispute, and the general penal element to the making of indemnity costs were all relevant factors in determining whether to order indemnity costs: *Airtrust* at [51]–[53]. In *Three Rivers District Council v The Governor and Co of the Bank of England (No 6)* [2006] EWHC 816 (Comm) at [25], as cited in *Tan Chin Yew Joseph v Saxo Capital Markets Pte Ltd* [2013] SGHC 274 ("*Tan Chin Yew Joseph*") at [99], Tomlinson J found that the critical requirement before an indemnity order can be made in the successful defendant's favour is that there must be some conduct or some circumstance which takes the case out of the norm.

The Claimants are not entitled to costs on an indemnity basis

16 Taking into consideration the relevant factors, I do not consider that the threshold for costs on an indemnity basis has been met, as there is no conduct or circumstance that takes the case out of the norm. The Claimants submit in para 4 of their written submissions on costs that the Defendants should be ordered to pay costs on an indemnity basis as (i) the action was speculative, hypothetical or clearly without basis, or (ii) the action amounted to wasteful or duplicative litigation. I dismissed SUM 1189 because the Defendant had not

established the materiality of the *entire* categories of documents sought, and had not shown that the documents existed or were bankers' books subject to disclosure. However, I did not consider the Defendant's conduct in SUM 1189 to cross the high threshold warranting costs on an indemnity basis.

My decision on quantum of costs

17 Part II(B) of Appendix G of the Supreme Court Practice Directions 2021 sets the range of costs (excluding disbursements) for an application for the production of documents at \$3,000–\$11,000. In consideration of the complexity of the legal case, the conduct of the parties and the stage at which the proceedings were concluded, I consider that an award on the higher end is appropriate. The Defendant attempted to make an eleventh-hour amendment to SUM 308, necessitating an adjournment and wasted costs. The Claimants filed a total of 46 pages of written submissions or affidavits in total for SUM 308 and SUM 1189, and the issues raised of banking secrecy involved established law.

18 Therefore, I award costs on a standard basis, in the total amount of \$10,000 all in, in the quantum of \$4000 for wasted costs in SUM 308 and \$4500 for SUM 1189, and in the quantum of \$1500 for the costs submissions for SUM 308 and SUM 1189.

Kwek Mean Luck
Judge of the High Court

Jaikanth Shankar, Tan Ruo Yu, Ng Shu Wen and Seong Hall Ee
Waverly (Davinder Singh Chambers LLC) for the claimants;
Gerald Quek, Chua Ze Xuan (PDLegal LLC) (instructed), Michael
Lukamto (Joo Toon LLC) for the defendant/applicant.
