

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

[2023] SGHC 209

Suit No 477 of 2015

Between

Crescendas Bionics Pte Ltd

*... Plaintiff*

And

Jurong Primewide Pte Ltd

*... Defendant*

And Between

Jurong Primewide Pte Ltd

*... Plaintiff in counterclaim*

And

Crescendas Bionics Pte Ltd

*... Defendant in counterclaim*

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***EX TEMPORE JUDGMENT***

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[Civil Procedure — Costs — Principles]

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**Crescendas Bionics Pte Ltd**  
**v**  
**Jurong Primewide Pte Ltd**

**[2023] SGHC 209**

General Division of the High Court — Suit No 477 of 2015  
Tan Siong Thye SJ  
3 August 2023

3 August 2023

**Tan Siong Thye SJ:**

**Introduction**

1 This case is a long-drawn dispute between the plaintiff, Crescendas Bionics Pte Ltd (“Crescendas”), and the defendant, Jurong Primewide Pte Ltd (“JPW”), which has finally concluded, save for costs. The Court is now requested to determine the issues pertaining to costs that were incurred by the parties at various stages of the proceedings.

**Background facts**

2 Crescendas was a property developer while JPW was a general building contractor. On 30 June 2008, Crescendas and JPW signed a four-page Letter of Intent (“LOI”) dated 26 June 2008 under which Crescendas engaged JPW as the management contractor to build Biopolis 3, a seven-storey multi-tenanted

business park development at Biopolis Drive/Biomedical Grove in One-North (the “Project”).

3 After the LOI was signed, the parties’ relationship deteriorated due to disagreements on each party’s obligations and the scope of each party’s responsibilities under the LOI. Ultimately, there were substantial delays in the completion of the Project, which was certified as completed on 12 January 2011. It was undisputed that the time taken for completion exceeded the time period of 18 months stipulated in the LOI for JPW to complete the construction of the Project.

4 Crescendas brought Suit No 477 of 2015 (“Suit 477”) against JPW and JPW also had counterclaims against Crescendas. The trial was bifurcated.

5 The first tranche of the trial dealt with the liabilities of the parties. The High Court made its findings on the liabilities of the parties in *Crescendas Bionics Pte Ltd v Jurong Primewide Pte Ltd* [2019] SGHC 4 (“Liability Judgment (HC)”). Upon the conclusion of the first tranche of the trial, the parties were dissatisfied with the High Court’s decision and lodged their respective appeals. At the appellate hearing, the Liability Judgment (HC) was largely affirmed by the Court of Appeal (the “CA”) in *Jurong Primewide Pte Ltd v Crescendas Bionics Pte Ltd and another appeal* [2019] SGCA 63 (“Liability Judgment (CA)”), save in relation to the arithmetic computation of the days of delay for which JPW was responsible and the time taken for the capping beams work (see Liability Judgment (CA) at [16]–[20]).

6 Briefly, the Liability Judgment (HC) and the Liability Judgment (CA) found that the completion of the Project was delayed by a total of 334 days. Of the 334 days, Crescendas was responsible for an aggregate of 173 days of delay

caused by its acts of prevention (see Liability Judgment (HC) at [352]), while JPW was responsible for 161 days of delay (see Liability Judgment (CA) at [14]–[20]). On this basis, JPW was found to be liable to Crescendas for general damages for 161 days of delay.

7 The second tranche of the trial dealt with an assessment of the general damages due to Crescendas in respect of the 161 days of delay for which JPW was responsible. This is because of the finding made in the first tranche of the trial that the contractual provision on liquidated damages in the LOI was rendered inoperative as a result of the acts of prevention by Crescendas. The High Court made its findings on the general damages owed to Crescendas by JPW in *Crescendas Bionics Pte Ltd v Jurong Primewide Pte Ltd* [2021] SGHC 189 (the “Damages Judgment (HC)”). The parties again were dissatisfied with the High Court’s decision and they lodged their respective appeals. On 9 February 2023, the Appellate Division of the High Court (the “AD”) released its decision on the appeals in *Crescendas Bionics Pte Ltd v Jurong Primewide Pte Ltd and other appeals* [2023] SGHC(A) 9 (the “Damages Judgment (AD)”).

8 Crescendas and JPW now appear before me in relation to the High Court costs of the proceedings pertaining to the first tranche and the second tranche of the trial, *ie*, the High Court costs relating to liability and assessment of damages. In relation to the High Court costs for the first tranche, each party claims that it had won and therefore is entitled to costs. As for the second tranche, the parties agree that Crescendas is entitled to costs. However, the parties disagree on the quantum of costs Crescendas is entitled to.

9 Before I consider the issues relating to the appropriate costs orders in this case, I shall summarise the outcome of the issues in the first tranche and the second tranche of the trial and provide a brief summary of the decisions of the

two appeals. The background facts and detailed findings can be found in the judgments for the first tranche and the second tranche of the trial and the respective appeals. I shall summarise only the key issues relevant to the determination of the parties' liability on the issues of costs.

### **Outcome of the first tranche and the second tranche of the trial and the respective appeals**

#### ***The first tranche of the trial and the appeal to the CA***

10 The issues and the Court's findings at the first tranche of the High Court trial are as follows:

(a) The first issue related to the provision of \$12.3 million under the signed LOI for the preliminaries ("Preliminaries Sum"). Crescendas argued that the Preliminaries Sum under the LOI was tentative and that the parties had intended for the Preliminaries Sum to be finalised within four weeks of the commencement of the Project. JPW, on the other hand, submitted that the Preliminaries Sum was fixed at \$12.3 million under the signed LOI. In the Liability Judgment (HC), the High Court found that the parties' intention was for the Preliminaries Sum under the LOI to be fixed at \$12.3 million (see Liability Judgment (HC) at [164]–[170]). The High Court, therefore, dismissed Crescendas' claim on this issue. This finding was affirmed by the CA on appeal (see Liability Judgment (CA) at [10]).

(b) The second issue related to JPW's counterclaim of \$155,000, which was the amount JPW incurred to procure a performance bond from Oversea-Chinese Banking Corporation Limited ("OCBC Bond"). In the Liability Judgment (HC), the High Court found that Crescendas was not liable to pay JPW \$155,000 for the procurement of the OCBC

Bond (see Liability Judgment (HC) at [171]–[179]). The High Court, therefore, dismissed JPW’s counterclaim for the amount incurred to procure the OCBC Bond. JPW did not appeal on this issue.

(c) The third issue related to JPW’s counterclaim for its share of \$2.5 million in the first \$5 million of the shared savings. Crescendas claimed that JPW had agreed to forgo its share in the first \$5 million of the shared savings. In the Liability Judgment (HC), the High Court found that there was no agreement between the parties that JPW would forego its 50% share in the first \$5 million of the shared savings as Crescendas failed to comply with its conditions. The High Court, therefore, allowed JPW’s counterclaim of \$2.5 million (see Liability Judgment (HC) at [217]). This was upheld by the CA on appeal (see Liability Judgment (CA) at [12]).

(d) The fourth issue related to whether the delays in the completion of the Project were due solely to JPW or whether both Crescendas and JPW were responsible for the delays. In the Liability Judgment (HC), the High Court found that Crescendas had caused 173 days of delay by its acts of prevention while JPW was liable for 133 days of delay. The High Court, therefore, allowed Crescendas’ claim on this issue of delay albeit that JPW was liable for general damages for only 133 days of delay in the completion of the Project (see Liability Judgment (HC) at [351]–[352] and [375]). On appeal, the CA allowed Crescendas’ appeal on this issue in part for two reasons. First, the CA rectified an undisputed arithmetical error of three days in the computation of the days of delay for which JPW was responsible (see Liability Judgment (CA) at [14]–[15]). Second, the CA found that JPW’s error in its assessment of the time taken for the capping beams work was its own mistake and that

JPW should not have been given the benefit of an additional 25 days for the capping beams work in computing a reasonable time within which the Project should have been completed (see Liability Judgment (CA) at [16]–[20]). Therefore, as a result of the Liability Judgment (CA), JPW was found to be responsible for 161 days of delay.

(e) The fifth issue related to Crescendas' claim for a refund of the additional preliminaries it had paid to JPW for the delays in the Project's completion. In the Liability Judgment (HC), the High Court found that Crescendas should not have paid JPW for the additional preliminaries that JPW incurred for the 133 days of delay for which JPW was liable. The High Court, therefore, allowed Crescendas' claim for a refund of the portion of the additional preliminaries it paid to JPW for 133 days of delay only (see Liability Judgment (HC) at [376]). As a result of the CA's finding in the Liability Judgment (CA) that JPW was responsible for 161 days of delay (see [10(d)] above), Crescendas was entitled to a refund of the portion of the additional preliminaries it paid to JPW for 161 days of delay. Before the commencement of the second tranche of the trial, the parties arrived at a settlement that a sum of \$2.75 million was to be refunded by JPW to Crescendas. A by-consent order of the Court setting out this settlement agreement was issued on 30 December 2020.

### ***The second tranche of the trial and the appeal to the AD***

11 In the second tranche of the trial, Crescendas sought an assessment of general damages in respect of the 161 days of delay for which JPW was responsible. In particular, Crescendas claimed general damages for the delayed completion in respect of three heads of losses, namely:

- (a) “loss of chance” to earn net rental revenue;
- (b) holding costs; and
- (c) site staff costs.

12 Crescendas engaged three expert witnesses to support its case: Mr Andre Toh Sern (“Mr Toh”), Dr Annie Woo Yen Lee (“Dr Woo”) and Mr Dennis Yeo Huang Kiat (“Mr Yeo”). JPW engaged one expert witness, Assoc Prof Yu Shi Ming (“Assoc Prof Yu”), to support its case. In view of the extreme positions taken by the parties on the quantum of Crescendas’ loss of net rental revenue (see [13] below), a court expert who was chosen and agreed upon by the parties, Adjunct Assoc Prof Tay Kah Poh (“Assoc Prof Tay”), was appointed to assist the Court.

