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

[2025] SGHC(A) 3

Appellate Division / Civil Appeal No 61 of 2024

Between

Ee Hup Construction Pte Ltd

… *Appellant*

And

(1) China Jingye Engineering Corporation Limited (Singapore Branch)
(2) India International Insurance Pte Ltd

… *Respondents*

GROUNDS OF DECISION

[Building and Construction Law — Performance Bond]
[Injunctions — Erinford Injunction]
[Injunctions — Unconscionability]

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Ee Hup Construction Pte Ltd
v
China Jingye Engineering Corp Ltd (Singapore Branch) and another

[2025] SGHC(A) 3

Appellate Division of the High Court — Civil Appeal No 61 of 2024
Tay Yong Kwang JCA, See Kee Oon JAD and Mavis Chionh Sze Chyi J
3 February 2025

11 February 2025

Mavis Chionh Sze Chyi J (delivering the grounds of decision of the court):

Introduction

1 AD/CA 61/2024 was an appeal against the learned Judge's decision in HC/OA 426/2024 ("OA 426"). In OA 426, the appellant ("EH") sought an injunction against the 1st respondent's ("CJY") call on the on-demand performance bond issued by the 2nd respondent insurance company ("III"). Although the Judge partially allowed the application, the order was mostly in CJY's favour: the injunction was granted for the sum of $98,150.52, but refused for the sum of $499,864.67. EH was ordered to pay $25,000 in costs (all-in) to CJY. The Judge's oral grounds of decision on these matters are dated 9 July 2024 (the "oral grounds of 9 July").

2 On the same day, the Judge had also allowed EH's application for an order that the execution of his judgment be stayed pending the filing of an appeal

by EH, so long as the appeal was filed by 4 pm on 29 July 2024. Subsequently, after hearing further arguments on 2 August 2024, the Judge revised this order: in his further oral grounds of decision dated 2 August 2024, he held that EH had not placed any material before him that would merit the grant of an *Erinford* injunction.

3 EH then appealed against the entirety of the Judge's decision, save for his finding that the injunction was justified in respect of the sum of $98,150.52. CJY did not appeal the decision to restrain the call for the $98,150.52, but it opposed EH's appeal. As for III, it did not make any submissions before the Judge, and similarly did not make any submissions in the present appeal.

Background

4 The factual background to the dispute between EH and CJY is as follows. CJY was the main contractor engaged by the Land Transport Authority of Singapore for a project involving the construction of the Bedok South Mass Rapid Transit train station and tunnels for the Thomson-East Coast train line (the "Project"). On 13 December 2016, CJY engaged EH as a sub-contractor to carry out excavation and earthworks for the Project (the "Sub-Contract"). Under cl 2.1 of the Sub-Contract, this contract was for a fixed lump sum amount of $5,483,334 (the "Lump Sum"). The works required of EH were set out in schedule B1 of the Sub-Contract.

5 Further, cl 9 of the Sub-Contract set out EH's obligation to procure an "irrevocable and unconditional on-demand" performance bond in the sum of $501,163.80, or equal to 10% of the Lump Sum amount "by way of a deposit or security for the due performance and observance by [EH] of all stipulations, conditions and agreements herein contained". In accordance with this,

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Performance Bond No. AGPB-013715 was issued in favour of CJY (the "Bond") by III, for the sum of $501,163.80 (the "Bond Amount").

6 The Bond was stated to be valid from 13 December 2016 to 31 May 2024, "provided always that the expiry date of this Bond and [III's] liability thereunder shall be automatically extended for successive periods of 180 days (the last day of which shall be known as "the Expiry Date")" unless III gave "90 days' written notice" to CJY prior to the Expiry Date of its intention not to extend the Bond, whereupon the Bond would expire on the Expiry Date. Upon receipt of such notice from III, CJY would be entitled to either make a demand under the Bond, or to direct III to extend the validity of the Bond for a further period not exceeding 180 days, in which case the Bond would expire on the last day of such further extended period. III gave notice on 6 October 2022 of its intention not to extend the Bond.

