

HONG KONG / JUDGMENT

Y, S v. GI, GG

[2025] HKCFI 3633

COURT
Court of First Instance

DECIDED
13 August 2025

CASE / FILE NUMBER
HCCT117/2024

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bjbj HCCT 117/2024

[2025] HKCFI 3633 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION COURT OF FIRST INSTANCE CONSTRUCTION AND ARBITRATION
PROCEEDINGS NO 117 OF 2024

IN THE MATTER of an arbitration administered by the Hong Kong International Arbitration
Centre in HKIAC/A21233 (A22018) (Arbitration) and IN THE MATTER of Section 81 of the
Arbitration Ordinance (Cap 609)

BETWEEN Y 1st Plaintiff (2nd Respondent in the Arbitration) S 2nd Plaintiff (3rd Respondent in
the Arbitration) and GI 1st Defendant (Claimant in the Arbitration) GG 2nd Defendant (1st
Respondent in Arbitration)

Before: Hon Mimmie Chan J in Chambers Dates of Written Submissions: 17 and 27 June 2025
Date of Decision: 13 August 2025

D E C I S I O N

On 11 March 2025, this Court made an order on the summons issued by the 1st Defendant on 13
December 2024 (Security Summons), for the Plaintiffs to give security for the 1st Defendant s
costs in the sum of HK\$2,000,000 by payment into court within 21 days (Security Order). The
Security Order was made in terms of paragraph 2 of the Security Summons, that if the security is
not given within the time specified by the Court, Plaintiffs application by way of Originating

Summons filed on 4 October 2024 to set aside the Final Award in the arbitration be dismissed with costs to the 1st Defendant on an indemnity basis . At the hearing of the Security Summons on 11 March 2025, which led to the making of the Security Order, the parties had by their respective skeleton submissions presented their arguments on the costs to be made on the Security Summons. Both parties asked for the costs of the Security Summons to be granted to them. After the grant of the Security Order, the Plaintiffs failed to provide security as ordered by the Court. Pursuant to paragraph 2 of the Security Order, the Originating Summons to set aside the award was dismissed, with costs as provided for on the express terms of the Security Order. The 1st Defendant submitted a draft order on 16 April 2025 (Draft Order), for approval by the Court. The Draft Order provided for the costs of the Originating Summons to be paid by the Plaintiffs to the 1st Defendant on an indemnity basis with 2 certificates for Counsel forthwith, to be summarily assessed . The Draft Order was not approved by the Court, as paragraph 2 of the Security Order had simply provided for the Originating Summons to be dismissed with costs to the 1st Defendant on indemnity basis , and there was no application to amend the order to provide either for certificate for 2 counsel, or for the costs to be summarily assessed. The 1st Defendant accordingly issued a summons on 9 May 2025 (Costs Summons), pursuant to Order 62 rule 9 RHC, seeking costs of the Originating Summons to be paid by the Plaintiffs to the 1st Defendant on indemnity basis, to be summarily assessed . Order 62 rule 9 is the usual provision in the Rules for costs to be summarily assessed for non-interlocutory applications. The Plaintiffs opposed the Costs Summons, on the ground that the Security Order already made a final order for the costs of the Originating Summons, which was not expressed as an order nisi, the Court is functus, the only avenue left for the 1st Defendant is to appeal against the order, and its Costs Summons is an abuse. I refer to my Decision in *Techteryx Ltd v Legacy Trust Company Limited & others* [2025] HKCFI 2056 and in particular paragraphs 6 to 7 thereof, which deal with the authorities cited by the Plaintiffs in this case (*Chan Sung Kei t/a Chan Shun Kei Construction Works v Hong Kong Construction (Hong Kong) Ltd*, HCCT 2/2011 21 August 2014, *Ghazi Faidi v Qantex Capital Markets Limited & Ors* [2025] HKCA 342 and *Kung Kwok Wai David v Commissioner of Estate Duty*). It is not necessary to repeat the matters found. On the facts of the present case, although the Security Order including the sanction for the dismissal of the Originating Summons and the costs of such dismissal was made in terms of what the 1st Defendant itself sought by the Security Summons, at the hearing of the Security Summons, only the costs of the Security Summons were argued by the parties (although they chose to do this on a very limited basis). There were no submissions made on the position of the costs of the Originating Summons, if security was not furnished in accordance with any order by the Court. The dismissal of the Originating Summons with costs came into effect and operation on 1 April 2025, after the lapse of 21 days for the provision of security in accordance with the Security Order. In all fairness, since the parties did not have the opportunity to address the Court on the question of the costs of the Originating Summons, the costs order reflected in paragraph 2 of the Security Order (and which came into operation on 1 April 2025) may be regarded as an order nisi, subject to variation which can be sought by either party, with detailed submissions on costs. A costs order nisi becomes absolute 14 days thereafter, unless an application is made for its variation. In this case, the Costs Summons was issued only on 9 May 2025. Even if the costs order for the dismissal of the Originating Summons was an order

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