13 In respect of the “loss of chance” to earn net rental revenue, the parties’ positions can be summarised as follows:

- (a) Crescendas argued that the combined delay of 344 days resulted in the loss of five pre-commitment tenants which would have otherwise taken up lease agreements in the Project. In quantifying its net rental revenue loss, Crescendas submitted that the appropriate method of quantification was the multi-year model, *ie*, a computation of the difference between the projected net rental revenue Crescendas would have earned had there been no combined delay and the actual net rental revenue Crescendas had earned, over the span of multiple years including the combined delay of 344 days to stabilised occupancy. A discount rate of 8% was then applied to the difference to take into account the project risk. Crescendas contended that the multi-year model reflected the full loss it suffered. Using the multi-year model,

Crescendas claimed net rental revenue loss of \$10.2 million from JPW. Alternatively, if a single-year model was adopted, *ie*, where damages are awarded only in respect of the loss of net rental revenue for the period of delay in 2010, Crescendas claimed net rental revenue loss of \$2.89 million to \$2.91 million from JPW (see Damages Judgment (HC) at [29]–[34]).

(b) JPW raised various issues of causation and remoteness to deny Crescendas' high recoverability of damages for net rental revenue loss. As to the quantum, JPW argued that, if the multi-year model was to be applied, a more appropriate quantification of the loss suffered by Crescendas was \$362,183.83. Alternatively, under the single-year model, JPW argued that it was only liable for a sum of between \$308,045.33 and \$627,987.17 (see Damages Judgment (HC) at [41]–[45]).

14 In the Damages Judgment (HC), the High Court preferred the single-year model over the multi-year model. The High Court opined that the single-year model was fairer and would not have infringed the principle of remoteness of damages. Further, the single-year model computed the delay without any uncertainty and assumptions which were inherent in the multi-year model. Thus, the single-year model was the more appropriate method of quantifying Crescendas' loss of net rental revenue (see Damages Judgment (HC) at [125]–[128]). Applying the single-year model, the High Court found JPW liable for a sum of \$1,789,398.82 in respect of Crescendas' loss of net rental revenue (see Damages Judgment (HC) at [317]). In the Damages Judgment (AD), the AD found that the multi-year model should have been used instead of the single-year model in assessing Crescendas' loss of net rental revenue. Applying the

multi-year model, JPW was found to be liable to Crescendas for a sum of \$4,185,802.60 (see Damages Judgment (AD) at [196]–[197]).

15 In respect of Crescendas’ claim for holding costs, Crescendas submitted that it had incurred holding costs totalling \$2,340,102.37, comprising land rent paid to JTC Corporation, the head lessor of the land on which the Project was built, and property tax paid to the Inland Revenue Authority of Singapore. Crescendas sought to hold JPW liable for the portion of holding costs attributable to JPW’s delay (see Damages Judgment (HC) at [36]–[38]). JPW did not dispute the quantum of holding costs incurred by Crescendas. However, JPW argued that Crescendas was not entitled to claim holding costs as Crescendas would have incurred holding costs regardless of whether there was a delay in the completion of the Project. Further, JPW argued that Crescendas’ holding costs were too remote and, in any event, could not be claimed in addition to Crescendas’ loss of net rental revenue, since Crescendas would have had to incur holding costs in order to earn its net rental revenue (see Damages Judgment (HC) at [46]–[48]). In the Damages Judgment (HC), the High Court found that Crescendas’ holding costs were not too remote and had flowed directly from the combined delay of 344 days. Therefore, Crescendas was entitled to claim the portion of holding costs from JPW attributable to its delay of 161 days. However, the High Court held that Crescendas’ holding costs incurred during the 90-day rent-free fitting-out period given by Crescendas to the tenants were not caused by the combined delay of 344 days because this portion of Crescendas’ holding costs would have been incurred even if the Project was completed on time. Taking this into account, the High Court found JPW liable for a sum of \$775,310.63 in respect of Crescendas’ holding costs (see Damages Judgment (HC) at [343]–[346]). In the Damages Judgment (AD), the AD found that Crescendas was entitled to claim holding costs incurred

during the 90-day rent-free period. Therefore, the AD found JPW liable for a sum of \$1,061,285.86 in respect of Crescendas' holding costs (see Damages Judgment (AD) at [212]).

16 In respect of the site staff costs, JPW accepted that it was liable for site staff costs incurred as a result of its 161 days of delay. JPW was, therefore, liable for a sum of \$128,864.46 in respect of the site staff costs (see Damages Judgment (HC) at [352]).

***Previous costs orders set aside by the AD following the Damages Judgment (AD)***

17 Following the second tranche of the trial but before the appeals relating to the second tranche of the trial were heard by the AD, the parties requested the High Court for a decision on costs for the first tranche and the second tranche of the trial at first instance.

18 By way of correspondence dated 23 November 2021 and after having considered the parties' written submissions, the High Court made costs orders for the first tranche and the second tranche of the trial.

19 Following the hearing by the AD which led to the Damages Judgment (AD), the AD set aside the High Court's previous costs orders made in respect of the first tranche and the second tranche of the trial.<sup>1</sup> The AD also directed the High Court to review the costs orders for the first tranche and the second tranche of the trial, taking into account the decisions of the appellate courts in the Liability Judgment (CA) and the Damages Judgment (AD). With the benefit of hindsight, the High Court should have withheld its decision on costs until the

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<sup>1</sup> 23 March 2023 Minute Sheet by the Appellate Division at para 4.

outcome of the appellate decisions to avoid duplicating efforts. Further, the outcome of the appellate decisions would have a significant bearing on the issues of costs for the first tranche and the second tranche of the trial.

### **The parties' agreement on the issues of costs**

20 It is important to highlight that the parties have informed this Court that they do not wish to proceed to taxation and that their submissions on costs are based on the costs guidelines in Appendix G to the Supreme Court Practice Directions ("Appendix G") with adjustments made by the parties on account of the complexity of the first tranche and the second tranche of the trial. The parties have also mentioned that they do not wish to adopt an issues-based approach in determining which party was the successful party for the first tranche of the trial. The Court will have to be mindful of the above matters when it deliberates on the issues of costs afresh.

### **The parties' submissions on costs**

#### ***Crescendas' submission on costs for the first tranche and the second tranche of the trial***

##### *Crescendas' submission on costs for the first tranche of the trial*

21 Crescendas argues that it is the successful party for the first tranche of the trial.<sup>2</sup> Crescendas states that it had established that JPW was liable for 161 days of delay as opposed to its original claim of 355 days of delay. Crescendas submits that the issue of delay was its main claim given that a significant part of the Liability Judgment (HC) and the parties' written closing submissions were dedicated to dealing with the issue of delay. Crescendas also states that it

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<sup>2</sup> Crescendas' Submission on Costs dated 9 May 2023 ("Crescendas' 9 May 2023 Costs Submissions") at para 14.

had successfully defended against JPW's counterclaim on the issue relating to the OCBC Bond. Crescendas acknowledges that JPW had succeeded on the issues relating to the Preliminaries Sum, the shared savings and liquidated damages for the delays. Nevertheless, Crescendas argues that it is the successful party on the basis that the practical and overall outcome of Suit 477 is that Crescendas is entitled to receive compensation from JPW which JPW would not have paid but for Suit 477.<sup>3</sup>

22 In relation to the quantum of costs for the first tranche of the trial, Crescendas submits that it should be entitled to at least 40% of its legal costs and at least 50% of all disbursements incurred.<sup>4</sup> The details of Crescendas' submission are as follows:

(a) In relation to legal costs, Crescendas relies on its costs schedule for the first tranche of the trial which sets out its legal costs for the period up to the written closing submissions which amounted to \$700,000.<sup>5</sup> As Crescendas' costs schedule has not included legal costs for the parties' oral closing submissions which took 2.5 days, Crescendas has referred to the costs guidelines for party-and-party costs in Appendix G. Appendix G provides a daily tariff of between \$6,000 and \$18,000 for construction trials. Crescendas states that the maximum daily tariff of \$18,000 should be used to compute legal costs for the 2.5 days of oral closing submissions, given the complexity of Suit 477. Therefore, Crescendas states that the total legal costs for the first tranche of the trial

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<sup>3</sup> Crescendas' 9 May 2023 Costs Submissions at paras 14 to 17.

<sup>4</sup> Crescendas' 9 May 2023 Costs Submissions at para 22.

<sup>5</sup> See Crescendas' Bundle of Documents Vol II dated 9 May 2023 ("Crescendas BOD Vol II") at Tab 13: Crescendas' Costs Schedule for the first tranche of the trial dated 15 October 2018.

is \$745,000. Crescendas seeks a costs order for 40% of its legal costs of \$745,000, *ie*, \$298,000. Crescendas states that this is reasonable, as Crescendas was the successful party at the first tranche, although JPW had succeeded on various issues as summarised above.<sup>6</sup>

(b) In relation to disbursements, Crescendas relies on its costs schedule for the first tranche of the trial which sets out its total disbursements for the period up to the written closing submissions as amounting to \$455,355.53.<sup>7</sup> Taking into account disbursements incurred for and after the oral closing submissions, Crescendas seeks the following costs orders:

(i) In relation to general disbursements, Crescendas states that its general disbursements for the period up to the written closing submissions amounts to \$220,183.75. Crescendas states that the additional general disbursements incurred for and after the oral closing submissions amounts to \$4,644.47. Therefore, Crescendas states that its total general disbursements is \$224,828.22.<sup>8</sup> However, there is an arithmetical error in Crescendas' calculation. Based on Crescendas' figures, Crescendas' total general disbursements would be \$224,828.22, *ie*, \$220,183.75 plus \$4,644.47. Crescendas seeks a costs order for 40% of its general disbursements, *ie*, 40% of \$224,828.22 which is \$89,931.29.

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<sup>6</sup> Crescendas' 9 May 2023 Costs Submissions at paras 23 to 24; Summary tables for costs submissions prepared jointly by the parties dated 6 June 2023 ("Summary Tables") at page 2.

<sup>7</sup> Crescendas BOD Vol II at Tab 13: Crescendas' Costs Schedule for the first tranche of the trial dated 15 October 2018.

