

HONG KONG / JUDGMENT

CS v. HKR

[2026] HKCFI 1611

COURT

Court of First Instance

DECIDED

19 March 2026

CASE / FILE NUMBER

HCCT72/2024

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[2026] HKCFI 1611 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION COURT OF FIRST INSTANCE CONSTRUCTION AND ARBITRATION
PROCEEDINGS NO 72 OF 2024

IN THE MATTER OF THE ARBITRATION ORDINANCE (CAP 609) and IN THE MATTER OF AN
ARBITRATION

BETWEEN CS Plaintiff (Respondent in Arbitration) and HKR Defendant (Claimant in Arbitration)

Before: Hon Mimmie Chan J in Chambers Dates of Written Submissions: 12 and 16 February 2026
Date of Decision: 19 March 2026

D E C I S I O N

This is an unusual application made by the Plaintiff in these proceedings instituted by its Originating Summons issued on 24 June 2024 (). By its summons of 7 November 2025, the Plaintiff seeks what the Defendant described as a Voluntary Payment Order , for the Plaintiff s own payment into court of the interest awarded under a Second Award dated 30 October 2025 (2nd Award) made in the Arbitration which is the subject matter of the proceedings. In the OS, the Plaintiff applied for leave to appeal against the Amended Interim Award on Liability and Quantum dated 27 May 2024 (1st Award), on specified questions of law, pursuant to section 6(1) (b) of Schedule 2 (Schedule) to the Arbitration Ordinance (Ordinance). 4 questions of law were

identified for the application for leave to appeal. By its Decision on 22 November 2024, this Court refused leave (Refusal of Leave Decision). The Plaintiff applied for leave to appeal against the Refusal of Leave Decision. By the Decision dated 7 February 2025, this Court granted leave to the Plaintiff to appeal to the Court of Appeal against the Refusal of Leave. This was on the basis that it is reasonably arguable that the tribunal s decision on Question 1 (as defined in the Refusal of Leave Decision) is in substance a matter of construction of the relevant Subcontract, and the tribunal had erred in law by failing to consider the effect of the Subcontract provisions and the drawings. Leave to Appeal was also granted for the Court of Appeal to consider whether leave to appeal on Question 3 (double recovery) should also be granted. There are now pending before the Court of Appeal the substantive appeals against the Refusal of Leave Decision with regard to Questions 1 and 3, and whether leave to appeal from the 1st Award should be granted for Questions 2 and 4. According to the parties, the appeal on Questions 1 and 3 is scheduled for hearing in late March 2026, and the renewed application for leave to appeal on Questions 2 and 4 was heard in February 2026, with judgment pending. The Plaintiff highlighted the fact that it has in fact made full payment to the Defendant of the amount allowed under the 1st Award, as a result of the statutory demands threatened by the Defendant, and to avoid any enforcement action including winding up proceedings being taken against it on the basis of the 1st Award. The 2nd Award was for interest and costs, on the basis of the findings made and the principal sums awarded in the 1st Award. The Defendant on its part emphasized that there has been no application made by the Plaintiff to challenge the 2nd Award, whether by way of setting aside, or seeking leave to appeal on any question of law. However, the Plaintiff pointed out that the Defendant itself has not yet made any application for leave to be granted by the Court to enforce the 2nd Award. To avoid any threat of winding up and any enforcement action on the 2nd Award, the Plaintiff has taken the initiative to apply for an order from the Court for it to give security for the payment of the interest allowed under the 2nd Award, by payment into court within 21 days, which payment will remain in court pending the final determination of the Plaintiff s appeal to the Court of Appeal in respect of the 1st Award, and any consequential award or order on the questions of law identified in the OS, and if necessary, for consequential amendments to the 2nd Award as a result of the 1st Award being set aside, varied or remitted, upon the determination of the appeal. The Defendant claims that the Plaintiff has no entitlement to seek the Voluntary Payment Order, nor does the Court has jurisdiction or power to make the order sought by the Plaintiff - when there is no challenge or appeal against the 2nd Award. That is the gravamen of the submissions made for the Defendant, ie since there is no challenge against the 2nd Award, the entire sum awarded by way of interest and costs should be paid to the Defendant under a final award of the tribunal, and there should not be any condition attached to the Defendant s recovery by the money being paid into and retained in Court until the conclusion of the appeal proceedings. It was argued that the Defendant should not be hampered in its liberty to choose the method and location of seeking recovery under the 2nd Award by way of enforcement. That would be the practical effect, as Counsel for the Defendant contended, if the Court should allow the Plaintiff to keep the money representing the 2nd Award in the Hong Kong court, when the Defendant should be able to seek recovery elsewhere. Dealing with this last point first, I can appreciate the Defendant s concerns, but so long as it has not received the amount allowed under