7 Disputes arose between the parties as a result of certain back-charges allegedly incurred by CJY on behalf of EH. On 25 March 2023, EH issued payment claim ("PC") number 69, claiming $1,909,794.65 for works carried out up until that date. In response, on 15 April 2023, CJY issued a payment response ("PR") number 65, whereby it only allowed payment for $63,938.87. PR 65 alluded to back-charges that amounted to $327,656.17. EH lodged an adjudication application in SOP/AA 069/2023 ("AA 69/2023") in respect of PC 69. On 13 June 2023, the adjudicator determined that a sum of $642,307.63 was payable from CJY to EH in respect of PC 69. The determination did not take into account the back-charges as CJY withdrew its claim for the back-charges for the purposes of AA 69/2023. On 20 June 2023, EH applied for an adjudication review of the adjudicator's decision in AA 69/2023. This application was dismissed. Thereafter, EH issued multiple PCs for the work

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done from 1 November 2016 to the date that each PC was issued, to which CJY issued PRs that incorporated the back-charges.

8 CJY called on the Bond on 16 April 2024. In its letter to III calling on the Bond, CJY stated that it had sustained costs and/or expenses totalling $598,015.19 "[a]rising from [EH's] default in the performance of its obligations under the Sub-Contract and/or matters arising from/pertaining to the Sub-Contract". CJY provided a breakdown of this total amount which showed that $499,864.67 of this amount was for back-charges for the provision of equipment, services, materials and manpower, and charges for safety lapses (which we will refer to as the "back-charges"). The remaining $98,150.52 was for "Temporary Land Occupation ("TOL") fees and charges" for a total period spanning 1 July 2019 to 30 June 2023 and "[d]amages imposed by [the Singapore Land Authority] for TOL handover after expiry on 30 June 2023 (for 1 July to 31 July 2023)" (which we will refer to as the "TOL fees"). This amount of $98,150.52 for the TOL fees was the amount in respect of which the Judge granted EH an injunction against CJY's call on the Bond, while refusing EH's application in respect of the $499,864.67 representing the back-charges.

9 On 25 April 2024, EH filed OA 426 for an injunction to restrain CJY and/or its related persons from calling on the Bond. On 29 April 2024, EH brought its claim in PC 76 (for an amount of $1,289,590.33) to adjudication in SOP/AA 103/2024 ("AA 103/2024"). In response to PC 76, CJY issued PR 73 which certified the amount payable as a *negative* amount of $345,903.27 (*ie*, this amount being due to *CJY*). In AA 103/2024, CJY again withdrew its claim for back-charges as set out in PR 73 for the purposes of the proceedings. Consequently, the adjudicator did not consider the issue of back-charges, and determined that EH was entitled to $150,865.61.

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The Appellant's case

10 On appeal, EH argued that the Judge had erred in finding that the call on the Bond by CJY was not unconscionable. According to EH:

(a) the Judge had erred in applying a "subjective" test of unconscionability;

(b) the Judge should have found that CJY breached the "duty to speak" imposed on it by s 15(3) of the Building and Construction Industry Security of Payment Act 2004 (2020 Rev Ed) ("SOPA"), by failing to put forward its back-charges claim for adjudication in AA 69/2023 and AA 103/2024 (the "two ADs");

(c) the call negated the two ADs and went against the temporary finality of these adjudications;

(d) the back-charges were excessive and without merit, and CJY knew that EH was contesting its liability for and the quantum of the back-charges;

(e) the Judge had erred in finding that the potential lack of *bona fides* in relation to the Bond call for the TOL Fees did not amount to strong *prima facie* evidence of unconscionability in respect of the *entire* call;

(f) the Judge had erred in finding that there were no ulterior motives behind the call; and

(g) the Judge had failed to consider that it was just and equitable that the *status quo* between the parties be maintained until the final determination of the disputed back-charges.

