IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2016] SGHC 190

Suit No 689 of 2016
(Summons No 3539 of 2016)

Between

BBW

… *Plaintiff*

And

(1) BBX
(2) BBY
(3) BBZ

… *Defendants*

GROUNDS OF DECISION

[Civil procedure] — [Judgments and orders] — [Orders for proceedings to be heard *in camera*]

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v
BBX and others

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Lee Seiu Kin J:

1 The present summons was brought *ex parte* by the plaintiff, [BBW], who sought an order that all court documents and records in this action ("the Suit") be sealed, and access by third parties to those documents and records be withheld ("the Sealing Order Application"). [BBW] also sought an order that the proceedings brought by way of the Suit be held *in camera* ("the *In Camera* Hearing Application"). According to the summons, [BBW]'s applications were based on two grounds: (a) ss 22 and 23 of the International Arbitration Act (Cap 143A, 2002 Rev Ed) ("IAA"); and (b) the inherent jurisdiction of the court.

2 I did not think that ss 22 and 23 of the IAA could be the basis for [BBW]'s applications, but eventually granted the applications on other

grounds. However, [BBW]'s reliance on these provisions highlighted the need to clarify their precise ambit and I do so below.

The Suit

3 The Suit was still at the pleadings stage at the time of [BBW]'s applications. In fact, only [BBW]'s version of the Suit's facts, as set out in the amended statement of claim, was available. I set out below the material facts that can be gleaned from the amended statement of claim.

4 In the Suit, [BBW] prays for a declaration that there is a valid indemnity agreement ("the Indemnity Agreement") between him and a deceased party, [B], and for enforcement of the Indemnity Agreement against the first defendant, [BBX], who is the personal representative of [B]'s estate. [BBW] claims that under the Indemnity Agreement, [B] had agreed to indemnify him against all liability, loss or damage incurred in connection with an arbitration at the Singapore International Arbitration Centre ("the Arbitration"). In the Arbitration, the claimant, [C], seeks damages from [BBW] in relation to an agreement by [BBW] to purchase certain shares from [C]. [BBW]'s position in the Arbitration is that those shares were beneficially owned by [B], who was the father-in-law of [C]. [B] and [C] were engaged in litigation in Seychelles in relation to [B]'s claim to those shares.

Sections 22 and 23 of the IAA

5 I proceeded on the assumption that the Arbitration is an international arbitration falling within the scope of the IAA.

6 As mentioned at [1] above, the first ground for [BBW]'s applications was ss 22 and 23 of the IAA. These provisions read as follows:

Proceedings to be heard otherwise than in open court

22. Proceedings under this Act in any court shall, on the application of any party to the proceedings, be heard otherwise than in open court.

Restrictions on reporting of proceedings heard otherwise than in open court

23.—(1) This section shall apply to proceedings under this Act in any court heard otherwise than in open court.

(2) A court hearing any proceedings to which this section applies shall, on the application of any party to the proceedings, give directions as to whether any and, if so, what information relating to the proceedings may be published.

(3) A court shall not give a direction under subsection (2) permitting information to be published unless —

(*a*) all parties to the proceedings agree that such information may be published; or

(*b*) the court is satisfied that the information, if published in accordance with such directions as it may give, would not reveal any matter, including the identity of any party to the proceedings, that any party to the proceedings reasonably wishes to remain confidential.

(4) Notwithstanding subsection (3), where a court gives grounds of decision for a judgment in respect of proceedings to which this section applies and considers that judgment to be of major legal interest, the court shall direct that reports of the judgment may be published in law reports and professional publications but, if any party to the proceedings reasonably wishes to conceal any matter, including the fact that he was such a party, the court shall —

(*a*) give directions as to the action that shall be taken to conceal that matter in those reports; and

(*b*) if it considers that a report published in accordance with directions given under paragraph (*a*) would be likely to reveal that matter, direct that no report shall be published until after the end of such period, not exceeding 10 years, as it considers appropriate.

