

# Convexity Ltd v Phoenixfin Pte Ltd and others and other matters

[2021] SGHC 121

**Case Number** : Originating Summons No 342 of 2020 (Summons No 5276 of 2020), Originating Summons No 407 of 2020 (Summons No 4725 of 2020), Originating Summons No 1151 of 2020 and Originating Summons No 1158 of 2020 (Summons No 4944 of 2020)

**Decision Date** : 31 May 2021

**Tribunal/Court** : General Division of the High Court

**Coram** : Andre Maniam JC

**Counsel Name(s)** : Daniel Chia, Ker Yanguang, Jeanette Wong (Morgan Lewis Stamford LLC) for the applicant; K Sathinathan, J Jayanthi (Lincoln's Law LLC) for the respondents.

**Parties** : Convexity Ltd — Phoenixfin Pte Ltd — Mek Global Ltd — Phoenixfin Ltd

*Arbitration – Enforcement*

*Arbitration – Interlocutory order or direction*

31 May 2021

**Andre Maniam JC:**

## **Introduction**

1 These grounds of decision are supplemental to my judgment dated 19 April 2021 in Originating Summons No 1158 of 2020 (“OS 1158”): see *Convexity Ltd v Phoenixfin Pte Ltd and others* [2021] SGHC 88 (“Judgment”). They also deal with various related matters.

2 In my Judgment, I had set aside the tribunal’s decision on the Penalty Issue, and the parts of the Award affected by it (at [120]) – which included the tribunal’s dismissal of the claimant’s claims.

3 I decided that there are no grounds for setting aside the Confidentiality Relief, *ie*, the tribunal’s order that the claimant destroy any and all proprietary or confidential data of the first respondent (Judgment at [119]). As indicated in my Judgment, however, I wished to hear further from the parties on whether the Confidentiality Relief should presently be implemented, when the claimant’s claims may yet be determined in a new arbitration (at [120]).

## **Consequential orders in respect of the Confidentiality Relief**

4 When I heard the parties on this, it was common ground between them that this aspect should be addressed in Originating Summons No 1151 of 2020 (“OS 1151”), *viz*, the respondents’ application for leave to enforce the Award. Specifically, it was suggested that enforcement of the Confidentiality Relief be stayed. I agreed with this approach. Postponing the destruction of the information and documents in question, would allow the claimant to continue using them for its claims.

5 I thus granted the respondent’s application in OS 1151 for leave to enforce the Award (save for the portions of the Award which I had set aside in OS 1158), with a stay in relation to paragraphs 134 and 141(e) of the Award (concerning the Confidentiality Relief) until 30 days after (a) final determination of the claimant’s claims in any new arbitration, or (b) an appeal against the setting-aside decision in OS 1158. That appeal is presently under way in Civil Appeal No 31 of 2021.

## **The claimant’s application for a freezing injunction**

### **The claimant's application for a freezing injunction**

6 In OS 1158, the claimant also applied for a freezing injunction by way of Summons 4944 of 2020 ("SUM 4944").

7 The claimant had earlier obtained a freezing injunction in Originating Summons No 342 of 2020 ("OS 342"), which was granted in March 2020 by way of Order of Court No 2156 of 2020 ("ORC 2156"). That was limited to the sum of US\$2.8m, the principal sum claimed by the claimant.

8 That freezing injunction was granted with the proviso that the claimant would apply to the tribunal for a freezing order (on the same terms as its application to the court) and that the freezing injunction granted by the court would lapse upon disposal of that application in the Arbitration.

9 The claimant duly applied to the tribunal for a freezing order, and the tribunal granted that in April 2020. Accordingly, on the terms of ORC 2156, the freezing injunction granted by the court lapsed; but its effect was continued by the tribunal's freezing order.

10 The claimant then applied in Originating Summons No 407 of 2020 ("OS 407") for leave to enforce the tribunal's freezing order, and I granted that on 30 September 2020.

11 Shortly thereafter, on 2 October 2020, the tribunal issued the Award, dismissing the claimant's claims and consequently discharging the tribunal's freezing order.

12 The tribunal's discharge of the freezing order was made "[i]n view of the Tribunal's denial of the Claimant's claims against the Respondents", as the tribunal expressed it in para 133 of the Award.

13 With my Judgment setting aside the tribunal's dismissal of the claimant's claims, it was once again appropriate to impose a freezing injunction against the respondents. Not only had the court in OS 342 considered it appropriate to grant such relief, so too had the tribunal when it granted a freezing order in the Arbitration.

14 The claimant asked that the limit of the freezing injunction be raised to US\$4,645,698.63, a sum which included interest. However, the original freezing injunction *per* ORC 2156 was only for the principal sum of US\$2.8m, as was the freezing order granted by the tribunal. Consistent with that, I set the limit of the freezing injunction at the principal sum of US\$2.8m. In the same vein as ORC 2156, I ordered that the freezing injunction remain in place until further order, and that it would lapse upon disposal of the application for a freezing order which the claimant intended to file before an arbitral tribunal.

### **The respondents' applications for the orders in OS 342 and OS 407 to be set aside**

15 The respondents applied for the orders in OS 342 and OS 407 to be set aside, by filing Summons No 5276 of 2020 in OS 342 ("SUM 5276") and Summons No 4725 of 2020 in OS 407 ("SUM 4725").

16 Both those orders were, however, already spent. The freezing injunction granted in ORC 2156 for OS 342 had lapsed on its own terms when the tribunal granted its freezing order; and my order of 30 September 2020 granting leave to enforce the tribunal's freezing order was rendered moot just two days after that, when the tribunal discharged the freezing order.

17 Notwithstanding that, the respondents asked that the earlier orders be discharged so that third parties would not be confused: to avoid them thinking that the earlier freezing injunction was still in

effect, when it had lapsed; or that the tribunal's freezing order was still in effect, when it had been discharged. I did not agree with this: there was nothing before me to show that third parties had been, or might be, confused into thinking that the respondents were subject to a freezing injunction/order for a period of time when no such restraint was in place. Moreover, I had granted a fresh freezing injunction. Accordingly, I made no orders on the respondent's applications to set aside the earlier orders of court.

### **Costs**

18 Looking at the matter in the round, the claimant was substantially successful overall; it had only failed to set aside the Confidentiality Relief. I thus awarded costs of \$20,000 (all in) to the claimant, save for the costs of the application for the fresh freezing injunction (SUM 4944) which I reserved to the new arbitral tribunal.

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