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

[2025] SGHCR 3

Originating Claim No 665 of 2024 (Summons No 158 of 2025)

Between

Le Ninh Tien

… *Claimant*

And

(1) Rainbow Forest Enterprises Limited
(2) Stevean Goh Hwee Peng
(3) Lu Qianxiang
(4) Gordon Roy Bate
(5) Song Doc MV19 Pte Ltd
(6) Truong Dinh Hoe

… *Defendants*

Counterclaim of 6th Respondent

Between

Troung Dinh Hoe

… *Claimant in Counterclaim*

And

Le Ninh Tien

… *Defendant in Counterclaim*

GROUNDS OF DECISION

[Civil Procedure – Costs – Security – O 9 r 12(1)(a) of the Rules of Court 2021]

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Le Ninh Tien
v
Rainbow Forest Enterprises Ltd and others

[2025] SGHCR 3

General Division of the High Court — Originating Claim No 665 of 2024
(Summons No 158 of 2025)
Registrar Jill Tan
19 February 2025, 26 February 2025

3 April 2025

Registrar Jill Tan:

1 The application before me, HC/SUM 158/2025 ("SUM 158"), was for security for costs ("SFC"). These are the grounds of my decision, which incorporate and supercede the reasons I gave for my decision when I rendered judgment.

Background

2 For context, I first set out some information about the underlying claim, HC/OC 665/2024 ("OC 665"), which is for minority oppression. The 5th defendant is an asset-holding vehicle, whose sole asset is the vessel FPSO Song Doc Pride MV 19 ("vessel"). The registered shareholders of the 5th defendant (and their respective shareholdings) are the 4th defendant (1%), the claimant (40%), and the 1st defendant (59%). One Truong Dinh Hoe ("TDH") is the ultimate beneficial owner of the 1st defendant. The claimant, the 2nd defendant

and 3rd defendant are directors of the 5th defendant. The 2nd and 3rd defendants are TDH's nominee directors.

3 The primary reliefs sought by the claimant in OC 665 are to buy over the shares in the 5th defendant which are held by the 1st and 4th defendants, or have them buy him out.

4 In August 2024, the claimant made his first application for injunctions against the 1st to 4th defendants, in HC/SUM 2468/2024 ("SUM 2468"). These were primarily to restrain the 1st to 4th defendants from selling, transferring or disposing of the vessel. The injunctions were granted on condition that the claimant provided fortification of S$1 million by 6 September 2024. The claimant was unable to provide the fortification by the stated deadline, and the injunctions expired and terminated.

5 In November 2024, the claimant again sought, and obtained, similar injunctions, in HC/SUM 2695/2024 ("SUM 2695"). The injunctions were again granted on condition that the claimant provided fortification, but the amount was increased to S$1.5 million. The claimant has since provided the fortification.

6 On 6 December 2024, the 1st to 4th defendants' solicitors wrote to the claimant's solicitors seeking S$100,000 as security for their costs "up to (and including) OC 665 being set down for trial" ("the 6 December letter"). The claimant's solicitors replied, stating that they did not see a need for SFC, but added that the claimant was willing to provide SFC in the range of S$25,000 to S$50,000 if TDH did the same, since TDH was also a foreigner and would soon be added as a defendant. No agreement was reached on the SFC.

7 In January 2025, TDH was added as the 6th defendant in OC 665, after which he filed a counterclaim against the claimant.

Present application

8 The application before me, SUM 158, was the 1st to 4th defendants' application against the claimant for SFC. I will herein refer to the 1st to 4th defendants as "the applicants" collectively where their position in SUM 158 is concerned, but to minimise confusion, I will still refer to the claimant as "claimant", instead of "respondent", and to the individual defendants as "1st/2nd/3rd/4th/5th/6th defendant" as necessary. The applicants sought orders for two amounts:

(a) S$90,000 as security for their collective costs for all work done in relation to OC 665 until set down; and

(b) S$30,000 as security for their collective costs for all work done in relation to SUM 2695.

It was not disputed that the claimant holds an Australian passport and is not ordinarily resident in Singapore. The applicants therefore relied on O 9 r 12(1)(a) of the Rules of Court 2021 ("ROC 2021") to ground their application.