<sup>8</sup> Summary Tables at page 3.

(ii) In relation to expert fees, Crescendas states that the fee incurred by Crescendas to engage its expert, Mr Daniel Connor (“Mr Connor”), to deal with the issue of delay, amounts to \$239,816.25. Crescendas seeks a costs order for 60% of Mr Connor’s expert fee, *ie*, \$143,889.75. Crescendas states that the expert fee was reasonably incurred to undertake a delay analysis following JPW’s defence that Crescendas had caused delay by its acts of prevention.<sup>9</sup>

*Crescendas’ submission on costs for the second tranche of the trial*

23 Crescendas submits that it is also the successful party for the second tranche of the trial and is, therefore, entitled to costs for the second tranche of the trial. As set out above at [8] and in line with the Damages Judgment (AD) at [224], it is undisputed by JPW that Crescendas is entitled to costs for the second tranche.

24 In relation to the quantum of costs for the second tranche of the trial, Crescendas submits that it should be entitled to a costs order for at least 80% of its legal costs and an average of at least 75% of all disbursements.<sup>10</sup> The details of Crescendas’ submission are as follows:

(a) In relation to legal costs, Crescendas relies on its costs schedule for the second tranche of the trial which sets out its legal costs for the period up to the written closing submissions as amounting to \$600,000.<sup>11</sup>

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<sup>9</sup> Crescendas’ 9 May 2023 Costs Submissions at paras 23 and 25 to 26; Summary Tables at page 3.

<sup>10</sup> Crescendas’ 9 May 2023 Costs Submissions at para 22.

<sup>11</sup> Crescendas BOD Vol II at Tab 28: Crescendas’ Costs Schedule for the second tranche of the trial dated 31 May 2021.

Given that its costs schedule has not included legal costs for the parties' oral closing submissions which took one day, Crescendas is claiming legal costs for one day's hearing. Appendix G provides a daily tariff of between \$6,000 and \$18,000 for construction trials. Crescendas states that the maximum daily tariff of \$18,000 should be used to compute the legal costs for the one day of oral closing submissions, in view of the complexity of the second tranche of the trial. Therefore, Crescendas states that its total legal costs for the second tranche of the trial is \$618,000. Crescendas seeks a costs order for 80% of its legal costs of \$618,000, *ie*, \$494,400. Crescendas states that this is reasonable in view of its success. Crescendas submits that it secured damages totalling \$8,125,952.92, comprising \$4,185,802.60 for "loss of chance" to earn net rental revenue, \$1,061,285.86 for holding costs, \$128,864.46 for site staff costs and \$2.75 million for the portion of the additional preliminaries refunded by JPW to Crescendas following a settlement after the first tranche of the trial.<sup>12</sup>

(b) In relation to disbursements, Crescendas relies on its costs schedule for the second tranche of the trial which sets out its disbursements.<sup>13</sup> Crescendas seeks an average of 75% of all its disbursements. Crescendas' submissions on the appropriate costs orders for the expert fees incurred by Crescendas and general disbursements are as follows:

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<sup>12</sup> Crescendas' 9 May 2023 Costs Submissions at paras 28 to 31.

<sup>13</sup> Crescendas BOD Vol II at Tab 28: Crescendas' Costs Schedule for the second tranche of the trial dated 31 May 2021.

(i) Crescendas seeks a costs order for 80% of its share of Assoc Prof Tay’s expert fee of \$28,800, *ie*, \$23,040.<sup>14</sup>

(ii) Dr Woo’s and Mr Yeo’s joint expert fee amounted to \$256,242.26. Crescendas seeks a costs order for 95% of Dr Woo’s and Mr Yeo’s joint expert fee, *ie*, \$243,430.<sup>15</sup> Crescendas states that the joint expert fee of Dr Woo and Mr Yeo is reasonable. Crescendas states that it has applied a discount to the fee on account of the fact that the AD had overturned a finding made in the Damages Judgment (HC) that the combined delay had caused Crescendas to lose one of the tenants of the Project, namely PetNet, as a pre-commitment tenant.<sup>15</sup>

(iii) Mr Toh’s expert fee amounted to \$665,379.80. Crescendas seeks a costs order for 65% of Mr Toh’s expert fee, *ie*, \$432,496.87. Crescendas states that the expert fee of Mr Toh is reasonable. Crescendas also states that it has applied a discount to Mr Toh’s fee as not all of Mr Toh’s evidence was used by the Court in its determination of the issues.<sup>16</sup>

(iv) Crescendas states that its general disbursements for the second tranche of the trial amounts to \$224,763. Crescendas seeks a costs order for 80% of its general disbursements, *ie*, \$179,810.40.<sup>17</sup>

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<sup>14</sup> Crescendas’ Reply Submissions on Costs dated 6 June 2023 (“Crescendas’ 6 June 2023 Reply Submissions”) at para 40; Summary Tables at page 9.

<sup>15</sup> Crescendas’ 9 May 2023 Costs Submissions at para 33; Summary Tables at page 8; Crescendas’ 6 June 2023 Reply Submissions at para 41.

<sup>16</sup> Crescendas’ 9 May 2023 Costs Submissions at para 33; Crescendas’ 6 June 2023 Reply Submissions at para 42.

<sup>17</sup> Crescendas’ 6 June 2023 Reply Submissions at para 39, Summary Tables at page 8.

***JPW's submission on costs for the first tranche and the second tranche of the trial***

*JPW's submission on costs for the first tranche of the trial*

25 JPW submits that it is the successful party for the first tranche of the trial.<sup>18</sup> JPW states that it had succeeded on two highly contentious issues, namely the issues relating to the Preliminaries Sum and the shared savings. JPW submits that since it won on these issues, JPW was entitled to approximately \$14.65 million. This comprises the Preliminaries Sum of \$12.3 million and JPW's \$2.5 million share in the first \$5 million of the shared savings, less \$155,000 which was for the OCBC Bond which JPW failed in its counterclaim against Crescendas. Further, JPW argues that it succeeded in proving Crescendas' acts of prevention which made the liquidated damages provision of the LOI inoperative and this led to the outcome that Crescendas was liable for 173 days out of the total combined delay of 334 days.<sup>19</sup>

26 In relation to the quantum of costs for the first tranche of the trial, JPW submits that it should be entitled to a costs order for 70% to 80% of its legal costs and all disbursements.<sup>20</sup> The details of JPW's submission are as follows:

(a) In relation to legal costs, JPW relies on its costs schedule for the first tranche of the trial which sets out its legal costs as amounting to \$700,000.<sup>21</sup> JPW highlights that Crescendas has indicated its legal costs for the first tranche of the trial as amounting to \$700,000 as well. JPW

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<sup>18</sup> JPW's Submission on Costs dated 9 May 2023 ("JPW's 9 May 2023 Costs Submissions") at para 9 to 11.

<sup>19</sup> JPW's 9 May 2023 Costs Submissions at paras 9 to 10.

<sup>20</sup> JPW's 9 May 2023 Costs Submissions at para 11.

<sup>21</sup> Crescendas BOD Vol II at Tab 14: JPW's Costs Schedule for the first tranche of the trial dated 12 October 2018.

seeks a costs order for 70% to 80% of its legal costs, *ie*, \$490,000 to \$560,000.<sup>22</sup>

(b) In relation to disbursements. JPW relies on its costs schedule for the first tranche of the trial which sets out its disbursements as amounting to \$162,772.85.<sup>23</sup> JPW highlights that this is less than half of the amount of \$455,355.53 which Crescendas has set out in its costs schedule as its disbursements. JPW seeks a costs order for 70% to 80% of its disbursements, *ie*, \$113,941.00 to \$132,218.28.

*JPW's submission on costs for the second tranche of the trial*

27 JPW accepts that Crescendas was the successful party for the second tranche of the trial and Crescendas is, therefore, entitled to costs for the second tranche of the trial.

28 In relation to the quantum of costs for the second tranche of the trial, however, JPW submits that Crescendas should be entitled to a costs order for only 40.6% of its legal costs and general disbursements. As for Crescendas' expert fees, JPW argues that it should only be liable for a small proportion.<sup>24</sup> The details of JPW's submission are as follows:

(a) In relation to legal costs, JPW states that Crescendas should only be entitled to claim 40.6% of legal costs on the basis that Crescendas only succeeded in claiming 40.6% of the amount of \$13.3 million it was seeking to claim against JPW for delay-related losses at the start of the

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<sup>22</sup> JPW's 9 May 2023 Costs Submissions at paras 11 to 12.

<sup>23</sup> Crescendas BOD Vol II at Tab 14: JPW's Costs Schedule for the first tranche of the trial dated 12 October 2018.

<sup>24</sup> Crescendas' 9 May 2023 Costs Submissions at para 22.

second tranche of the trial.<sup>25</sup> Further, JPW takes issue with the quantum of legal costs claimed by Crescendas for the second tranche of the trial. JPW, instead, suggests that Appendix G should be used as a guide on legal costs for the second tranche of the trial. JPW states that Appendix G suggests legal costs for pre-trial costs, 16 days of trial and post-trial costs in the range of \$167,000 to \$413,000. JPW states that the appropriate starting point for legal costs in this case is \$350,000. Therefore, JPW argues that Crescendas should only be entitled to 40.6% of legal costs and thus, Crescendas should be entitled to only \$142,100 (*ie*, 40.6% of \$350,000).<sup>26</sup>

(b) In relation to disbursements, JPW argues that Crescendas' claim for disbursements of \$1,171,185.06 is not a reasonable and proportionate figure. The details of JPW's submission are as follows:

(i) In relation to general disbursements for Crescendas, JPW states that Crescendas should be entitled to no more than 40.6% of its general disbursements. JPW states that this would amount to \$89,524.31.<sup>27</sup>

(ii) In relation to the expert fees incurred by Crescendas, JPW states that there is a need for substantial moderation to accord with principles of proportionality and reasonableness. JPW's submission on the various expert fees for Crescendas' experts is as follows:

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<sup>25</sup> JPW's 9 May 2023 Costs Submissions at para 14.

