

**IN THE SINGAPORE INTERNATIONAL COMMERCIAL COURT
OF THE REPUBLIC OF SINGAPORE**

[2024] SGHC(I) 20

Originating Application No 1 of 2024 (Summons No 8 of 2024)

Between

Pertamina International
Marketing & Distribution Pte
Ltd

... Claimant

And

P-H-O-E-N-I-X Petroleum
Philippines, Inc. (a.k.a.
Phoenix Petroleum
Philippines, Inc.)

... Defendant

JUDGMENT

[Civil Procedure — Costs]

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Pertamina International Marketing & Distribution Pte Ltd
v
P-H-O-E-N-I-X Petroleum Philippines, Inc (also known as
Phoenix Petroleum Philippines, Inc)

[2024] SGHC(I) 20

Singapore International Commercial Court — Originating Application No 1 of 2024 (Summons No 8 of 2024)

Bernard Eder JJ

31 May 2024

28 June 2024

Bernard Eder JJ:

Introduction

1 This judgment (“Judgment”) follows on from the hearing on 19 April 2024 in these proceedings when I heard the parties’ submissions in relation to P-H-O-E-N-I-X Petroleum Philippines, Inc.’s (“Phoenix”) application in SIC/SUM 8/2024 (“SUM 8”).

2 In the event, I dismissed that application for reasons which I set out in my grounds of decision dated 26 April 2024.

3 Thereafter, the parties served written submissions dealing with the question of costs which the parties had been unable to agree. This Judgment therefore deals with the question of costs in respect of SUM 8.

4 Phoenix accepts that given that Pertamina International Marketing & Distribution Pte Ltd (“PIMD”) was the successful party in SUM 8, PIMD is in principle entitled to an order for costs in its favour. Accordingly, the only dispute concerns the quantum of costs.

5 The costs now claimed by PIMD amount to \$243,469.35 broken down as follows:

- (a) \$208,275.28 in legal costs incurred by PIMD's Singapore counsel ("Singapore counsel costs");
- (b) \$26,813.66 in legal costs incurred by PIMD's arbitration counsel ("arbitration counsel costs");
- (c) \$6,416.16 in fees to engage ACCRALAW on matters of Philippines law; and
- (d) \$1,964.25 in disbursements (such as filing fees, translation fees, courier charges, and overtime transport expenses).

Phoenix do not dispute the sums claimed in respect of (c) and (d). However, for the reasons set out below. Phoenix submits that a discount of 50 per cent ought to be applied to the costs claimed by PIMD in relation to the Singapore counsel costs and the arbitration counsel costs *ie*, \$104,137.64 for the former and \$13,406.83 for the latter.

6 The applicable principles are not in dispute. In short, it is common ground that the quantum of costs to which PIMD is entitled is subject to principles of proportionality and reasonableness; and that in considering those matters, the court may have regard to all relevant circumstances including the

complexity of the case and the difficulty or novelty of the questions involved; the skill, specialised knowledge and responsibility required of, and the time and labour expended by, the counsel; the conduct of the parties (including whether it was reasonable for a party to raise, pursue or contest a particular allegation or issue; and the manner in which a party has pursued or contested a particular allegation or issue); and the amount of the value of the claim: Singapore International Commercial Court Rules 2021 O 22 r 3(1).

7 Bearing in mind these principles I turn to consider the two main heads of costs which are in dispute.

Singapore counsel costs: \$208,275.28

8 In short, Phoenix submits that the amount claimed by PIMD under this head is disproportionately high and unreasonable for the following reasons, *viz*:

(a) First, Phoenix submits that the large bulk of such costs amounting to \$137,796.93 relates to what is described as Stage A5, *ie*, work done in relation to “*preparing written submissions and accompanying bundles, reviewing Defendant’s written submissions and accompanying bundles, and preparing for hearing (including research)*”. The total number of hours spent on Stage A5 (including both director and associate time) is 113.63 hours. Assuming that seven hours were spent per day on average, that is a little over 16 days. By comparison, the time spent and costs incurred by Phoenix’s solicitors for the same scope of work was 60.4 hours and \$38,980 respectively.

(b) Second, Phoenix submits that a comparison with other recent cost awards made by the Singapore International Commercial Court

(“SICC”) demonstrates that this head of costs is disproportionately high and unreasonable.

(c) Third, Phoenix submits that the total time spent (19.5 hours) corresponding to a claim of \$17,689.37 for taking instructions in relation to and preparing the 3rd witness statement of Mohammad Fitrawan Nur dated 5 March 2024 (“3MFN”) is disproportionate and unreasonable.

(d) Fourth, Phoenix submits that the costs claimed by PIMD for “*getting-up and attending hearing*” for four of its Singapore lawyers, two directors and two associates amounting to a total cost of \$17,560.59 is excessive. In comparison, Phoenix only had two Singapore lawyers who attended the hearing and incurred costs of only \$4,030.

(e) Fifth, Phoenix submits that the sum of \$15,772.95 claimed by PIMD for work done for preparing the cost submissions is excessive and unreasonable.