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11 Further, EH submitted that the call on the Bond by CJY was also fraudulent. EH's arguments in this respect overlapped substantially with its arguments on the issue of unconscionability: in gist, EH claimed that CJY had no basis to call on the Bond as the back-charges were "falsely inflated", and CJY knew it had no basis to call on the Bond. As to the *Erinford* injunction, EH submitted that the Judge had erred by waiving CJY's non-compliance with para 112 of the Supreme Court Practice Directions 2021 ("PD") and allowing further arguments; that in refusing the *Erinford* injunction, he had failed to consider the merits of EH's appeal; and that he should have found that EH was contractually bound to provide a fresh bond. Finally, EH also submitted that the Judge should have awarded EH costs or at least ordered parties to bear their own costs, especially considering that EH was partially successful in its injunction application.

The call on the Bond was not unconscionable

12 At the outset, it is trite that the call on a performance bond may be restrained on the ground of unconscionability. In *BS Mount Sophia Pte Ltd v Join-Aim Pte Ltd* [2012] 3 SLR 352 ("*BS Mount Sophia*") (at [20]), the Court of Appeal held that the necessary threshold is a *high* one, and the burden is on the party seeking an injunction to show a strong *prima facie* case of unconscionability. The reason for this high threshold is "the need to strike the appropriate balance between the conflicting positions of the obligor and beneficiary of a performance bond" and also "the underlying need to preserve the *raison d'être* of performance bonds – that they are to provide security for the performance of the obligor's obligations – which stems from broader policy reasons" (*BS Mount Sophia* at [24]). The courts have noted that such policy considerations include: (a) the need to respect the parties' intentions and their

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decided allocation of risk in a building contract; (b) upholding the commercially valuable autonomy principle, *ie*, the importance of parties being able to rely on a promise to pay upon an independent guarantee regardless of disputes in the underlying contract; and (c) the prevention of abusive and oppressive calls on bonds, particularly in the construction industry (*CEX v CEY and another* [2021] 3 SLR 571 ("*CEX*") at [10] and *BS Mount Sophia* at [25] and [30]).

13 Broadly speaking, therefore, "unconscionability" is a label applied to describe "unsatisfactory conduct tainted by bad faith" (*BS Mount Sophia* at [36]). The Court of Appeal in *BS Mount Sophia* declined to lay down a precise definition of "unconscionability", as it held that such a definition would not be useful: the value of the concept of unconscionability lay in its flexibility to "capture a range of conduct, all of which share the common undertones of bad faith" (at [36]). Hence, the court would consider all relevant facts and the context of the case, including the parties' conduct leading up to the call of the bond, in order to determine if there is a strong *prima facie* case of unconscionability (*BS Mount Sophia* at [45]).

The Judge's formulation of the test for unconscionability was not wrong

14 In respect of the issue of unconscionability, EH claimed that the Judge had applied the wrong test because, in his oral grounds of 9 July, the Judge stated that "the test of unconscionability is a subjective one, with the inquiry focusing on the *bona fides* of the beneficiary's call on the bond" ([18] of the oral grounds of 9 July). EH submitted that this was wrong because the authorities clearly adopted an objective test in requiring that the court draw its conclusion "from a thorough consideration of the relevant facts as viewed in the entire context of the case, taking into account the parties' conduct leading up to the call on the bond" (*BS Mount Sophia* at [45]).

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15 While it is true that the authorities do not use terms such as "subjective" or "objective" to describe the test of unconscionability, we found that, in so far as the Judge had the view that the court had to consider the beneficiary's "perspective" ([19] of the oral grounds of 9 July), this was not wrong. This was because if the beneficiary had a genuine belief in its contractual entitlement but was actually mistaken about its entitlement, the call would still be legitimate if it was an honest mistake (*CEX* at [22]). Further, in applying the test of unconscionability to the facts before him, the Judge clearly did not stop at focusing on CJY's self-professed "perspective", but engaged in an analysis of the relevant facts as viewed in the entire context of the case. Thus, for example, in considering CJY's view that the back-charges were not potentially the appropriate subject of adjudication in the two ADs, the Judge had regard to the provisions of s 17(3) of the SOPA, relevant caselaw on whether back-charges fell under s 17(3), and what the likely outcome would have been if CJY had insisted on having its back-charges claim adjudicated (at [16]–[21] of the oral grounds of 9 July). Accordingly, we found no merit in EH's complaint that the Judge had erred in his application of the test of unconscionability.