<sup>26</sup> JPW's 9 May 2023 Costs Submissions at paras 16 to 17; Summary Tables at page 6.

<sup>27</sup> Summary Tables at page 8.

(A) JPW highlights that the expert fee of Assoc Prof Tay, the Court's expert, amounted to \$57,600 and this was borne by Crescendas and JPW in equal proportion in the first instance. JPW states that it should only be ordered to pay 40.6% of Crescendas' 50% share of Assoc Prof Tay's fee of \$28,800, *ie*, \$11,692.80.<sup>28</sup> Therefore, taking into account that the parties bore Assoc Prof Tay's fee in equal proportion in the first instance, JPW would ultimately bear \$40,492.80 while Crescendas would bear \$17,107.20 based on JPW's submission.

(B) JPW argues that the joint expert fee of Dr Woo and Mr Yeo is unreasonable and excessive. The joint expert fee of the two experts amounted to \$256,242.26. JPW highlights that this fee is twice that of JPW's expert, Assoc Prof Yu, which was \$119,600. JPW also highlights that this fee is four times that of the Court's expert, Assoc Prof Tay, which was \$57,600. JPW proposes a 50% reduction to the joint expert fee of Dr Woo and Mr Yeo. Therefore, JPW seeks a costs order for JPW to pay \$128,121.13 to Crescendas in relation to the joint expert fee of Dr Woo and Mr Yeo.<sup>29</sup>

(C) JPW argues that Mr Toh's expert fee of \$665,379.80 is disproportionately high. JPW highlights that Mr Toh's expert fee is five times that of JPW's expert, Assoc Prof Yu, which was \$119,600. Further,

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<sup>28</sup> JPW's 9 May 2023 Costs Submissions at para 15(a).

<sup>29</sup> JPW's 9 May 2023 Costs Submissions at para 15(b); Summary Tables at page 8.

JPW states that there is substantive reason for reducing the amount payable by JPW to Crescendas in relation to Mr Toh's expert fee. JPW states that the original case advanced by Crescendas at the start of the second tranche of the trial was based on Mr Toh's quantification of Crescendas' loss of net rental revenue using the multi-year method. Mr Toh's quantification was based on a calculation of the difference of what Crescendas would have earned over a span of 7.5 years to reach stabilised occupancy against what Crescendas did actually earn over 7.5 years. JPW submits that Mr Toh's position was, however, ultimately abandoned by Crescendas in its written closing submissions after extensive cross-examination of Mr Toh. Instead, according to JPW, Crescendas quantified the loss of net rental revenue based on a calculation of the difference of what Crescendas would have earned over a span of five years to reach stabilised occupancy if there were delays against what Crescendas would have earned over a span of five years if there were no delays. On this basis, JPW submits that very little of Mr Toh's expert evidence was of assistance to the Court. Therefore, JPW proposes a 70% reduction to Mr Toh's fee. On this basis, JPW seeks a costs order for JPW to pay \$199,613.94 to Crescendas in relation to the expert fee of Mr Toh.<sup>30</sup>

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<sup>30</sup> JPW's 9 May 2023 Costs Submissions at para 15(c); Summary Tables at page 9.

***The parties' submissions on costs for various interlocutory matters***

29 The parties also seek costs orders for various interlocutory matters for which costs have not been decided. The parties have agreed on a number of issues relating to the costs orders for the interlocutory matters. I shall deal with the disputed issues relating to the costs orders for the interlocutory matters at [76] to [78] below.

**The applicable law on costs**

***The general principles on costs***

*Generally costs follow the event*

30 Section 18(2) read with paragraph 13 of the First Schedule to the Supreme Court of Judicature Act 1969 (2020 Rev Ed) empowers the court to award costs. Vinodh Coomaraswamy J stated in *Comfort Management Pte Ltd v OGSP Engineering Pte Ltd and another* [2022] 5 SLR 525 (“*Comfort Management*”) (at [24]) that the court has a very wide discretion in exercising this power and this is specified in O 59 r 2(2) of the Rules of Court (2014 Rev Ed) (“ROC 2014”).

31 Order 59 r 3(2) of the ROC 2014 states that costs generally follow the event, *ie*, the successful party in the litigation is entitled to recover costs from the unsuccessful party:

**When costs to follow the event (O. 59, r. 3)**

...

(2) If the Court in the exercise of its discretion sees fit to make any order as to the costs of or incidental to any proceedings, the Court shall, subject to this Order, order the costs to follow the event, 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.

32 When deciding who is the successful party in the litigation, the court would have to ascertain the overall outcome of the litigation as well as which party in substance and reality won the litigation, looking at its outcome in a realistic and commercially sensible way: *Comfort Management* at [27]–[28], citing *Straker v Tudor Rose (a firm)* [2007] EWCA Civ 368 at [11]; *HLB Kidsons (A Firm) v Lloyds Underwriters subscribing to Lloyds Policy No 621/PKID00101 & Others* [2007] EWHC 2699 (Comm) at [10].

33 In *Comfort Management*, Coomaraswamy J stated that in commercial litigation where the dispute is ultimately about money, the successful party would typically be the party whom the court has found is entitled to receive money, see [29]–[35] as follows:

29 In commercial litigation, where the dispute is ultimately about money, the event is typically in favour of the party whom the court has found is entitled to receive money (*per* Ward LJ in *Burchell v Bullard* [2005] EWCA Civ 358 (“*Burchell*”) at [33]; *per* Longmore LJ in *AL Barnes Limited v Time Talk (UK) Limited* [2003] EWCA Civ 402 (“*Barnes*”) at [28]). That is especially true where the litigation comprises both claims and counterclaims and each party claims a balance in his favour (*per* Jackson J (as he then was) in *Multiplex Constructions (UK) Ltd v Cleveland Bridge UK Ltd and another* [2008] EWHC 2280 (TCC) (“*Multiplex*”) at [72(i)]).

30 The decision of the English Court of Appeal in *Barnes* is particularly instructive. In that case, a contractor undertook and completed renovation works for an employer with no contract in place. The contractor sued the employer to recover a *quantum meruit* for the works. The employer brought a counterclaim alleging that the contractor’s employee had been dishonest in procuring the engagement and in performing the works.

31 The trial judge found that the contractor was entitled to recover £216,000 from the employer for the works on a *quantum meruit*. But he accepted that the contractor’s employee had indeed been dishonest. He therefore held that the employer was entitled to recover £87,000 from the contractor on the counterclaim. The employer therefore owed the contractor a net sum of £129,000 (*Barnes* at [24]).

32 On the costs of the action, the trial judge started by holding that each party should bear its own costs of and incidental to the expert evidence adduced at trial. The expert evidence had been necessary purely to deal with the *quantum meruit* claim. The trial judge's reasoning was that each party was equally responsible for the works having been undertaken and completed with no contract in place and therefore that each party was equally responsible for the difficulties of proving the nature and the value of the works which had made the expert evidence necessary (*Barnes* at [26]). The trial judge then found that the bulk of the time at trial was taken up with proving whether the contractor's employee had been dishonest. Because the employer had won on that issue, the trial judge found that the employer should be seen as the successful party in the litigation. He accordingly ordered the contractor to pay half of the employer's costs (*Barnes* at [27]).

33 The English Court of Appeal set aside the trial judge's costs order. It ordered instead that the employer pay 25% of the contractor's costs (*Barnes* at [30]). Longmore LJ held that the contractor was the successful party because the result of the litigation was that the contractor had been found entitled to receive a substantial sum of money from the employer. The trial judge had therefore gone wrong in principle in two ways: (a) by failing to find that the event was in the contractor's favour; and (b) by segregating the costs of the expert evidence as costs which need not follow the event. As Longmore LJ put it at [28]–[30]:

28. It does seem to me that the judge has, with the greatest respect, fallen into an error of principle. In what may generally be called commercial litigation...the disputes are ultimately about money. *In deciding who is the successful party the most important thing is to identify the party who is to pay money to the other. That is the surest indication of success and failure.* It is not irrelevant that it was [the employer] who felt the need to appeal the judge's judgment. It is not normally right to segregate a large element of the costs and thereafter to decide who the successful party is. It needs to be decided at the outset.

29. I do not, moreover, consider that the judge was right to segregate the costs associated with instructing experts and thus most of the costs of proving the claim...

...

30. For these two reasons the exercise of discretion by the judge was vitiated by an error of principle. If he had asked himself who was the successful party, before

segregation of the effective costs of proving the *quantum meruit* claim, he would in my judgment have had to answer that it was the [contractor] who recovered more than the [employer] had ever offered and thus it must be the [contractor] who [was] the successful party. The question would then be what proportion, if any, of their costs should they recover. That question is now for this court. The judge was, of course, correct to be influenced by the fact that most of the time spent in court was spent on an issue on which the [contractor] failed and that that issue was whether one of the [contractor's] employees had acted dishonestly, albeit at "the least serious end of the spectrum". Bearing that matter in mind, I would hold that the [contractor's] success should be reflected by the recovery of a small proportion of their costs. I would fix that proportion at 25% and would accordingly allow the cross-appeal to that extent.

[emphasis added]

34 Implicit in Longmore LJ's criticism of the trial judge's approach is the fundamental importance of identifying the successful party at the very outset of exercising the discretion to award costs. Doing so makes it more likely that the discretion will be approached from the right perspective (see [*HLB Kidsons (A Firm) v Lloyds Underwriters subscribing to Lloyds Policy No 621/PKID00101 & Others* [2007] EWHC 2699 (Comm)] ... at [10]). Further, once the successful party has been identified, the court will be able to attach real weight to that party's success throughout the exercise of the discretion to award costs, as the court is obliged to do (*Re Elgindata Limited (No. 2)* [1992] 1 WLR 1207 ("*Elgindata*") at 1213H per Nourse LJ).

35 Thus, if the trial judge in *Barnes* had attempted to identify the successful party at the outset of his exercise in awarding costs, he would have found that it was the contractor. It would then have followed that the contractor was *prima facie* entitled under the general rule to receive its costs from the employer. And that it was for the employer to persuade the trial judge that he should depart from the general rule and to what extent he should do so.