Meaning of "proceedings under this Act"

7 What is immediately apparent is that ss 22 and 23 of the IAA only apply to "proceedings under this Act" ("this Act" being the IAA). On a plain reading of this phrase, it refers to proceedings under specific provisions of the IAA. Such proceedings include (by no means exclusively) applications under the following provisions of the IAA: s 6(1) (stay of proceedings), s 10(3) (jurisdiction of arbitrator), s 10(4) (appeal to Court of Appeal), s 12(6) (enforcement of orders or directions of arbitrator), s 12A (interim measures), s 13(2) (subpoena), s 13(3) (bringing up prisoner for examination), s 18(*b*) (enforcement of consent awards), s 19 (enforcement of awards), s 24 (setting aside award) and s 29(1) (enforcement of foreign awards). An interesting question arises as to whether applications under ss 22 or 23 of the IAA amount to "proceedings under this Act". In my view, while such an application is made under the IAA, the "proceeding" that is the subject of the application under ss 22 or 23 of the IAA must relate to an application under another provision of the IAA. To interpret this otherwise would render otiose the phrase "proceedings under this Act", as any application that is made under ss 22 or 23 of the IAA would fall within the ambit of the phrase even though there is no connection whatsoever with any international arbitration.

8 The corollary to the foregoing is that a proceeding based on some other cause of action also does not qualify as a proceeding under the IAA. Indeed, some statutes make reference to proceedings under the relevant act as well as proceedings under the relevant subsidiary legislation, *eg*, "any proceedings under this Act or any subsidiary legislation made thereunder" (ss 53(1) and 54(1), Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap 65A, 2000 Rev Ed)) and "any proceedings under this Act or the regulations" (s 57(5), Immigration Act (Cap 133, 2008 Rev Ed)).

These provisions indicate that the phrase "proceedings under this Act" does not include proceedings under the relevant subsidiary legislation made under the relevant act. *A fortiori*, the phrase does not include proceedings based on some other cause of action. Indeed, this interpretation is made even more evident when one considers s 19 of the Motor Vehicles (Third-Party Risks and Compensation) Act (Cap 189, 2000 Rev Ed) ("MVA"), which reads as follows:

> **Public Trustee may appear in court**
>
> **19.** The Public Trustee shall have the right to appear and be heard in a court in any proceedings under this Act or in relation to any claim or action for damages for the death or bodily injury of any person arising out of the use of a motor vehicle.

In this provision, express provision is made for proceedings "in relation to any claim or action for damages for the death or bodily injury of any person arising out of the use of a motor vehicle". This means that such proceedings, which are based on a cause of action that does not arise from the MVA, are not covered by the phrase "proceedings under this Act". These examples show that Parliament would have been explicit if it had intended for ss 22 and 23 of the IAA to cover proceedings based on some other cause of action.

9 In the present case, therefore, the issue was whether the Suit was a proceeding under the IAA. It was clear to me that it was not. [BBW]'s claim against [BBX] in the Suit essentially concerns the enforcement of the Indemnity Agreement and is, for this reason, a claim in contract. I was therefore of the view that the Suit was *not* a proceeding under the IAA. Accordingly, [BBW]'s applications could not have been granted pursuant to ss 22 and 23 of the IAA.

10 However, counsel pointed me to the decision in *AZT and others v AZV* [2012] 3 SLR 794 ("*AZT*"). In that case, the High Court granted an application to seal the court documents in an originating summons action which concerned the apportionment of liability between co-respondents in a Singapore arbitration. In support of his contention that an application for a sealing order may be made under s 23 of the IAA, counsel pointed to [17] of the judgment, which reads as follows:

> While the present OS action is not an interlocutory application, it is a chambers proceeding which is heard "otherwise than in open court" pursuant to s 22 of the IAA: the sealing of court documents would thus be "a less significant intrusion" into the principle of open justice.

11 Counsel submitted that [17] of *AZT* suggests that the court had considered the application to be one under s 23 of the IAA. Such a view also appears to be shared by Prof Jeffrey Pinsler SC ("Prof Pinsler") in *Principles of Civil Procedure* (Academy Publishing, 2013) (at para 21.033).