CJY did not breach its "duty to speak" by withdrawing the back-charges from adjudication

16 As to EH's argument that CJY had breached its "duty to speak" under s 15(3) of the SOPA by failing to put forward its back-charges claim for adjudication, this argument was misconceived. Section 15(3) only obliged CJY to put forward, in its payment responses, those objections which it intended to raise at the adjudication stage. Section 15(3) did not mandate that a respondent put forward for adjudication *all* potential objections to a payment claim. That this is the case is clear from the observation by the Court of Appeal in *W Y Steel Construction Pte Ltd v Osko Pte Ltd* [2013] 3 SLR 380 ("*WY Steel*"),

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where the Court pointed out (at [33]) that s 15(3) (of a prior version of the SOPA) was "jurisdictional in the sense that it curtails the power of an adjudicator to allow a respondent to raise new grounds for withholding payment that were not included in his payment response, and for that matter, an adjudicator's power even to consider such grounds at all". In other words, what a respondent's "duty to speak" requires is that the respondent has to raise in its payment response any objection which it intends to rely on before the adjudicator (*Audi Construction Pte Ltd v Kian Hiap Construction Pte Ltd* [2018] 1 SLR 317 ("*Audi Construction*") at [66]–[67]).

17 We noted that, in the 2018 amendments to the SOPA, the expression "objection of any nature" was introduced in s 15(3) to replace the previous wording of "any reason for withholding any amount". With this amendment, s 15(3) of the SOPA is not confined to certain types of objections, but extends to objections of any nature (Chow Kok Fong, *Security of Payments and Construction Adjudication* (LexisNexis, 3rd Ed, 2022) at paras 6.56–6.58). The point, however, is that the underlying principles articulated in *WY Steel* and *Audi Construction* remain applicable to s 15(3) of the SOPA. We therefore agreed with CJY's submission that s 15(3) of the SOPA does not *per se* require a respondent to raise or to pursue, at the adjudication stage, all possible objections or defences to a payment claim; nor does it prevent a respondent from withdrawing an objection. Section 15(3) of the SOPA only obliges a respondent to raise, in the relevant payment response, those objections it intends to ventilate at the adjudication stage. In the present case, CJY remained at liberty to pursue other objections at a later stage in another forum – for example, in arbitration proceedings, as provided for under cl 23.2 of the Sub-Contract. Indeed, CJY made clear, in the course of the adjudication proceedings in AA 103/2024, that it may pursue the back-charges at "an alternative forum, as necessary".

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The call on the Bond did not negate the Two ADs nor was it premised on ulterior motives

18 As to the argument that the Bond call "negated" the adjudications in AA 69/2023 and AA 103/2024, this argument was closely connected with EH's other argument that CJY had "ulterior motives" behind the Bond call. Both arguments were premised on EH's assertion that CJY had acted in bad faith in "deliberately" withdrawing its back-charges claim from the adjudication proceedings and then calling on the Bond post-adjudication so as effectively to "claw back" the adjudicated amounts without final determination of the back-charges. EH's case was that this was the sort of "unsatisfactory conduct" tainted by bad faith which denoted unconscionability.