The Law

9 The applicable law is settled. SFC may be granted in the court's discretion, to enable a defendant to recover costs from a claimant from a fund within the jurisdiction in the event the claim against him proves to be unsuccessful, and the law that applied in this regard to the Rules of Court 2014 applies with appropriate adaptations to the ROC 2021 – Singapore Civil

Procedure 2025 Vol I (Bull, Gen Ed, Sweet & Maxwell, 2025) ("Singapore Civil Procedure 2025") at 9/12/1, citing Goh Yihan JC (as he then was) in *Hyflux Ltd (in compulsory liquidation) and others v Lum Ooi Lin* [2023] SGHC 113.

10 In *Creative Elegance (M) Sdn Bhd v Puay Kim Seng* [1999] SLR(R) 112 at [18] to [25], the Court of Appeal noted the factors a court would typically consider in such an application:

(a) whether the claimant has a *bona fide* claim;

(b) the claimant's financial standing;

(c) the ease of enforcing any judgment for costs against the claimant;

(d) the relative strength of parties' cases; and

(e) whether the application has been taken out oppressively to stifle the claimant's action.

Essentially, the court must strike a balance between an outcome that is too oppressive for the claimant, and one that gives the defendant a measure of security (see Singapore Civil Procedure at 9/12/1).

11 The first issue to be determined in this application was whether SFC should be granted. The second issue of the quantum of the SFC to be awarded would arise only if the first issue was answered in the affirmative.

Issue 1: Whether SFC should be granted

Parties' positions

12 On the first issue, the applicants submitted that the balance lay in favour of SFC being granted, relying on five main points. First, that overseas enforcement would be inconvenient, as well as cause delay and expense. Second, that an order for SFC would not stifle the claimant's claim. Third, that the applicants were very likely to prevail in their defence. Fourth, that even if the parties' circumstances were evenly balanced, it would still be just to order SFC against the foreign claimant. Fifth, the claimant's allegation that the 6th defendant was not party to SUM 158 because he was hiding behind the applicants, was untrue.

13 The claimant contended that SFC should not be granted, since he was of good financial standing, there was relative ease in enforcing any judgment for costs against him, that his claim did not lack *bona fides*, and that SUM 158 was oppressive. The claimant also argued that if he was ordered to furnish SFC, then so should the 6th defendant.

My decision on the granting of SFC

Ease or difficulty in enforcing a judgment against the claimant

14 First, on the ease of enforcing any judgment for costs against the claimant, the claimant submitted that he currently resides in Australia and since it is a Commonwealth country, there are established processes for the reciprocal enforcement of Singapore judgments there. However, my view was that this could not be determinative of this issue, for if that were so, then any application

for SFC against a foreign claimant residing in a Commonwealth country or one with a reciprocal enforcement treaty with Singapore must be doomed to fail.

15 In this regard, I noted that in explaining his inability to provide fortification on time for SUM 2468, the claimant had stated in his supporting affidavit for SUM 2695 (filed on 18 September 2024) that this was caused in part by banks being closed in Vietnam due to public holidays, followed by a typhoon which caused significant portions of Vietnam to close. I pointed this out to counsel for the claimant Ms Ong Hui Wen, noting that this suggested that the claimant's main assets were in Vietnam rather than Australia. In response, Ms Ong did not contend otherwise, and conceded that Vietnam was not gazetted under the Reciprocal Enforcement of Foreign Judgments Act 1959.

16 Ms Ong nevertheless submitted that because the claimant had provided the S$1.5 million in fortification under SUM 2695, the claimant already has funds in Singapore. I was unable to agree that this assisted the claimant in the present application, since those funds are to protect the applicants' losses if the injunctions restricting their dealing with the vessel turn out to have been wrongly granted. Put another way, it was not a fund that the applicants could look to, to cover their costs of defending OC 665 and preparing for the trial. Ms Ong conceded this point in oral arguments as well.

17 Thus, the claimant has no assets in Singapore that the applicants can look to for their costs of defending the action, and there was no indication of what further significant assets the claimant has in Australia. This meant that to enforce any costs order against the claimant, it is likely that the applicants need to institute enforcement proceedings in Vietnam or Australia. Ms Ong submitted that the claimant's provision of the fortification demonstrated his willingness to

participate fully in the Singapore hearing and abide by directions made by the court. However, I had a difficulty with this argument, because the fortification was to further an end desired by the claimant, that is, the injunctions taking effect. He therefore had an interest in complying with that court order. If the claimant loses the lawsuit, then unless he intends to pursue an appeal in the Singapore courts, it is difficult to say that he would have similar interest in complying with an adverse costs order. On balance, given the uncertainty as to where the claimant's main assets lay, it was unclear that it would be easy for the applicants to enforce a costs order against the claimant, and there was a real risk that the applicants could be left with a costs order that is unenforceable, or enforceable only with difficulty and expense. On this point, I therefore leaned in favour of making an order for SFC.