12 However, a closer reading of *AZT* indicates that this is not the case. First, there is nothing on the face of the summons filed in *AZT* (*ie*, Summons No 2037 of 2012) which indicates that the application was taken out pursuant to s 23 of the IAA. Second, the analysis in *AZT* did not consider the wording of s 23 of the IAA. This would have been done if the court had considered that it was dealing with an application under this provision. Third, although the cause of action in *AZT* is not immediately clear from the decision, the originating summons action concerned the apportionment of liability and, more specifically, the issue of contribution, and it is difficult to envisage how this could have been a proceeding under the IAA. Fourth, it also appeared to me that s 23 of the IAA is not a provision that provides for the sealing of court documents (see the elaboration on this point at [15]–[18] below), and the court therefore could not have granted the application pursuant to this provision. For

these reasons, it was plain to me that *AZT* is not a case where a sealing order was granted pursuant to s 23 of the IAA.

13 In fact, the analysis in *AZT*, which weighed the need for open justice against the need to preserve the confidentiality of the arbitration in question, clearly shows that the court had proceeded on the basis that the application was based on the court's inherent power to grant a sealing order (see the elaboration on this point at [21]–[30] below). In fact, the reference to ss 22 and 23 of the IAA in *AZT* (at [13]) was made as evidence of the public policy of keeping arbitrations confidential. The court had stated (at [13]) that ss 22 and 23 of the IAA "reflect the public policy of keeping arbitrations, and all proceedings related to arbitration, confidential".

14 In my view, therefore, *AZT* is a case where a sealing order was granted pursuant to the court's inherent power to do so and not s 23 of the IAA. In so far as [BBW] had based the Sealing Order Application on this provision, such reliance was misplaced.

The purport of ss 22 and 23 of the IAA

15 The foregoing is sufficient to explain why [BBW]'s applications could not be made under ss 22 and 23 of the IAA. However, it might be useful to set out my observations on the purport of ss 22 and 23 of the IAA.

16 Under s 22 of the IAA, a party to proceedings under the IAA has the right to an order for such proceedings to be heard "otherwise than in open court". The provision clearly states that such an order "shall", on the application of any party, be made. It is also clear that other parties to the proceedings have no right to object. So long as one party applies for it, the order must be given. This indicates a strong policy intent of privacy in

proceedings under the IAA and, inferentially, proceedings in any international arbitration.

17 Where an order under s 22 of the IAA has been made, the proceedings are ordered to be heard "otherwise than in open court" and s 23 of the IAA is then applicable by virtue of s 23(1) of the IAA. Section 23(2) of the IAA states that a court hearing any proceedings to which the section applies shall, on the application of any party to the proceedings, "give directions as to whether any and, if so, what information relating to the proceedings may be published". This means that once an order has been obtained under s 22 of the IAA, the default position is that there is to be no publication of any information relating to the proceedings. What s 23(2) of the IAA does is to allow a party to make an application if he wants to publish any such information. The conditions for publication are then prescribed in s 23(3) of the IAA.

18 Thus, leaving aside s 23(4) of the IAA (which was irrelevant to the present case), s 23 of the IAA is a provision for the court to permit the publication of information relating to the proceedings. It is not a provision under which a party may obtain an order to seal court documents and records and to withhold access by third parties to those documents and records. Therefore, s 23 of the IAA was not relevant to the Sealing Order Application by [BBW].

The grounds for granting the applications

19 As stated at [1] above, the second ground for [BBW]'s applications was based on the court's inherent jurisdiction. Before proceeding further, I should state this was somewhat of a misnomer. In *Re Nalpon Zero Geraldo Mario* [2013] 3 SLR 258 ("*Nalpon*"), the Court of Appeal clarified (at [32]) that the *jurisdiction* of a court and the *powers* of a court are "two distinct and

entirely different concepts". The jurisdiction of a court is "its authority, however derived, to hear and determine a dispute that is brought before it", whereas the powers of a court "constitute its capacity to give effect to its determination by making or granting the orders or reliefs sought by the successful party to the dispute" (*Muhd Munir v Noor Hidah and other applications* [1990] 2 SLR(R) 348 at [19] cited in *Nalpon* at [31]). The Court of Appeal in *Nalpon* further exhorted (at [41]) that in the interests of conceptual clarity, it would be preferable to refer to the exercise of the right to regulate matters properly before the court as the exercise of the court's inherent powers rather than its inherent jurisdiction. Given the nature of [BBW]'s applications, it was clear to me that what [BBW] was really relying on was the court's inherent *power*.