19 EH placed heavy reliance on the judgment of the Court of Appeal in *Samsung C&T Corp v Soon Li Heng Civil Engineering Pte Ltd* [2020] 2 SLR 955 ("*Samsung C&T*"). Specifically, EH relied on [48] of the judgment where the Court had commented that "if a beneficiary [of a performance bond] were to deliberately avoid making a claim before an adjudicator simply to preserve its right to claim under a performance bond, that might itself be evidence of unconscionability". However, it is apparent from the preceding paragraph of that judgment (at [47]) that the Court of Appeal recognised that "each case is fact-sensitive". Whether or not a bond call has the effect of "negating" or "undermining" an adjudication determination prior to final determination of the parties' disputes depends on the facts of the case. In *Samsung C&T* (at [15]), the Court found that the parties themselves did not dispute that "the nub of Samsung's complaint about overpayment", which it had advanced in calling on the performance bond, "concerned matters that had already been adjudicated" earlier by the adjudicator. It was on this factual basis that the Court held (at [58]) that:

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> … While Samsung is entitled to disagree with and challenge the views of the adjudicator, it is entitled to do so only in final dispute resolution proceedings between the parties, whether before a court or tribunal or otherwise. … We did not agree that, on the one hand, Samsung must pay the adjudicated amount but, on the other hand, it can recover overpayment by making a demand on the [performance bond] and *rely on reasons which have been rejected by the adjudicator* to resist a restraining order. If it could do so, the temporary finality of the AD would be undermined.
>
> [emphasis added]

20 In the present case, the adjudicators in the two ADs clearly did not make any determination of CJY's back-charges claim because CJY withdrew its back-charges claim from adjudication. It was wrong of EH to rely on the adjudicator's purported "determination" in AA 69/2023 of "0" as the amount to be awarded for back-charges. In AA 69/2023, the adjudicator expressly noted that CJY had confirmed it was not pursuing the back-charges "for the purposes of this [a]djudication", and that "[a]ccordingly" the amount to be deducted in respect of the back-charges was "$0.00".

21 We would add that, in so far as EH's argument about the presence of "ulterior motives" behind the Bond call was premised on its suggestion that CJY was trying to "rectify" its "failure" to take up the "option" of requesting a six-month extension of the Bond upon expiry of the Bond, this argument too was without merit. While CJY did not take up the "option" of requesting a six-month extension following III's notice on 6 October 2022 of its intention not to extend the Bond upon expiry, this in itself did not render it "unconscionable" for CJY to call on the Bond on 16 April 2024. On the contrary, given that the Bond remained in full force until 31 May 2024, CJY was contractually entitled to make a demand for payment, pursuant to cl 2 of the Bond, prior to that date.

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There was no "unfairness" to EH arising from CJY choosing to make such a demand, and no basis for inferring unconscionability therefrom.

22 As to the Judge's decision to grant an injunction in respect of the TOL fees amounting to $98,150.52, EH argued that the Judge had erred in finding that the potential lack of *bona fides* in relation to the call on the Bond for the TOL Fees did not amount to strong *prima facie* evidence of unconscionability in respect of the entire call. On the evidence available, we did not find any merit in this argument either.

CJY's reasons for withdrawing the back-charges did not reveal unconscionability

23 As to EH's argument that CJY had acted *mala fides* in withdrawing the back-charges from the adjudication proceedings because the latter had the "intention" to "claw back" the adjudicated amounts *via* a subsequent call on the Bond, this argument too was considered by the Judge, who also then considered CJY's explanation for withdrawing its back-charges claim from adjudication (at [16]–[21] of the oral grounds of 9 July). CJY's position was that the back-charges fell within s 17(3) of the SOPA such that the claim for back-charges was not the appropriate subject of adjudication, and that it withdrew this claim from adjudication to save time and costs.

24 In gist, s 17(3) SOPA provides that in determining an adjudication application, an adjudicator "must disregard any part of a payment claim or a payment response related to damage, loss or expense" unless the damage, loss or expense falls within either of the exceptions provided in ss 17(3)(*a*) and 17(3)(*b*): namely, where the claim is supported by "any document showing agreement between the claimant and the respondent on the quantum" of the

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claim, or "any certificate or other document that is required to be issued under the contract". EH first contended that s 17(3) of the SOPA "expressly" requires that before disregarding any claim for back-charges the adjudicator must first make a determination as to whether the back-charges in fact constitute "damage, loss or expense". However, EH failed to point to any *express* language in s 17(3) which actually says this. We found that there is nothing in the language of s 17(3) which warrants such a reading.