[emphasis in original]

***When would it be appropriate to depart from the general rule that costs follow the event?***

34 It must be emphasised that when the successful party raises claims or issues in the litigation which ultimately failed, this, in itself, is not sufficient

reason to depart from the general rule that costs follow the event. The successful party in such a situation should still be entitled to costs: *Comfort Management* at [85(c)], citing *Re Elgindata Limited (No. 2)* [1992] 1 WLR 1207 (“*Elgindata*”) at 1214A; *Element Six Technologies Ltd v Ila Technologies Pte Ltd* [2020] SGHC 140 at [30].

35 In exercising the court’s discretion on whether to depart from the general rule, the court may consider the following: an order depriving the successful party of the right to recover all or part of his costs of the action from the unsuccessful party, and an order requiring the successful party to pay all or part of the unsuccessful party’s costs.

36 An order requiring the successful party to pay all or part of the unsuccessful party’s costs would only be justified under O 59 r 6A of the ROC 2014 if the following criteria are satisfied: (a) the successful party failed to establish a significant discrete claim or issue which he raised in the litigation; (b) the successful party thereby unnecessarily or unreasonably protracted or added to the costs or complexity of the litigation; and (c) the successful party raised the claim or issue improperly or unreasonably: *Comfort Management* at [85(e)], citing *Elgindata* at 1214A; *Tullio Planeta v Maoro Andrea G* [1994] 2 SLR(R) 501 at [24].

### **My decision**

***Crescendas is the successful party and is entitled to costs for both the first tranche and the second tranche of the trial***

*Crescendas is the successful party for the first tranche of the trial*

37 In determining the successful party for the first tranche of the trial, the parties have agreed that the issues-based approach is not the appropriate

approach.<sup>31</sup> The parties agree that the Court has to ascertain ultimately which party is entitled to receive money after taking into account the claims and counterclaims.

38 While the trial was bifurcated, this does not mean that the Court must ignore the outcome of the second tranche of the trial, which is an assessment of damages for the 161 days of delay caused by JPW. On the contrary, the Court must view the overall outcome of the litigation in determining which party in substance and in reality won the litigation (see [32] above). This would require an examination of which party is ultimately entitled to receive more money. The result of the overall litigation is that JPW must pay a substantial sum to Crescendas after taking into account JPW's counterclaims. Crescendas could not have recovered this sum if it had not commenced legal action against JPW and succeeded in Suit 477. Therefore, Crescendas must be the successful party in this litigation for both the first tranche and the second tranche of the trial.

39 Crescendas only recovered a portion of its overall pleaded claims as Crescendas took extreme positions for its claims. JPW argues that Crescendas cannot be the successful party in the first tranche of the trial as Crescendas was liable for 173 days of delay.<sup>32</sup> However, JPW was liable for 161 days of delay and this was the subject of the second tranche of the trial where damages were to be assessed for JPW's 161 days of delay.

40 JPW had also won some important issues in the first tranche. JPW succeeded in its counterclaim in relation to its \$2.5 million share in the first

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<sup>31</sup> Crescendas' 6 June 2023 Reply Submissions at para 4; JPW's Reply Submissions on Costs dated 6 June 2023 ("JPW's 6 June 2023 Reply Submissions") at para 6.

<sup>32</sup> JPW's 9 May 2023 Costs Submissions at para 10.

\$5 million of the shared savings. JPW won on the issue of the Preliminaries Sum and managed to resist Crescendas' claim on liquidated damages. JPW also succeeded in proving that Crescendas was liable for 173 days of delay as a result of its acts of prevention. However, these successes were outweighed by Crescendas' victory in Suit 477 as the overall result of this litigation is that JPW must pay Crescendas a substantial sum.

*JPW's submission that it is the successful party for the first tranche of the trial is not convincing*

41 JPW's argument that it is the successful party for the first tranche of the trial appears to be based primarily on its successes on some of the issues. JPW submits that it "was found to be entitled to approximately \$14.65m [at the end of the first tranche of the trial], comprising \$12.3m of the [Preliminaries Sum] plus \$2.5m for [its share in the first \$5 million of the shared savings] that it had succeeded on, less \$155,000 for the [OCBC Bond] which [Crescendas] had succeeded on".<sup>33</sup>

42 This submission, however, is incorrect. Although JPW had won on the issue of the Preliminaries Sum of \$12.3 million, JPW cannot claim that it had won \$12.3 million from Crescendas. The issue relating to the Preliminaries Sum (see [10(a)] above) was whether the Preliminaries Sum of \$12.3 million was a fixed sum as JPW contended or a tentative figure subject to negotiation within four weeks of the commencement of the Project as Crescendas contended. JPW succeeded in proving that the Preliminaries Sum was a fixed sum of \$12.3 million. The result of this was that JPW was not required to refund any portion of the Preliminaries Sum to Crescendas. But the result was not that Crescendas had to pay more for the Preliminaries Sum.

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<sup>33</sup> JPW's 9 May 2023 Costs Submissions at para 10.

43 However, JPW's attempt now to frame the Preliminaries Sum of \$12.3 million as an amount it had *won* as a result of the litigation is incorrect. Even if Crescendas had succeeded in proving that the Preliminaries Sum was not fixed at \$12.3 million, this did not mean that JPW was not entitled to any portion of the \$12.3 million. Rather, Crescendas' submission was that the parties had not arrived on any agreement on the Preliminaries Sum within four weeks of the commencement of the Project and that the Court should order that JPW was entitled to be compensated for work done on a *quantum meruit* basis (see Liability Judgment (HC) at [45]), which may or may not have been higher than \$12.3 million. If Crescendas had succeeded on its argument on the Preliminaries Sum, there would have been an assessment to determine the sum which JPW was entitled to for the preliminaries in the second tranche of the trial. This would then be an issue for the High Court at the second tranche to ascertain the portion of the Preliminaries Sum which JPW was entitled to. Therefore, JPW cannot reasonably state now that it had *won* the sum of \$12.3 million, or even *won* a portion of the sum of \$12.3 million such as \$6.3 million as it seeks to claim in its submission.<sup>34</sup> JPW's success on this issue was merely a finding that the Preliminaries Sum was a fixed sum of \$12.3 million. Therefore, JPW does not have to return any portion of the Preliminaries Sum to Crescendas.

44 For the above reasons, the monetary win for JPW at the end of the first tranche of the trial was only in relation to JPW's share of \$2.5 million in the first \$5 million of the shared savings. In contrast, Crescendas had succeeded in the following claims: (a) JPW was responsible for 161 days of delay, for which general damages was to be assessed in the second tranche of the trial; and (b) JPW was liable to refund a portion of the additional preliminaries

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<sup>34</sup> JPW's 6 June 2023 Reply Submissions at para 13.

Crescendas paid to JPW for 161 days of delay, which sum was fixed at \$2.75 million following a settlement agreement by the parties before the hearing of the second tranche.

45 Therefore, it is clear that Crescendas is the successful party for both the first tranche and the second tranche of the trial. This does not mean, however, that JPW's successes in relation to its counterclaim and in defending against Crescendas' various claims are to be given no weight. Rather, JPW's successes on these issues would allow the Court to exercise its discretion to discount Crescendas' claim for legal costs and disbursements for the first tranche of the trial. I shall, therefore, now consider the costs to be awarded to Crescendas for the first tranche of the trial.

***The quantum of costs to be awarded to Crescendas for the first tranche of the trial***

46 The parties' positions on the quantum of costs to be awarded to Crescendas for the first tranche of the trial are as follows:

| Type of costs | Crescendas' position                                                                                          | JPW's position                                                                                  |
|---------------|---------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------|
| Legal costs   | JPW ought to pay Crescendas 40% of Crescendas' legal costs of \$745,000, <i>ie</i> , \$298,000. <sup>35</sup> | JPW does not accept that Crescendas is the successful party for the first tranche of the trial. |

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<sup>35</sup> Summary Tables at page 2.

|                        |                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                     |
|------------------------|------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                        |                                                                                                                              | <p>Even if Crescendas is found to have succeeded on the issue of delay, JPW states that JPW should nevertheless be awarded costs but at a lower quantum, <i>ie</i>, Crescendas is to pay JPW 50% to 60% of JPW's legal costs.</p> <p>Alternatively, JPW states that each party should bear its own legal costs for the first tranche of the trial.<sup>36</sup></p> |
| General disbursements  | JPW ought to pay Crescendas 40% of Crescendas' general disbursements of \$224,828.22, <i>ie</i> , \$89,931.29. <sup>37</sup> | <p>JPW does not accept that Crescendas is the successful party for the first tranche of the trial.</p> <p>JPW states that no costs should be payable by JPW to Crescendas for Crescendas' general disbursements.<sup>38</sup></p>                                                                                                                                   |
| Mr Connor's expert fee | JPW ought to pay Crescendas 60% of Mr Connor's expert fee of \$239,816.25, <i>ie</i> , \$143,889.75. <sup>39</sup>           | JPW does not accept that Crescendas is the successful party for the first tranche of the trial.                                                                                                                                                                                                                                                                     |

<sup>36</sup> Summary Tables at page 2.

<sup>37</sup> Summary Tables at page 3. See also, [22(b)(i)] above.

<sup>38</sup> Summary Tables at page 3.

<sup>39</sup> Summary Tables at page 3.

|  |  |                                                                                                                                                                                                    |
|--|--|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|  |  | JPW states that no costs should be payable by JPW to Crescendas for the expert fee of Mr Connor. JPW also states that the expert fee of Mr Connor is excessive and disproportionate. <sup>40</sup> |
|--|--|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

47 To determine the appropriate and fair quantum of costs to Crescendas, the Court has to take into account the conduct of Crescendas and its failure in certain claims as well as the successes of JPW in the first tranche of the trial which are as follows:

- (a) Crescendas failed in its claim that the Preliminaries Sum was not a fixed sum.
- (b) Crescendas succeeded in refuting JPW's counterclaim of \$155,000 which was the amount JPW incurred to procure the OCBC Bond.
- (c) Crescendas failed in relation to JPW's counterclaim for JPW's share of \$2.5 million in the first \$5 million of the shared savings.
- (d) Crescendas succeeded in proving that JPW caused substantial delays to the completion of the Project. However, Crescendas claimed in its pleadings that JPW was liable for 355 days of delay but JPW was ultimately only found to be liable for 161 days of delay. The Court also found Crescendas liable for 173 days of delay by its acts of prevention.