Oppressively stifling the claim

18 The applicants' second point was that an order for SFC would not stifle the claimants' claim. The claimant asserted that one of the reasons an order for SFC should not be made against him was his robust financial standing, as evidenced by the S$1.5 million in fortification that he provided under SUM 2695. The applicants used this assertion against the claimant, contending that since he was of good financial standing, then an order for SFC could not operate to stifle his claim. I was cautious to note that it could not be that just because a claimant was of good financial standing, that an order for SFC must be made against him. Nevertheless, I accepted the point that a claimant with a strong financial position would be hard put to argue that an order for a reasonable amount of security operated to oppressively stifle his claim.

19 On balance, I did not find that an application for SFC in and of itself operated to oppressively stifle the claimant's claim.

Relative strength of parties' cases

20 The applicants' third point was that they were very likely to prevail in their defence. This was connected to the question of whether the claimant had a *bona fide* claim, because answering this question in the negative would likely result in a finding that the applicants were very likely to prevail in their defence. Ms Ong submitted that the claimant's claim did not lack *bona fides*, since the courts which granted the injunctions to the claimant in SUM 2468 and SUM 2695 found that there was a serious question to be tried on the merits of the case.

21 A key contention regarding the merits of the parties' cases was whether the claimant paid valuable consideration for his 40% shareholding in the 5th defendant, which translated to his share in the vessel. The claimant contended that he did pay such valuable consideration (see para 13(a) of the 1st amended Statement of Claim). The applicants contended otherwise, on the basis that the money which was paid to transfer the said 40% share to the claimant came from the 6th defendant (see para 4 of 1st amended Defence and Counterclaim). The applicants thus contended that the claimant could not substantively succeed in OC 665, because even if minority oppression is found, he would be bought out for a nominal sum.

22 It is trite that in an application for SFC, the court generally does not go into a detailed examination of the merits of the case. Based on the information before me, I noted that Justice Aidan Xu, in granting the injunctions in SUM 2695, found that the claimant demonstrated serious issues to be tried. Nevertheless, this did not mean that the claimant had a strong case. This was

because the defendants, in their amended Defence, referred to evidence supporting their position that the claimant's acquisition of shares in the 5th defendant was paid for by the 6th defendant. This has yet to be addressed by the claimant since the Reply has yet to be filed.

23 I pause to observe that if the 6th defendant effectively funded the claimant's acquisition of a 40% share in a company that essentially belonged to the 6th defendant, then it was an unusual arrangement. Since both the claimant and the 6th defendant appear to be seasoned businessmen, they must have had their reasons for this. The circumstances under which they came to this arrangement would address the issue of whether the claimant provided valuable consideration for his acquisition, and these are matters to be determined at trial. Given the incomplete evidence before me, to make a finding that the applicants are "very likely to prevail" in their defence would be pre-judging the matter, and I declined to do so. In my view, at best, there are triable issues.

24 For the present purposes, my view was that the relative strength of the parties' cases seemed to be evenly balanced at this time. I therefore found this to be a neutral point.

Whether the balance lay in the applicants' favour

25 In support of their fourth point, the applicants cited *Jurong Town Corp v Wishing Star Ltd* [2004] 2 SLR(R) 427 at [14] for the proposition that where the circumstances are evenly balanced, it would ordinarily be just to order SFC against a foreign claimant. Given my findings above, my view was that the balance tipped in the applicants' favour.

Whether the 6th defendant was "hiding behind" the applicants

26 On the fifth point, the applicants explained that the 6th defendant was not party to the present application because he had filed a counterclaim against the claimant, which might preclude him from obtaining SFC from the claimant. Since it is settled law that a court would consider any overlap between a claim and a counterclaim in determining whether to grant a defendant SFC, my view was that this was a valid reason for the 6th defendant not being party to this application.