25 Further, and in any event, EH also failed to explain how the exceptions in ss 17(3)(*a*) and/or 17(3)(*b*) are made out in this case. EH did not point us to any "document showing agreement" between the parties on the quantum of the back-charges (and, indeed, the quantum is very much in dispute). Nor did EH identify any "certificate or other document that is required to be issued" under the Sub-Contract which supported the back-charges. It would be recalled that in its letter to III on 16 April 2024, CJY had stated that the back-charges concerned provision of equipment, services, materials and manpower and charges for safety lapses. We agreed with the Judge that these costs could potentially fall under s 17(3) SOPA; that CJY's view that its back-charges claim fell within s 17(3) was not unreasonable; and that there was some basis for believing that, had CJY pursued the back-charges in the adjudication proceedings, "time and cost [would have been spent] at the adjudication proceedings on the evidence surrounding these back-charges". We thus rejected EH's contention that CJY was acting in bad faith in withdrawing its back-charges claim from adjudication and subsequently making a call on the Bond.

The back-charges appear to be supported by evidence

26 As to the argument that the back-charges were excessive and without merit, the courts do not engage in a detailed merits review when considering an

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application to injunct a call on a performance bond (*BS Mount Sophia* at [40], and see, also, *Shanghai Chong Kee Furniture & Construction Pte Ltd v Church of St Teresa* [2024] SGHC 5 at [42], citing the Court of Appeal's decision in *Anwar Siraj and another v Teo Hee Lai Building Construction Pte Ltd* [2003] 1 SLR(R) 394 at [13]). The Judge for the present matter had noted that, while some of the documentation was not "particularly complete" at this stage, there appeared to be some evidence to support the back-charges: for example, there were workers' time-cards produced to support the claim for back-charges relating to the supply of manpower by CJY (at [27]–[28] of the oral grounds of 9 July). In our view, having regard to the evidence available, the Judge was justified in finding that EH had not discharged the burden of establishing a strong *prima facie* case that the back-charges were excessive and without merit, and that CJY was aware of this.

There was no merit to the "status quo" argument

27 As to EH's argument that the Judge should have restrained the Bond call so as to preserve the *status quo* of the parties' rights pending final determination of CJY's back-charges claim, it was not clear what the basis for this argument was. EH cited the High Court's judgment in *Royal Design Studio Pte Ltd v Chang Development Pte Ltd* [1990] 2 SLR(R) 520 ("*Royal Design*") as authority for this argument. However, nothing in the Court's remarks about preserving the *status quo* in that case suggested that the Court was articulating a general principle of law. Indeed, having a general principle in the terms conceived by EH would fly in the face of the very rationale for an on-demand performance bond. As the Court of Appeal noted in *Master Marine AS v Labroy Offshore Ltd and others* [2012] 3 SLR 125 ("*Master Marine*") (at [26]), "[t]he enormous advantage to the beneficiary" in having an on-demand performance

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bond is that the beneficiary "has the assurance of *immediate* payment from the bank, subject only to a compliant demand being made on it" [emphasis in original]. This is because the bank's obligation to pay in accordance with the terms of the performance bond agreement is "entirely independent of the underlying contract between the bank's customer and the beneficiary; the two are autonomous contracts *vis-à-vis* different parties (albeit with obligations that are closely related)". In this connection, the on-demand performance bond differs from the conditional performance bond which is predicated on the existence (and/or proof) of a breach and/or the occasioning of loss and damage on the underlying contract. It would appear that in *Royal Design*, the bond in question was the latter type of performance bond, because the Court alluded (at [22]) to the defendant in that case being "only entitled to call on the bond in the event of breach of contract by the plaintiff".