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<sup>40</sup> Summary Tables at page 3.

(e) As a result of the delay by JPW, Crescendas succeeded in its claim for a refund of the portion of the additional preliminaries it paid to JPW which the parties agreed at \$2.75 million.

48 The High Court also noticed that Crescendas had taken extreme positions which were unnecessary in Suit 477. These had lengthened and increased the complexity of the proceedings.

49 In particular, Crescendas alleged that the delays were all due to JPW. However, the High Court found that Crescendas had committed acts of prevention that caused the Project's completion to be delayed. In the Liability Judgment (HC) (at [378]–[384]), the High Court found that Crescendas had embarked on an insidious campaign to slow down the completion of the Project as it was a period of global financial crisis in 2008 which moderated construction prices. There were also serious uncertainty and challenges to seek tenants to occupy the Project at that time. To delay the progress of the work, Crescendas engaged in conduct which was highly interventionist and uncondusive to the progress of the works towards the completion of the Project. Despite the delay caused by Crescendas, it took an unreasonable position at the first tranche of the trial and blamed JPW solely for all 355 days of delay. This unnecessarily added to the length and the complexity of the proceedings.

50 It is not surprising that Crescendas is not seeking an order for all its legal costs and disbursements for the first tranche of the trial. Crescendas had limited successes regarding the various issues of the claim and seeks for at least 40% of its legal costs and at least 50% of all disbursements for the first tranche of the trial.

51 In my view, the fair and appropriate costs orders for the first tranche of the trial for Crescendas are 30% of its legal costs and 40% of its disbursements as Crescendas had limited successes in the first tranche of the trial. The breakdown is as follows:

(a) The parties agree that the quantum of legal costs for the first tranche is \$700,000.<sup>41</sup> However, the parties' costs schedules have not included legal costs for the parties' oral closing submissions which took 2.5 days. Crescendas has referred to the costs guidelines in Appendix G which provides a maximum daily tariff for construction cases of \$18,000. This maximum daily tariff should be used to compute the legal costs for the 2.5 days of oral closing submissions, given the complexity of Suit 477. On this basis, Crescendas' total legal costs for the first tranche of the trial is \$745,000, *ie*, \$700,000 plus \$45,000. Accordingly, JPW is to pay Crescendas 30% of Crescendas' legal costs, *ie*, \$223,500.

(b) In relation to the general disbursements, Crescendas' costs schedule for the first tranche of the trial sets out its general disbursements for the period up to the written closing submissions as amounting to \$220,183.75.<sup>42</sup> Taking into account the general disbursements incurred for and after the oral closing submissions, Crescendas states that its total general disbursements amount to \$224,828.22. Accordingly, JPW is to pay Crescendas 40% of Crescendas' general disbursements, *ie*, \$89,931.29.

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<sup>41</sup> Crescendas BOD Vol II at Tabs 13 and 14: Crescendas' Costs Schedule for the first tranche of the trial dated 15 October 2018 and JPW's Costs Schedule for the first tranche of the trial dated 12 October 2018.

<sup>42</sup> Crescendas BOD Vol II at Tab 13: Crescendas' Costs Schedule for the first tranche of the trial dated 15 October 2018; Summary Tables at page 3.

(c) In relation to Mr Connor's expert fee, Crescendas states that it incurred the sum of \$239,816.25.<sup>43</sup> Accordingly, JPW is to pay Crescendas 40% of Mr Connor's expert fee of \$239,816.25, *ie*, \$95,926.50.

***The quantum of costs to be awarded to Crescendas for the second tranche of the trial***

52 The parties agree that Crescendas is entitled to costs for the second tranche of the trial. Thus, I shall focus only on the fair and appropriate quantum of legal costs and disbursements which Crescendas is entitled to.

53 The parties' positions on the quantum of costs to be awarded to Crescendas for the second tranche of the trial are as follows:

| Type of costs | Crescendas' position                                                                                          | JPW's position                                                                                                                                                                                                                                                                                                                                                 |
|---------------|---------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Legal costs   | JPW ought to pay Crescendas 80% of Crescendas' legal costs of \$618,000, <i>ie</i> , \$494,400. <sup>44</sup> | JPW states that Appendix G provides for legal costs in the range of \$167,000 to \$413,000 for pre-trial costs of 16 days of trial and post-trial costs. JPW states that the appropriate legal costs is \$350,000.<br><br>Therefore, JPW should be ordered to pay Crescendas 40.6% of the sum of \$350,000 for Crescendas' legal costs, <i>ie</i> , \$142,100. |

<sup>43</sup> Summary Tables at page 4.

<sup>44</sup> Summary Tables at page 7.

|                             |                                                                                                                           |                                                                                                                                                                                                                                       |
|-----------------------------|---------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                             |                                                                                                                           | Alternatively, JPW states that it should only be ordered to pay up to 40.6% of the upper range of legal costs of \$413,000 provided for in Appendix G, <i>ie</i> , \$167,678. <sup>45</sup>                                           |
| General disbursements       | JPW ought to pay 80% of Crescendas' general disbursements of \$224,763, <i>ie</i> , \$179,810.40. <sup>46</sup>           | JPW ought to pay 40.6% of Crescendas' general disbursements. <sup>47</sup> Given that Crescendas' general disbursements amounts to \$224,763, this would mean that JPW is seeking to pay 40.6% of \$224,763, <i>ie</i> , \$91,253.78. |
| Assoc Prof Tay's expert fee | JPW ought to pay 80% of Crescendas' share of Assoc Prof Tay's expert fee of \$28,800, <i>ie</i> , \$23,040. <sup>48</sup> | JPW ought to pay 40.6% of Crescendas' share of Assoc Prof Tay's expert fee of \$28,800, <i>ie</i> , \$11,692.80. <sup>49</sup>                                                                                                        |

<sup>45</sup> Summary Tables at page 7.

<sup>46</sup> Summary Tables at page 8.

<sup>47</sup> Summary Tables at page 8.

<sup>48</sup> Summary Tables at page 9.

<sup>49</sup> Summary Tables at page 9.

|                                        |                                                                                                                 |                                                                                                                 |
|----------------------------------------|-----------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------|
| Dr Woo's and Mr Yeo's joint expert fee | JPW ought to pay 95% of Dr Woo's and Mr Yeo's joint expert fee of \$256,242.26, ie, \$243,430.15. <sup>50</sup> | JPW ought to pay 50% of Dr Woo's and Mr Yeo's joint expert fee of \$256,242.26, ie, \$128,121.13. <sup>51</sup> |
| Mr Toh's expert fee                    | JPW ought to pay 65% of Mr Toh's expert fee of \$665,379.80, ie, \$432,496.87. <sup>52</sup>                    | JPW ought to pay 30% of Mr Toh's expert fee of \$665,379.80, ie, \$199,613.94. <sup>53</sup>                    |

*The quantum of legal costs which Crescendas is entitled to for the second tranche of the trial*

54 I shall deal first with Crescendas' entitlement to legal costs for the second tranche of the trial. Crescendas seeks 80% of its legal costs. In contrast, JPW seeks an order that it be liable for only 40.6% of Crescendas' legal costs.

55 JPW argues that since the AD, in the second tranche of the trial, only awarded 40.6% of Crescendas' overall claim, Crescendas should only be awarded 40.6% of the costs for the second tranche of the trial. This simplistic approach may not be fair and appropriate. This approach does not take into consideration the complexity of the second tranche of the trial. It also does not take into account the extremely low quantum that JPW submitted it was liable to pay to Crescendas in the second tranche of the trial. Ultimately, the AD awarded Crescendas an amount much higher than that proposed by JPW for the 161 days of delay.<sup>54</sup>

<sup>50</sup> Summary Tables at page 8.

<sup>51</sup> Summary Tables at page 8.

<sup>52</sup> Summary Tables at page 9.

<sup>53</sup> Summary Tables at page 9.

<sup>54</sup> Crescendas' 9 May 2023 Costs Submissions at para 29.

56 Further, JPW's computation of 40.6% has not taken into account that Crescendas is entitled to a sum of \$2.75 million from JPW in relation to the issue of the additional preliminaries. JPW contends that this should not be the case since the sum of \$2.75 million was pursuant to a settlement by the parties.<sup>55</sup> In the Liability Judgment (HC) at [376], the High Court found that Crescendas should not have paid JPW for the additional preliminaries for the number of days of delay caused by JPW. The High Court, therefore, allowed Crescendas' claim for a refund of the portion of the additional preliminaries it paid to JPW. As a result of the CA's finding in Liability Judgment (CA) at [20] that JPW was responsible for 161 days of delay, Crescendas was entitled to a refund of the portion of the additional preliminaries it paid to JPW for 161 days of delay. While the assessment of the amount to be refunded by JPW to Crescendas would have been the subject matter of the second tranche of the trial, the parties arrived at a settlement before the second tranche of the trial that a sum of \$2.75 million was to be refunded by JPW to Crescendas. Therefore, it is clear that the settlement was pursuant to a finding already made in the first tranche of the trial that Crescendas was entitled to a refund of the portion of the additional preliminaries it paid to JPW for 161 days of delay. While costs were saved as a result of the settlement before the second tranche of the trial, the fact remains that costs were incurred to litigate the issue relating to the additional preliminaries which led to the finding in the Liability Judgment (HC). Therefore, the Court is entitled to take into account that Crescendas had succeeded to claim a refund of \$2.75 million from JPW in relation to the issue of the additional preliminaries in the second tranche of the trial and the proportion of costs to be awarded to Crescendas.

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<sup>55</sup> JPW's 9 May 2023 Costs Submissions at para 13.