20 To this end, and notwithstanding the non-applicability of ss 22 and 23 of the IAA, I granted the Sealing Order Application pursuant to the court's inherent power to do so. As for the *In Camera* Hearing Application, recourse to the court's inherent power was not necessary in light of s 8(2) of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) ("SCJA").

The Sealing Order Application

The court's power to grant a sealing order

21 The sealing order is no doubt part and parcel of our civil procedure. In *Navigator Investment Services Ltd v Acclaim Insurance Brokers Pte Ltd* [2010] 1 SLR 25 ("*Navigator*"), the Court of Appeal affirmed as much when it noted (at [66]) that "[t]here are, in fact, procedures in place for the sealing of court files". Likewise, Prof Pinsler in *Singapore Court Practice 2014* vol 2 (LexisNexis, 2014) describes the sealing order (at para 60/4/4) as "well-

established". Yet, despite its ubiquity, the source of the court's power to grant a sealing order seems to be, hitherto, an open question.

22 As observed by Prof Pinsler in *Singapore Court Practice 2014* vol 1 (LexisNexis, 2014) (at para 42/1/17), the sealing order is not provided for in any statute or the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("ROC"). It also appears that no provision is made for it in the Supreme Court Practice Directions (1 January 2013 release). Neither have our courts pronounced on this question; indeed, it has been noted that "the legal status of [the sealing] order in general proceedings has yet to be judicially examined" (*Singapore Court Practice 2014* vol 1 at para 42/1/17).

23 Academic writers, however, have suggested that the court has the inherent power to grant a sealing order. In *Singapore Court Practice 2014* vol 1, Prof Pinsler takes the view (at para 42/1/17) that the court "may have the inherent power to grant a sealing order pursuant to O 92 r 4 [of the ROC] in the interests of justice", although this "has yet to be declared as the juridical basis of the remedy". In vol 2 of the same text, Prof Pinsler argues (at para 60/4/4) that in the absence of a specific provision in the ROC, "it may be contended that a court has the inherent power … to make a sealing order in the interest of the administration of justice".

24 This view is also shared by Asst Prof Goh Yihan ("Asst Prof Goh") in his article "The Inherent Jurisdiction and Inherent Powers of the Singapore Courts: Rethinking the Limits of their Exercise" [2011] SJLS 178. In the section of his article dealing with the court's inherent procedural powers, Asst Prof Goh observes (at p 195) that the courts have "certain inherent procedural powers with respect to proceedings presently before them". In the list of sub-categories that follows, the sealing of court documents is listed as one such

power, with *Navigator* being cited as authority for this proposition. However, it is not entirely clear that *Navigator* stands for this proposition. In *Principles of Civil Procedure*, Prof Pinsler goes so far as to say (at para 21.033) that Andrew Phang Boon Leong JA, who delivered the judgment of the Court of Appeal, did not examine the juridical basis of the sealing order applied for in *Navigator*. Notwithstanding, it is possible that Asst Prof Goh had in mind the part of the decision where the Court of Appeal acknowledged (at [66]) the fact that an application made on the ground of confidentiality (which the sealing order presumably is) "may be a more limited right inasmuch as it might be denied by the court "in exercise of its inherent jurisdiction because of the fundamental importance of the litigation"".

25 In my view, the suggestion by Prof Pinsler and Asst Prof Goh makes ample sense, and I agreed that the court has the inherent power to grant a sealing order.

26 First, if the sealing order is indeed an accepted part of our civil procedure (see [21] above) and if there is indeed no statutory basis for it (see [22] above), then it must necessarily follow that the court has the inherent power to grant a sealing order. To conclude otherwise would lead to the unlikely (and somewhat absurd) corollary that our courts have, through the years, been acting *ultra vires* in granting sealing orders.