28 Before the Judge, EH also submitted that it would suffer "dire financial crisis" as a result of the Bond call, but, again, there was no explanation as to why this should compel the court to injunct the Bond call. On appeal, EH appeared to argue instead that it would be "unconscionable" for CJY to render EH financially incapable of pursuing its claims in arbitration by "financially disabl[ing]" EH through the Bond call. However, no evidence had been adduced to substantiate the submission about EH's "dire financial crisis" or about EH being "financially disable[d]" as a result of the Bond call.

29 For the reasons we have set out, we found that EH's arguments on the issue of unconscionability were without merit.

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The call on the Bond was not fraudulent

30 In respect of the issue of fraud, EH relied on substantively the same arguments it advanced on the issue of unconscionability. Having regard to the reasons explained, these arguments similarly failed.

There was no basis to grant an *Erinford* injunction

31 As to the issue of the *Erinford* injunction, we rejected EH's argument that the Judge had erred in waiving paragraph 112 of the PD and allowing CJY's further arguments. EH failed to explain how it was prejudiced by the waiver. Indeed, EH was given the opportunity to respond to CJY's further arguments by way of written submissions and subsequent oral submissions at the hearing before the Judge. Further, we agreed with the Judge that, regardless of the merits of EH's appeal, there was no prospect of the appeal being rendered nugatory in any event, since there was no evidence that CJY would not be able to repay the Bond Amount if the appeal was allowed. That the court, in considering an application for an *Erinford* injunction, should consider whether the appeal will ultimately be rendered nugatory is supported by Megarry J's judgment in the *Erinford* case itself (*Erinford Properties Ltd and another v Cheshire County Council* [1974] 2 WLR 749 at 755G–755H):

> There may, of course, be many cases where it would be wrong to grant an injunction pending appeal, as where any appeal would be frivolous, or to grant the injunction would inflict greater hardship than it would avoid, and so on. *But subject to that*, the principle is to be found in the leading judgment of Cotton L.J. in Wilson v. Church (No. 2), 12 Ch.D. 454, where, speaking of an appeal from the Court of Appeal to the House of Lords, he said at p. 458, "… *when a party is appealing, exercising his undoubted right of appeal, this court ought to see that the appeal, if successful, is not nugatory*." …
>
> [emphasis added]

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32 EH also argued that it would be "contractually obliged" to put up a *fresh* bond to replace the expired bond in the event it succeeded on appeal, that it would have difficulty in putting up a fresh bond, and that it risked being in breach of contract if it failed to do so. However, EH failed to explain its basis for claiming that it would be "contractually obliged" to put up a *fresh* bond to replace the expired bond in the event it succeeded on appeal.

No reason to disturb the Judge's costs order

33 Finally, as to the issue of costs, we saw no reason to disturb the Judge's decision to award CJY costs, given that CJY had substantially succeeded in resisting EH's application to injunct its Bond call. The $499,864.67 in respect of which the injunction application was denied amounted to 99% of the Bond Amount of $501,163.80.

Conclusion

34 For the reasons we have explained, we dismissed EH's appeal in entirety and ordered that EH pay CJY costs of $35,000 all-in (including disbursements). The usual consequential orders applied. As to III, its counsel confirmed at the hearing before us that the civil proceedings against III having been discontinued, III had not sought costs below and similarly did not seek any costs for this appeal.

Tay Yong Kwang
Justice of the Court of Appeal

See Kee Oon
Judge of the Appellate Division

Version No 1: 11 Feb 2025 (17:23 hrs)

Mavis Chionh Sze Chyi
Judge of the High Court

S Magintharan, Paul Leng Ji En and Liew Boon Kwee James (Essex LLC) (instructed), Shanmugam Suppiah (K Ravi Law Corporation) for the appellant;
Aw Wei Keng Kelvin and Andy Yeo Yong Chuan (Holborn Law LLC) for the 1st respondent;
Anparasan s/o Kamachi, Tang Jin Sheng and Sivakumar Suchetra (WhiteFern LLC) for the 2nd respondent.

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