57 Based on a holistic overview, Crescendas has won a substantial sum of \$8,125,952.92 (see the breakdown below) at the end of the second tranche of the trial, less the sum of \$2.5 million owed by Crescendas to JPW for JPW's share of the first \$5 million of the shared savings. The breakdown of the award is as follows:

- (a) JPW was found to be liable for a sum of \$4,185,802.60 in relation to Crescendas' loss of net rental revenue.
- (b) JPW was found to be liable for a sum of \$1,061,285.86 in respect of Crescendas' holding costs.
- (c) JPW was found to be liable for a sum of \$128,864.46 in respect of the site staff costs.
- (d) JPW was found to be liable to refund a portion of the additional preliminaries paid by Crescendas to JPW for 161 days of delay. Following the settlement, JPW agreed to pay a sum of \$2.75 million to Crescendas.
- (e) JPW succeeded in its counterclaim against Crescendas for the sum of \$2.5 million which was JPW's share in the first \$5 million of the shared savings.

58 Further, Crescendas had also succeeded in showing, and the AD had agreed, that the multi-year methodology was the correct method for computing the loss of rental arising from the 161 days of delay caused by JPW.

59 Therefore, Crescendas' submission that it should be entitled to 80% of legal costs for the second tranche of the trial is reasonable and I agree. Unlike the first tranche of the trial, the quantum of legal costs for the second tranche of

the trial is disputed. I shall summarise the parties' position on the quantum of legal costs for the second tranche of the trial and the basis of my decision below:

(a) Crescendas relies on its costs schedule for the second tranche of the trial which sets out its legal costs for the period up to the written closing submissions as amounting to \$600,000.<sup>56</sup> Crescendas' costs schedule has not included legal costs for the parties' oral closing submissions which took one day. Crescendas has referred to the costs guidelines in Appendix G and states that the maximum daily tariff of \$18,000 should be used to compute the legal costs for the one day of oral closing submissions, given the complexity of Suit 477. Therefore, Crescendas states that its total legal costs for the second tranche of the trial is \$618,000. As acknowledged by Crescendas, this sum of \$618,000 already takes into account legal costs incurred by Crescendas for the issue of the additional preliminaries.<sup>57</sup> Crescendas seeks a costs order for 80% of its legal costs of \$618,000, *ie*, \$494,400.

(b) JPW disagrees with Crescendas' legal costs as set out in Crescendas' costs schedule. Instead, JPW suggests using the costs guidelines in Appendix G to arrive at an approximation of the appropriate legal costs for the second tranche of the trial. Appendix G provides the following:

- (i) \$30,000 to \$90,000 for pre-trial costs;
- (ii) a daily tariff of \$6,000 to \$18,000 for trial; and

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<sup>56</sup> Crescendas BOD Vol II at Tab 28: Crescendas' Costs Schedule for the second tranche of the trial dated 31 May 2021.

<sup>57</sup> Summary Tables at page 5.

- (iii) up to \$35,000 for post-trial costs.

JPW states that an application of Appendix G would lead to costs in the range of \$167,000 to \$413,000 for pre-trial costs, 16 days of trial and post-trial costs. JPW states that the appropriate starting point for legal costs in this case is \$350,000. Based on JPW's costs schedule for the second tranche of the trial, I note that JPW's legal costs amounted to \$350,000.<sup>58</sup>

(c) There is clearly a significant difference in the quantum of legal costs of the parties as set out in their respective costs schedules. The costs guidelines in Appendix G should be used to arrive at an approximation of legal costs which would ordinarily have been incurred for the second tranche of the trial. The second tranche of the trial was clearly complex and lengthy. I agree that the complexity of the second tranche of the trial warrants using the highest end of the ranges set out in Appendix G. This would lead to the total legal costs of \$413,000, comprising the following:

- (i) \$90,000 for pre-trial costs;
- (ii) \$288,000 for 16 days of trial (which already factors in one day of oral closing submissions), based on the maximum daily tariff of \$18,000 in Appendix G; and
- (iii) \$35,000 for post-trial costs.

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<sup>58</sup> Crescendas BOD Vol II at Tab 29: JPW's Costs Schedule for the second tranche of the trial dated 17 May 2021.

I agree that Crescendas is entitled to 80% of legal costs for the second tranche of the trial. Thus, I order JPW to pay 80% of Crescendas' legal costs of \$413,000, *ie*, \$330,400.

*Crescendas' entitlement to disbursements for the second tranche of the trial*

60 In relation to the issue of disbursements, I shall deal with the costs orders for general disbursements and disbursements relating to the fees of the various experts separately.

(1) General disbursements

61 Crescendas seeks 80% of the general disbursements while JPW submits that Crescendas should only be paid 40.6% of the general disbursements. I am of the view that Crescendas' figure of 80% of the general disbursement is fair. I, therefore, order JPW to pay 80% of Crescendas' general disbursements of \$224,763 to Crescendas, *ie*, \$179,810.40.

62 I shall now consider the amount of the expert fees that JPW has to pay for the Court's expert and Crescendas' experts.

(2) Assoc Prof Tay's expert fee

63 Assoc Prof Tay was the Court's expert appointed with the consent of the parties who agreed to bear his fee which amounted to \$57,600. This was the lowest of all the expert fees and it was borne by Crescendas and JPW in equal proportion in the first instance.

64 JPW states that it should only be ordered to pay 40.6% of Crescendas' share of Assoc Prof Tay's expert fee of \$28,800, *ie*, \$11,692.80. Based on

JPW's submission, JPW would ultimately bear \$40,500 of Assoc Prof Tay's expert fee while Crescendas would bear \$17,100.

65 As the High Court had stated in the Damages Judgment (HC) at [51], Assoc Prof Tay was appointed as the Court's expert to assist in the second tranche of the trial in view of the extreme positions taken by both the parties on the quantum of Crescendas' loss of net rental revenue. Given the need for the Court's expert to be appointed in the first place, I order that Assoc Prof Tay's expert fee be borne in equal proportion by the parties.

(3) Dr Woo's and Mr Yeo's joint expert fee

66 JPW argues that the joint expert fee of Dr Woo and Mr Yeo is unreasonable and excessive. The joint expert fee amounts to \$256,242.26.

67 JPW argues that this fee is twice that of JPW's expert, Assoc Prof Yu, which was \$119,600. However, this ignores the fact that the joint expert fee of \$256,242.26 is a combined fee issued for the work done by two experts – Dr Woo and Mr Yeo. In contrast, the expert fee of JPW's expert was for the work done by a single expert. Therefore, JPW's comparison of the two fees is erroneous and inaccurate.

68 In the same vein, JPW's submission that the joint expert fee of Dr Woo and Mr Yeo is four times that of the fee of the Court's expert, Assoc Prof Tay, which was \$57,600, is similarly incorrect.

69 Crescendas is seeking a reimbursement of 95% of the joint expert fee of Dr Woo and Mr Yeo while JPW submits that JPW should only be liable for 50% of the joint expert fee of \$256,242.26.

70 I am of the view that it was excessive for Crescendas to have engaged three experts to quantify JPW's delay. Accordingly, I shall make the appropriate adjustments to the expert fees of Crescendas' three experts. For the joint expert fee of Dr Woo and Mr Yeo, the fair and reasonable sum for Crescendas is 70% of \$256,242.26. Hence, JPW is ordered to pay Crescendas \$179,369.58.

(4) Mr Toh's expert fee

71 JPW argues that the expert fee of Mr Toh, amounting to \$665,379.80, is disproportionate. Crescendas seeks an order for 65% of Mr Toh's expert fee to be paid by JPW. JPW, on the other hand, states that it should only be ordered to pay 30% of Mr Toh's expert fee to Crescendas.

72 I note JPW's argument that Mr Toh's expert fee is five times that of JPW's expert, Assoc Prof Yu. It is undisputed that Mr Toh's expert fee is significantly higher than the expert fees of the other experts who assisted in the trial. The issue, however, is whether Mr Toh's expert fee is reasonable and proportionate.

73 In my view, I agree with JPW's submission that much of Mr Toh's evidence relating to quantification of Crescendas' loss of net rental revenue was based on a calculation of the difference between projected earnings (*ie*, the delay scenario) and actual earnings of Crescendas (*ie*, no delay scenario). This aspect of Mr Toh's evidence was also commented on by the other experts of Crescendas at the trial. Hence, it is questionable whether it was really necessary for Crescendas to engage Mr Toh as his fee was astronomically higher than the other experts. It is excessive for Crescendas to have engaged three experts to quantify the delay for the second tranche of the trial.

74 It appears that Crescendas acknowledges that there is a need to significantly calibrate downward the percentage of Mr Toh's expert fee which should be payable by JPW to Crescendas. This is reflected in Crescendas' position seeking for an order for 65% of Mr Toh's expert fee to be paid by JPW. In my view, a further downward adjustment is necessary, fair and appropriate, especially because Mr Toh's expert fee is extremely excessive as compared to the fees of the other experts. I agree with JPW and order JPW to pay 30% of Mr Toh's expert fee of \$665,379.80 to Crescendas, *ie*, \$199,613.94.

(5) Summary of the costs orders relating to disbursements for the second tranche of the trial

75 In summary, I make the following costs orders in relation to disbursements for the second tranche of the trial:

(a) I order JPW to pay 80% of Crescendas' general disbursements of \$224,763 to Crescendas, *ie*, \$179,810.40.

(b) As both the parties took extreme positions in the assessment of damages at the second tranche, I order that Assoc Prof Tay's expert fee be borne in equal proportion by the parties.

(c) I order JPW to pay 70% of Dr Woo's and Mr Yeo's joint expert fee of \$256,242.26 to Crescendas, *ie*, \$179,369.58.

(d) I order JPW to pay 30% of Mr Toh's expert fee of \$665,379.80 to Crescendas, *ie*, \$199,613.94.