the 2nd Award in its pocket, it cannot be said that it has recovered the amount, or has been paid. The Defendant should still be entitled to take other enforcement steps against any available assets of the Plaintiff elsewhere. It can only be argued that it has security in Hong Kong, in the sense that it will be able to look to the payment in court eventually, when the appeal has been disposed of and the Plaintiff is held liable to make payment to the Defendant out of the money paid into court. This would be relevant if the Defendant wishes to seek other security short of or before full payment by the Plaintiff. Viewed this way, any prejudice to the Defendant in its choice of remedies is more academic than real. No Challenge to 2nd Award? It is true that there has been no application to challenge the 2nd Award. However, the matter has to be considered in its proper context. The Plaintiff applied for leave to appeal against the 1st Award on points of law. There is a pending appeal as to whether such leave should be granted. If the Court of Appeal decides that leave should properly be granted on Question 1 and/or Question 3, then the appeal will be heard, and if the appeal results in the 1st Award being set aside, in whole or in part, or varied, or remitted, pursuant to section 5(5) of the Schedule to the Ordinance, the principal amount awarded under the 1st Award may well be reduced. If the principal amount of damages is varied or reduced, the amount of interest awarded in the 2nd Award must incidentally be affected and reduced. Hence, by challenging the 1st Award in the way it did, the Plaintiff is incidentally challenging the 2nd Award. Of course, the more appropriate procedure is for the Plaintiff to make the necessary formal challenge against the 2nd Award, but in this regard, the Plaintiff was right to point out that the Defendant has yet to apply for leave to enforce 2nd Award, because at that stage, the Plaintiff can oppose the enforcement. I therefore cannot fully accept the Defendant's contention, that there is no challenge against the 2nd Award, although I consider that even before any application is made to the Court for leave to enforce, the 2nd Award is a valid award which is binding on the Plaintiff unless and until it is set aside or varied by the Court on appeal in this case, or by the tribunal. Any basis to make application and power to make order? On behalf of the Defendant, it was contended that the Plaintiff has no entitlement to apply for the Voluntary Payment Order, and the Court has no power to make the order sought. The Plaintiff relies on sections 5-7 of the Schedule, Order 73 rule 2 and Order 1B RHC, as well as the inherent jurisdiction of the Court, to make its application. The Defendant claims that none of these is applicable, when there is no action to challenge the 2nd Award (for which the Voluntary Payment is proposed). With regard to the submissions made for the Defendant, I agree with the Plaintiff that these proceedings were commenced by the OS which seeks relief relating to the 1st Award, as well as any consequential award or order of the Arbitrator, including an order for remitting the 1st Award and any consequential award or order of the Arbitrator for his reconsideration, pursuant to section 5 of the Schedule. This will include the 2nd Award on interest, consequential to the findings made in the 1st Award. The Summons for the Voluntary Payment Order was issued in the proceedings commenced by the OS. It cannot be said that there is no action concerning the 2nd Award, and that the Court's inherent jurisdiction cannot extend to the 2nd Award. The OS makes it clear that the relief sought includes any necessary variation or remittal of a consequential award or order of the Arbitrator, which will extend to the 2nd Award. The paragraph relied upon at U1/114/50 of the Hong Kong Civil Procedure cannot assist the Defendant, as it only states generally that section 7 of the Schedule (and the orders which the

Court can make thereunder) applies to challenges to an award and appeals on questions of law under sections 4-6 of the Schedule. The OS was issued expressly under sections 4-7 of the Schedule. The challenge to/appeal sought against the 1st Award made under the OS can extend to the award of interest made in the 2nd Award. Any appeal allowed in respect of the principal sum awarded under the 1st Award will affect the interest allowed under the 2nd Award, so it cannot be said that when there is no challenge against the 2nd Award, no order can be made by the Court. Citing *JJ Argo Industries (P) Ltd v Texuna International Ltd* [1994] 1 HKLRD 89, the Defendant relies on the doctrine of severability of an award to claim that the 2nd Award should be enforced as a whole, rather than to permit a stay of enforcement of a part of the interest related to the claims which are sought to be challenged by appeal on the 4 Questions identified in the leave to appeal application. Counsel for the Defendant highlighted the fact that as the Plaintiff has accepted, only a sum of \$21,674,357 represents the interest payable on the claims affected by Questions 1 to 4. The balance of the interest allowed in the 2nd Award is approximately \$8 million. According to the Defendant, it would be contrary to the doctrine of severability to refuse enforcement of the whole of the 2nd Award, when there are parts of the award which are not in issue. It has not been clearly shown how the principles set out in *JJ Argo* are applicable to the facts of this case to prevent the Voluntary Payment proposed. To the extent that the part of the 2nd Award on interest for claims affected by the determination on appeal of Questions 1-4 is severable from the part of the 2nd Award of interest on claims which are not affected, that cannot be disputed. If it is contended that this means that the Plaintiff should not be permitted to make a payment exceeding the \$21,674,357 into court, but should only pay a smaller amount, I fail to see how it will alter the Defendant's position apart from the fact that the Defendant will be secured to a lesser extent than the Voluntary Payment offered. On its part, the Plaintiff's case is that the whole amount of interest under the 2nd Award should be paid into court as security for both parties - on the basis that if payment should now be made directly to the Defendant, the Plaintiff would be at risk as the Defendant's repayment capacity is (on the evidence) in doubt in the event that any amount of the principal awarded (and paid) and the interest thereon is reversed on appeal. What has not been addressed, which I take to be not in dispute, is that there is no express order for stay of enforcement or execution sought on the 1st or 2nd Award, whether by the Summons, or in the OS or any order so far made by the Court. In all the circumstances of this case, bearing in mind the nature of the 2nd Award, that the amount of interest on the principal sum awarded to the Defendant is affected by the application for leave to appeal against the 1st Award, I cannot agree that the Court does not have power to make the Voluntary Payment Order sought by the Plaintiff, whether under section 7(6) of the Schedule, or under the wider management powers of the Court under Order 1B RHC. As Counsel for the Plaintiff submitted, the power of the Court to order security under section 7(6) serves the purpose of preserving in Court money payable under arbitral awards pending challenges made under sections 4 or 5 of the Schedule. The Voluntary Payment Order preserves the status quo pending the appeal, and also saves the Court's time in assessing the potential reduction of the principal sum and interest in the event that the arbitrator is shown to have erred on questions of law. Overall, the payment into court is a fair and reasonable method which can ensure that neither party is prejudiced.

Disposition

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