27 Second, the sealing order also falls within the descriptions given of the court's inherent power. The inherent power of the court is reflected in O 92 r 4 of the ROC, which states as follows:

> **Inherent powers of Court (O. 92, r. 4)**
>
> **4.** For the avoidance of doubt it is hereby declared that nothing in these Rules shall be deemed to limit or affect the inherent powers of the Court to make any order as may be

> necessary to prevent injustice or to prevent an abuse of the process of the Court.

The court's inherent power "stems from the court's status and role as the adjudicating organ of the legal system" and "is to be exercised in exceptional circumstances when there is a pressing need to ensure a just outcome" (*Principles of Civil Procedure* at para 01.006). It has been said that "the concern is with the ability of the court to make appropriate orders to ensure the achievement of justice and the efficacy of its administration" (*Singapore Court Practice 2014* vol 1 at para 1/1/7). In the arbitration context, the decision to grant a sealing order is made by weighing the principle of open justice against the need to preserve confidentiality in arbitration (see [39] below). Thus, the sealing order is fundamentally concerned with a "just outcome" as well as the "achievement of justice and the efficacy of its administration". This brings it squarely within the aforementioned descriptions of the court's inherent power.

28 Third, the notion of the court having the inherent power to grant a sealing order has been accepted by other courts. In *The Attorney General of Nova Scotia and Ernest Harold Grainger v Linden MacIntyre* [1982] 1 SCR 175 ("*MacIntyre*"), the majority of the Supreme Court of Canada alluded to this when it observed (at 189) that:

> Undoubtedly *every court has a supervisory and protecting power over its own records*. Access can be denied when the ends of justice would be subverted by disclosure or the judicial documents might be used for an improper purpose. … [emphasis added]

Admittedly, *MacIntyre* did not concern a sealing order. Rather, the court was dealing with public access to search warrants and informations. However, it is clear that the above observation by the majority of the Supreme Court of Canada is capable of general application.

29 Indeed, numerous cases emanating from the provincial superior courts of Canada have noted (more explicitly) that the court has the inherent power to grant a sealing order. In *R v Chan* 2007 ABQB 554, the Alberta Court of Queen's Bench held (at [12]) that "a superior court always has jurisdiction to vary or vacate a sealing order of its proceedings made under its inherent jurisdiction to control its own processes". In *X. v Y. and Z. Ltd.* 338 DLR (4th) 156, the plaintiff brought an application seeking orders that in the reasons for judgment, he and his family be referred to by initials (rather than by their full names) and that the court file be sealed. The British Columbia Supreme Court held (at [14]) that "[t]he court has the discretion to make the orders sought pursuant to its inherent jurisdiction". In *Plimmer v Google Inc.* 2013 BCSC 681, the plaintiff sought a temporary sealing order and publication ban in respect of the application at hand. The British Columbia Supreme Court held (at [84]) that "[t]he authority for making some part of these civil court proceedings confidential, even temporarily, is the court's inherent jurisdiction". In *A. (A.), Re* 2016 BCSC 511, the applicant sought, *inter alia*, a sealing order. The British Columbia Supreme Court, citing *MacIntyre*, held (at [8]) that "[t]he authority of the Court to grant a sealing order is derived from its inherent supervisory and protecting power over its own records". In *Fairview Donut Inc. et al. v The TDL Group Corp. et al.* 100 OR (3d) 510, the defendants sought a "confidentiality order" or sealing order, restricting public access to certain documents, or portions of certain documents, in their motion record on certification and summary judgment. The Ontario Superior Court of Justice held (at [34]) that "[t]here is no doubt that the court has inherent jurisdiction … to seal a portion of the court file" (interestingly, the court also held that its jurisdiction to do so was also derived from a statutory provision). Finally, in *Patient 0518 v RHA 0518* 2016 SKQB 175, the Saskatchewan Court of Queen's Bench held (at [6]) that "[t]here is no question that this

Court has inherent jurisdiction to grant a sealing order". It is true that most of these cases refer to the court's inherent *jurisdiction* rather than *power*. However, bearing in mind the Court of Appeal's observations in *Nalpon* (see [19] above), these cases show that the notion of the court having the inherent power to grant a sealing order has been accepted by other courts.