***Costs orders for various interlocutory applications***

76 The parties have also sought costs orders for various interlocutory matters for which costs have not been decided.

77 There are a total of eight interlocutory applications for which costs have not been decided. The parties have agreed, as set out in a document dated 6 June 2023, on costs orders for five interlocutory applications.<sup>59</sup> In view of the parties' agreement, the consent costs orders are as follows:

| <b>Description of interlocutory application</b>                                       | <b>Costs order (as agreed by the parties)</b>  |
|---------------------------------------------------------------------------------------|------------------------------------------------|
| HC/SUM 2572/2017<br>(Summons for discovery by Crescendas)                             | JPW is to pay Crescendas \$12,651.17 (all-in). |
| Amendment of Statement of Claim by Crescendas in April 2018                           | Crescendas is to pay JPW \$1,000 (all-in).     |
| HC/SUM 6069/2019<br>(Summons for directions under O 37 of the ROC 2014 by Crescendas) | JPW is to pay Crescendas \$1,000 (all-in).     |
| Amendment of Statement of Claim by Crescendas in July 2020                            | Crescendas is to pay JPW \$2,500 (all-in).     |
| Amendment of pleadings by the parties in March 2021                                   | The parties are to bear their own costs.       |

78 For the remaining three interlocutory applications, the parties agree on the quantum of costs to be paid. The parties also agree that the costs for the three interlocutory applications should be paid to the party which is found to be entitled to costs for the first tranche of the trial. This is because these interlocutory applications were made in the first tranche of the trial and costs were ordered to be in the cause. Therefore, in view of the parties' agreement and my finding (at [45] above) that Crescendas is the successful party for the

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<sup>59</sup> See Schedule A in the List of Agreed Facts and Disputed Issues (for costs submissions to General Division) dated 6 June 2023 jointly prepared by the parties.

first tranche of the trial and is entitled to legal costs and disbursements for the first tranche of the trial, I order as follows:

| <b>Description of interlocutory application</b>                                                                                                                                            | <b>Costs order</b>                         |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------|
| HC/RA 123/2016<br>(Appeal by Crescendas against the decision of an Assistant Registrar relating to Crescendas' request for further and better particulars of the defence and counterclaim) | JPW is to pay Crescendas \$1,800 (all-in). |
| HC/SUM 340/2017<br>(Summons for directions pursuant to O 25 r 21 of the ROC 2014 by Crescendas)                                                                                            | JPW is to pay Crescendas \$1,000 (all-in). |
| HC/SUM 401/2018<br>(Summons under O 33 r 2 of the ROC 2014 by JPW for the trial to be bifurcated)                                                                                          | JPW is to pay Crescendas \$3,000 (all-in). |

## **Conclusion**

79 In summary, Crescendas is the successful party for both the first tranche and the second tranche of the trial. These are my findings:

- (a) The Court must view the overall outcome of the litigation in determining which party in substance and in reality won the litigation. It is clear that the result of the overall litigation is that JPW must pay a substantial sum to Crescendas. Crescendas could not have recovered this sum if it had not commenced Suit 477 against JPW. Crescendas has succeeded to recover a substantial sum from JPW. I am mindful that Crescendas only recovered a fraction out of its overall pleaded claim.

This is largely due to the fact that Crescendas took extreme positions on some of the important issues. I am also aware that JPW succeeded on a number of issues in the first tranche of the trial. However, this is outweighed by the fact that the overall result of this litigation is that JPW must pay Crescendas a substantial sum.

(b) JPW's position that it is the successful party for the first tranche of the trial is premised on its claim that it had *won* the Preliminaries Sum of \$12.3 million following the first tranche of the trial. This is, however, inaccurate. The issue relating to the Preliminaries Sum was whether the Preliminaries Sum of \$12.3 million was a fixed sum. Crescendas contended that the Preliminaries Sum of \$12.3 million was a tentative figure subject to negotiation. JPW's success on this issue was the High Court's finding, which was affirmed by the Court of Appeal, that the Preliminaries Sum was a fixed sum of \$12.3 million. The result of this issue is that JPW does not have to refund any portion of the Preliminaries Sum to Crescendas.

(c) While Crescendas is the successful party for both the first tranche and the second tranche of the trial, this does not mean that JPW's successes in relation to its counterclaim and in defending against the various claims of Crescendas are to be given no weight. Rather, JPW's successes on these issues allow the Court to exercise its discretion to moderate Crescendas' claims for legal costs and disbursements.

80 While Crescendas is the successful party for the first tranche of the trial, Crescendas' success is fairly limited. Crescendas' pursuit of the claims and the extreme positions it took with regard to some of the important issues in the first tranche of the trial had lengthened and raised the complexity of the proceedings.

For the first tranche of the trial, I order JPW to pay 30% of Crescendas' legal costs and 40% of Crescendas' disbursements as follows:

(a) The parties agree that the quantum of legal costs for the first tranche of the trial is \$700,000. For the oral closing submissions which took 2.5 days and applying the maximum daily tariff of \$18,000 in the costs guidelines in Appendix G, legal costs for the 2.5 days is \$45,000. Hence, Crescendas' total legal costs for the first tranche of the trial is \$745,000. JPW is to pay 30% of this amount to Crescendas, *ie*, \$223,500.

(b) In relation to general disbursements which amounts to \$224,828.22, JPW is to pay 40% of Crescendas' general disbursements to Crescendas, *ie*, \$89,931.29.

(c) In relation to Mr Connor's expert fee of \$239,816.25, JPW is to pay 40% of Mr Connor's expert fee to Crescendas, *ie*, \$95,926.50.

81 For the first tranche of the trial, JPW is to pay Crescendas an aggregate of \$409,357.79 (*ie*, \$223,500 plus \$89,931.29 plus \$95,926.50).

82 For the second tranche of the trial, it is undisputed that Crescendas is entitled to costs. I order JPW to pay legal costs and disbursements to Crescendas for the second tranche of the trial as follows:

(a) JPW is to pay 80% of Crescendas' legal costs for the second tranche of the trial. I reject JPW's submission that it should be held liable for only 40.6% of Crescendas' legal costs.

(b) Crescendas is seeking legal costs of \$618,000 for the second tranche of the trial. On the other hand, JPW submits that the appropriate

legal costs for the second tranche of the trial is \$350,000. The Court applies the costs guidelines in Appendix G to assess legal costs for the second tranche of the trial. The complexity of Suit 477 warrants the Court to apply the higher end of the costs range in Appendix G. Thus, legal costs for the second tranche of the trial is \$413,000. I order JPW to pay 80% of Crescendas' legal costs of \$413,000 to Crescendas, *ie*, \$330,400.

(c) I order JPW to pay 80% of Crescendas' general disbursements of \$224,763 to Crescendas, *ie*, \$179,810.40.

(d) The expert fee of Assoc Prof Tay is \$57,600. Assoc Prof Tay was appointed with the consent of the parties as the Court's expert to assist in the second tranche of the trial as the parties had taken extreme positions. Crescendas and JPW will bear the expert fee of Assoc Prof Tay in equal proportion.

(e) The joint expert fee of Dr Woo and Mr Yeo is \$256,242.26. Crescendas submits that JPW should bear 95% of the joint expert fee while JPW argues that it should only be liable for 50% of the joint expert fee. I order JPW to pay 70% of Dr Woo's and Mr Yeo's joint expert fee of \$256,242.26 to Crescendas, *ie*, \$179,369.58.

(f) The expert fee of Mr Toh is \$665,379.80. It is undisputed that Mr Toh's expert fee is the highest of all the experts' fees. Crescendas acknowledges that there is a need to calibrate downward Mr Toh's expert fee which is payable by JPW to Crescendas. Thus, Crescendas is seeking an order that JPW pays 65% of Mr Toh's expert fee. However, JPW submits that it should only be liable for 30% of Mr Toh's expert

fee. I order JPW to pay 30% of Mr Toh's expert fee of \$665,379.80 to Crescendas, *ie*, \$199,613.94.

83 For the second tranche of the trial, JPW is to pay Crescendas an aggregate of \$889,193.92 (*ie*, \$330,400 plus \$179,810.40 plus \$179,369.58 plus \$199,613.94).

84 For the interlocutory matters, I make the following costs orders:

| Description of interlocutory application                                                                                                                                                   | Costs order                                    |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------|
| HC/SUM 2572/2017<br>(Summons for discovery by Crescendas)                                                                                                                                  | JPW is to pay Crescendas \$12,651.17 (all-in). |
| Amendment of Statement of Claim by Crescendas in April 2018                                                                                                                                | Crescendas is to pay JPW \$1,000 (all-in).     |
| HC/SUM 6069/2019<br>(Summons for directions under O 37 of the ROC 2014 by Crescendas)                                                                                                      | JPW is to pay Crescendas \$1,000 (all-in).     |
| Amendment of Statement of Claim by Crescendas in July 2020                                                                                                                                 | Crescendas is to pay JPW \$2,500 (all-in).     |
| Amendment of pleadings by the parties in March 2021                                                                                                                                        | The parties are to bear their own costs.       |
| HC/RA 123/2016<br>(Appeal by Crescendas against the decision of an Assistant Registrar relating to Crescendas' request for further and better particulars of the defence and counterclaim) | JPW is to pay Crescendas \$1,800 (all-in).     |

|                                                                                                   |                                            |
|---------------------------------------------------------------------------------------------------|--------------------------------------------|
| HC/SUM 340/2017<br>(Summons for directions pursuant to O 25 r 21 of the ROC 2014 by Crescendas)   | JPW is to pay Crescendas \$1,000 (all-in). |
| HC/SUM 401/2018<br>(Summons under O 33 r 2 of the ROC 2014 by JPW for the trial to be bifurcated) | JPW is to pay Crescendas \$3,000 (all-in). |

85 For the interlocutory matters, JPW is to pay an aggregate of \$15,951.17 to Crescendas.

86 The total amount of costs and disbursements that JPW has to pay Crescendas for the first tranche and the second tranche of the trial as well as the interlocutory matters is \$1,314,502.88 (*ie*, \$409,357.79 plus \$889,193.92 plus \$15,951.17).

Tan Siong Thye  
Senior Judge

Parmar Karam Singh and Leong Lijie (Tan Kok Quan Partnership)  
for the plaintiff;  
Koh Kia Jeng, Lau Wen Jin and Alexander Choo Wei Wen (Dentons  
Rodyk & Davidson LLP) for the defendant.