27 The applicants also pointed out that they had not filed any counterclaim and remained solely as defendants in OC 665. Further, as the claimant had made allegations which concerned the conduct of the 2nd, 3rd and 4th defendants, they had to spend time responding to these. These included allegations of irregular and suspicious dealings relating to the 5th defendant's records, which the 2nd and 3rd defendants needed to respond to, and technical matters relating to the claim, which the 4th defendant needed to respond to. Thus, they were incurring costs in their defence of OC 665. I accepted this argument, and rejected the claimant's assertion that SFC should be ordered against him only if it was similarly ordered against the 6th defendant.

28 On balance, my view was that SFC should be ordered in the applicants' favour. I therefore moved to consider the second issue, the quantum of security to be awarded.

Issue 2: What quantum of SFC should be awarded

Parties' positions

29 As noted above, the applicants sought two sets of costs – S$90,000 for all work done in relation to OC 665 until set down, and S$30,000 for all work done in relation to SUM 2695. This totalled S$120,000. Counsel for the applicants, Mr Tan Youliang, explained the difference between this total and the lump sum of S$100,000 sought in the 6 December letter as follows.

30 He stated that it had been their "intention all along" for the S$100,000 to include the work done in OC 665 until set down and the work done in relation to SUM 2695. That figure of S$100,000 was discounted as the applicants hoped to obtain the claimant's agreement to the SFC. However, as the claimant counter-proposed a lower amount and then placed the condition that the 6th defendant furnish SFC as well, such that parties were unable to agree and this application had to be brought, the applicants were now seeking the "full amount" of S$120,000. On the matter of why the 6 December letter did not specify the components of the amount sought, Mr Tan could only say that it was an "oversight".

31 It was not disputed that the range of costs in the Guidelines for Party-and-Party Costs Awards in the Supreme Court of Singapore ("Appendix G") for commercial cases up to the pre-trial stage is S$25,000 to S$70,000, excluding disbursements. The applicants submitted that since this matter involved technical issues concerning the vessel, it was "closer to an admiralty matter than … to a commercial matter". As such, reference may be had to the Appendix G range for pre-trial costs for admiralty matters, which goes up to S$90,000, excluding disbursements. The applicants then relied on *Credit Suisse AG v*

Owner of the Vessel "Chloe V" [2022] SGHCR 9 ("*Chloe V*") as their basis for submitting for pre-trial costs of S$72,000, and disbursements of S$18,000, to make up the claimed figure of S$90,000.

32 On the matter of the costs for SUM 2695, the applicants relied on the Appendix G range of costs for injunctions, which was S$10,000 to S$35,000.

33 The applicants submitted that they pegged their costs at the higher end of the Appendix G ranges due to the fact-intensive and document-heavy nature of the dispute. They also pointed out that since almost all the documents involved in the suit were in Vietnamese, significant costs had been incurred for translating the documents into English.

34 The claimant submitted that the quantum of costs sought by the applicants was excessive, as they had "not provided any good basis" to seek costs in excess of the Appendix G guidelines. The claimant also submitted that the prayer concerning SUM 2695 was an afterthought, since it had not been mentioned in the 6 December letter. Ms Ong also submitted that this dispute turned on the conduct of parties, and it was thus a stretch to argue that it was akin to an admiralty claim. On the matter of translation costs, Ms Ong submitted that since key documents such as the Memorandum of Understanding between parties and the Transfer Agreement had already been translated, there was no basis for an uplift of nearly S$20,000 for disbursements. She also distinguished the application for SFC in *Chloe V* because it included costs for closing submissions, that is, post-trial work, and hence disbursements were included in the SFC order.

My decision on quantum of costs

35 On this issue, I first considered whether SFC should be separately awarded for the costs of work done in relation to OC 665 until set down, and for the work done in relation to SUM 2695. Given that the applicants did not segregate their request in this manner in their 6 December letter, it was odd that they sought to do so in the present application. Since that letter was drafted by the applicants' solicitors, it was a poor excuse to say that the failure to specify the components of the S$100,000 security sought was an oversight. In fact, it appeared that splitting the components seemed to be an attempt to justify the higher total claim of S$120,000. In any event, the natural meaning of the phrase "all the work done in relation to" OC 665 necessarily included the work done in resisting the injunction, and I therefore declined to split the components of costs in the manner sought by the applicants.