30 For the above reasons, I was of the view that the court has the inherent power to grant a sealing order.

31 Before concluding this section, I should also set out my observations on the relationship between the sealing order and O 60 r 4 of the ROC. The relevant provisions in this rule read as follows:

> **Right to search information and inspect, etc., certain documents filed in Registry (O. 60, r. 4)**
>
> **4.**—(1) Subject to any practice directions issued by the Registrar, any person shall, on payment of the prescribed fee and without leave of the Registrar, be entitled to search the information referred to in Rule 2.
>
> (2) Any person may, with the leave of the Registrar and on payment of the prescribed fee, be entitled —
>
> > (*a*) during office hours, at the Registry or a service bureau established under Order 63A, to search for, inspect and take a copy of any of the documents filed in the Registry; or
> >
> > (*b*) to use the electronic filing service established under Order 63A to search for and inspect any of the documents filed in the Registry during the period permitted by the Registrar.
>
> …

The difference between the two sub-rules is well-explained in *Singapore Civil Procedure 2016* vol 1 (Foo Chee Hock JC gen ed) (Sweet & Maxwell, 2016) (at para 60/4/2):

> … Under r.4(1), any person who wishes to ***search*** the information maintained by the Registry may do so *without leave of court*, upon payment of the prescribed fee. However, under r.4(2), if a person wishes to ***search, inspect or copy*** any document filed in the Registry, he may do so only *with leave* of the Registrar, and upon payment of the prescribed fee. … [emphasis added in italics and bold italics]

32 Prof Pinsler has argued in *Principles of Civil Procedure* (at para 21.033) that the sealing order "has the effect of directing the registrar not to give leave under Order 60 rule 4(2) [of the Rules of Court (Cap 322, R 5, 2006 Rev Ed)] to a member of the public to inspect or take a copy of the sealed document". I pause to note that there is a difference in wording in the older version of the Rules of Court referred to by Prof Pinsler, but this is inconsequential for present purposes. The point I make here is that while Prof Pinsler may well be correct, his argument should not be read as suggesting that the question of leave under O 60 r 4(2) of the ROC is answered solely with reference to the existence or otherwise of a sealing order. In *Tan Chi Min v The Royal Bank of Scotland plc* [2013] 4 SLR 529, I had (at [33]) discharged the sealing order in question but nevertheless held that access to the affidavits of evidence-in-chief and other affidavits filed would only be available to the public after they had been admitted as evidence in a hearing, whether in open court or in chambers. This shows that the question of leave in O 60 r 4(2) of the ROC is independent from the existence or otherwise of a sealing order. Of course, no leave should be granted if there is a sealing order in place. However, it does not follow that leave should always be granted just because there is no subsisting sealing order.

The present case

33 Returning to the present case, [BBW] first argued that the Sealing Order Application was consistent with the public policy in Singapore of

keeping arbitrations confidential. The existence of such a public policy is not controversial. In *AZT*, the court referred (at [13]) to the decision in *AAY v AAZ* [2011] 1 SLR 1093 ("*AAY*") as well as ss 22 and 23 of the IAA. These references demonstrate that the public policy of keeping arbitrations confidential has been affirmed by both the courts as well as Parliament.

34 In *AAY*, the court referred (at [56]) to "the underlying *general principle* in Singapore's arbitration law that arbitrations are not only private but also confidential" [emphasis in original]. As for ss 22 and 23 of the IAA, these have already been set out at [6] above and the public policy of keeping arbitrations confidential is well evident from these provisions. For instance, as stated at [16] above, s 22 of the IAA *mandates* (as can be seen from the word "shall") that proceedings under the IAA be heard "otherwise than in open court" on the application of any party to the proceedings. Furthermore, as stated at [17] above, once an order has been obtained under s 22 of the IAA, the default position is one of non-publication. It also appears that the threshold for publication pursuant to s 23(2) of the IAA is not easily crossed. Under s 23(3) of the IAA, a court can only permit information to be published if all parties agree that such information may be published or if publication of such information would not reveal any matter that any party *reasonably* wishes to remain confidential.