(f) Sixth, Phoenix submits that the total of 174.03 hours spent by PIMD’s Singapore counsel was not reasonably incurred when compared with the time spent by its own Singapore counsel (142.1 hours) having regard, in particular, to the fact that whereas Phoenix filed three witness statements, PIMD only filed one witness statement.

(g) Finally, Phoenix submits that even if the costs (in terms of time and labour expended or hourly rates charged) were reasonably incurred by PIMD, the extent of the disparity in quantum between the professional fees of the parties’ Singapore counsel supports the conclusion that the quantum of the costs claimed by PIMD is unreasonable.

9 As for these submissions, my observations and conclusions are as follows:

(a) Pursuant to the final award signed and dated 28 November 2023 (“Award”), the amount at stake in the present case was considerable, *viz*, approximately US\$142 million including interest up to the date of the Award as well as further interest at a rate of 5.33 per cent per annum (equivalent to approximately US\$120,000 per week or US\$18,000 per day) up to the date of payment. Even now, the Award is unsatisfied.

(b) In one sense, the issues raised were, or at least should have been, relatively straightforward. However, a number of the points raised by Phoenix raised potentially difficult factual and legal issues. As submitted by PIMD, this expanded the scope of the issues that PIMD had to deal with including on matters of Philippines law, research on the effect of findings made in an arbitral award, and coordination with Philippines counsel on the status of the proceedings commenced by Phoenix in the Republic of the Philippines under Civil Case No. R-DVO-23-6338-SC (“Philippines Action”) and to procure the necessary legal opinion. To this end, the main papers filed in the Philippines Action (excluding exhibits) exceeded 210 pages. I readily accept that it was important that PIMD’s Singapore counsel put themselves in a position to explain properly the nature and course of the proceedings initiated by Phoenix in the Philippines and to correct any misimpressions.

(c) As I stated in my judgment, the steps taken by Phoenix in the Philippines were in breach of the orders of this Court amounting to contempt of court. Even though it was well aware of SIC/ORC 5/2024

(“ORC 5”), Phoenix failed to bring ORC 5 to the attention of the Philippines Court and continued to forcefully press on with its pursuit of the Philippines Action. Phoenix has made no apology or excuse for its contempt. Even now, I am far from certain that Phoenix has properly explained to the Courts in the Philippines the jurisdictional framework which exists under the Model Law and the New York Convention (to which, as I understand, the Philippines is a party) which lie at the heart of modern international commercial arbitration.

(d) The main focus of Phoenix’s case, *viz*, that its proceedings in the Philippines were to be characterised as a mere attempt to resist enforcement of the Award in the Philippines was, in my view, untenable. In addition, Phoenix raised a number of other points which were equally misconceived, *eg*, that this Court did not have *in personam* jurisdiction; that the Award was void because there was no arbitration agreement even though Phoenix had not sought recourse against the Award within the three-month time limit; and that this Court should, as a matter of discretion, decline to exercise jurisdiction because of the progress of the proceedings in the Philippines even though such proceedings were, as I held, in breach of the Court’s order and in contempt of court.

(e) All of the above factors are relevant in considering the approach to the assessment of PIMD’s costs in the present case and point strongly in favour of PIMD.

(f) Comparison with the costs allowed in other SICC cases may, in certain circumstances, provide a useful “check” but ultimately each case turns on its own facts and particular circumstances. In the present case and given all that I have said above, I do not find it necessarily surprising

that PIMD's Singapore counsel's costs are somewhat higher than those apparently incurred by Phoenix's counsel. Nor do I find PIMD's Singapore counsel's costs outside what one might ordinarily expect.

10 Bearing all the above in mind and doing the best I can on the material submitted, I would allow the full amount of costs claimed by PIMD under this head less a small discount to take account of potential duplication of work and at least some of the objections raised by Phoenix, *ie*, \$180,000.

Arbitration counsel costs: \$26,813.66

11 As stated above, under this head, Phoenix submits that a discount of 50 per cent should be applied because the costs claimed are unreasonable. In support of that submission, Phoenix makes two main points. First, Phoenix submits that the total time spent by these individuals in drafting 3MFN was excessive. Second, the time spent and costs incurred for two lawyers of PIMD's arbitration team to attend the hearing is neither proportionate nor reasonable. I see some force in these submissions. Doing the best I can, I would assess these costs in the sum of \$17,500.

Conclusion

12 For these reasons, I would assess PIMD's costs of SUM 8 in the sum of \$205,880.41 (\$180,000 + \$17,500 + \$6,416.16 + \$1,964.25) and order that that

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sum be paid forthwith by Phoenix to PIMD together with interest at the Judgment rate until payment.

Bernard Eder
International Judge

Daniel Chia Hsiung Wen, Ker Yanguang (Ke Yanguang), Charlene
Wee Swee Ting and Chan Kit Munn Claudia (Prolegis LLC) for the
claimant;
Liew Yik Wee and Wong Wan Chee (Rev Law LLC) for the
defendant.