36 A related point was whether the amount should specifically account for disbursements. I noted from the case precedents that the courts do not ordinarily make a separate order for disbursements, and *Chloe V* seemed to have been exceptional in this regard. I also noted that in *Chloe V* (at [54(d)]), the applicant had specifically set out the expenses incurred for an English law expert, a ship broker expert and a ship finance expert. There was no such itemisation by the applicants in the present case, and their submissions were based on bare assertions of the costs of translating documents, and that they were considering engaging certain expert witnesses. In this regard, I noted Ms Ong's submission that the key documents would already have been translated, and it was thus unclear what further translation costs the applicants incurred. This being the case, even if some disbursements were factored into the SFC amounts awarded, I agreed with Ms Ong that there was no basis for an uplift of S$18,000.

37 Next, I considered whether the nature of OC 665 was such that costs in the range of the admiralty scale were applicable. It bears noting that just because a vessel is involved in a dispute does not mean that it an admiralty case. Admiralty proceedings are *in rem*, and raise quite different issues from the present minority oppression case which at heart concerns the terms of a contractual agreement between two men, even if their agreement involved the shareholdings of a company which owns a vessel. Putting the applicants' case at its highest, there would be some specialist knowledge required to explain why the vessel needed to be moved from the oil field, or whether the old mooring chains of the vessel could be re-used. However, this did not make it akin to an admiralty case. On this point, I therefore agreed with Ms Ong that the key issues in this suit fundamentally concerned the conduct of parties, and the agreements between them. This meant that I disagreed with Mr Tan that this case was akin to an admiralty case such that the admiralty scale of costs should apply.

38 That said, given the fact-intensive nature of this dispute, I accepted the applicants' submission that there would be several factual witnesses whose affidavits of evidence-in-chief needed to be prepared for trial. As observed above, there would also be specialist or technical evidence to contend with. This being the case, the dispute could not be described as a simple or straightforward one. However, there was no evidence that it was so complex that the costs incurred should be at the top end of the range. It should also be borne in mind that the present application was for *security* for the costs incurred, and not for an indemnity for those costs. Therefore, my view was that the quantum of pre-trial costs to be ordered should fall in the 50% to 75% quartile of the applicable range in Part III of Appendix G. Since the stated range for commercial cases including company disputes was S$25,000 to S$70,000, this meant that the relevant range would be about S$47,500 to S$58,750.

39 All things considered, my view was that pegging the amount of SFC at around the 60% point in the scale would be appropriate. I therefore ordered that the claimant furnish SFC of S$52,000 to the applicants for all their work done in OC 665 up to set down. For the avoidance of doubt, this amount included the work done for all matters arising out of the suit, including SUM 2695, and for disbursements incurred.

40 In respect of prayer 2 of SUM 158, I ordered that the said security be in the form of a solicitor's undertaking on terms satisfactory to the applicants. Prayer 3, that all further proceedings in OC 665 other than the provision for SFC be stayed until such security is provided, was granted. Prayer 4, that the applicants be at liberty to apply for further SFC if necessary and proper in the circumstances, was also granted, though my view was that any such further application should be by way of a fresh summons.

Costs

Parties' positions

41 On the costs of the present application, Mr Tan sought an award of S$5,000 (all in), on the basis that the application would not have been necessary if not for the claimant's counter-proposal in the 6 December letter.

42 Ms Ong submitted that there should be no order as to costs and made three main points in support thereof. First, the claimant's counter-proposal, suggesting SFC in the range of S$25,000 to S$50,000, was reasonable, as it was close to what this court ordered, and it also fell within the relevant range in Appendix G. Second, the applicants' conduct needed to be considered, as their offer was "very different" from what was sought in the present application.

Third, the documentation in the present application was not particularly voluminous, with affidavits and submissions of less than 20 pages. Nevertheless, if the court was minded to order costs, then Ms Ong submitted that it should be at the lower end of the Appendix G scale, at S$2,000.

My decision on costs

43 I noted that the total hearing time for the present application, including the rendering of my judgment, was about one hour and 45 minutes. The issues were not complex, and the affidavits were fairly short, as were parties' written submissions. I also noted that although costs follow the event and the applicants prevailed insofar as I granted an order for SFC, the amount awarded was substantially lower than what they had sought.

44 In the circumstances, I determined that it was appropriate to make an order of costs in the applicants' favour, but agreed with the claimant that it should be on the lower end of the relevant Appendix G scale. Costs of $2,500 (all in) were therefore ordered in the applicants' favour.

Jill Tan
Registrar

Ong Hui Wen (Drew & Napier LLC) for the claimant/respondent;
Tan Youliang (Tito Isaac & Co LLP) for the first to fourth defendants/applicants.