35 [BBW] pointed out that he was likely to rely on facts and/or documents relating to the Arbitration for the purposes of the Suit, including the cause papers and evidence filed in the Arbitration. It was also likely that facts and/or documents relating to the Arbitration would be referred to in, *inter alia*, the statement of claim in the Suit, as well as in the cause papers and/or further documents that had been or were to be filed in the Suit.

36 I agreed that the public policy of keeping arbitrations confidential applied in the present case. I was aware that [BBX], [BBY] (the second defendant) and [BBZ] (the third defendant) were not parties to the Arbitration, which was between [C] and [BBW]. This made the present case somewhat different from *AZT*, where the parties were co-respondents in the arbitration. However, I did not think that this made any difference in the circumstances of the present case. It is clear that there is a considerable overlap in the facts of the Suit and the Arbitration. In particular, [BBW] claims in the Suit that the consideration for the Indemnity Agreement was [BBW] agreeing to defend [C]'s claim in the Arbitration, *inter alia*, on the basis that the shares in question were beneficially owned by [B] and not [C]. Consequently, the evidence adduced in the Suit would, in the absence of a sealing order, doubtlessly compromise the confidentiality of the Arbitration.

37 [BBW] further argued that there was nothing to indicate that there was a legitimate public interest in not sealing the court file. The court in *AZT* pointed out (at [18]) that many of the relevant authorities had dealt with judgments and the need to make judgments dealing with challenges to arbitral awards public. This was to be differentiated from the sealing of court documents, which would not stifle the development of arbitration jurisprudence in Singapore. The court in *AZT* then went on to find (at [19]) that there was also no legitimate public interest in the subject matter of the dispute, as the dispute between the parties was purely commercial, with nothing to suggest that there was any countervailing and legitimate public interest weighing in favour of disclosure. Accordingly, there was no reason to compromise the confidentiality of the arbitration and related proceedings.

38 In the present case, the Sealing Order Application had to do with the sealing of court documents. Just as in *AZT*, there was no concern over the

stifling of the development of arbitration jurisprudence in Singapore. As regards the subject matter of the dispute, the Suit essentially concerns the Indemnity Agreement, which is, for all intents and purposes, a private contractual arrangement. As was the case in *AZT*, there was nothing to suggest that there was any countervailing and legitimate public interest weighing in favour of disclosure.

39 In deciding whether to grant a sealing order, the principle of open justice has to be weighed against the need to preserve confidentiality in arbitration, with the latter being an important factor in the court's exercise of discretion (*AZT* at [14]). On the present facts, I was of the view that the principle of open justice did not outweigh the need to preserve the confidentiality of the Arbitration. I therefore granted the Sealing Order Application accordingly.

The In Camera *Hearing Application*

40 As for the *In Camera* Hearing Application, the power to grant such an order is provided for by s 8(2) of the SCJA, which reads as follows:

> (2) The court shall have power to hear any matter or proceedings or any part thereof in camera if the court is satisfied that it is expedient in the interests of justice, public safety, public security or propriety, or for other sufficient reason to do so.

41 This provision vests the court with a "broad discretion" (*Principles of Civil Procedure* at para 20.003). I was of the view that this discretion should be exercised in the present case. For the reasons set out at [33]–[39] above, it was "expedient in the interests of justice" for proceedings brought by way of the Suit to be held *in camera*. Alternatively, these same reasons amounted to a "sufficient reason" for this to be the case.

Conclusion

42 In the circumstances, I granted the Sealing Order Application pursuant to the court's inherent power to do so and the *In Camera* Hearing Application pursuant to s 8(2) of the SCJA. Sections 22 and 23 of the IAA were inapplicable in the present case as the Suit was not a proceeding under the IAA. In addition, s 23 of the IAA was also not relevant to what was sought by the Sealing Order Application. I ordered that the costs of and occasioned by the summons be costs in the cause.

Lee Seiu Kin
Judge

Tan Tian Yi and Han Guangyuan, Keith (Cavenagh Law LLP) for the plaintiff.