

THE EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL

TERRITORY OF THE VIRGIN ISLANDS

BVIHCMAP2022/0070
BVIHCMAP2022/0071
BVIHCMAP2022/0072

BETWEEN:

[1] GREATER SAIL LIMITED
[2] LI JIANPING (ALSO KNOWN AS GIGI LEE)
[3] MAI FAN

Applicants

and

[1] NAM TAI PROPERTY INC.
[2] NAM TAI GROUP LIMITED
[3] NAM TAI INVESTMENT (SHENZHEN) CO. LTD

Respondents

Before:

The Hon. Mde. Gertel Thom
The Hon. Mr. Trevor Ward
The Hon. Mr. Robert Levy

Justice of Appeal
Justice of Appeal
Justice of Appeal [Ag.]

On written submissions

Appearances on paper:

Mr. Andrew Emery for the Applicants
Mr. Nicholas Burkill, Ms. Emily Rivett and Mr. Rondelle Keller for the
Respondents

2024: June 4.

Commercial appeal – Costs – Assessment of costs

JUDGMENT ON COSTS

- [1] **LEVY JA [AG.]:** By the Court's judgment handed down on 12th February 2024 (the "February Judgment"), the Court dismissed two of the applicants' three applications (the "Summary Judgment Leave Application" and the "Injunction

Extension Application”) and granted the third (the “Contempt Extension Application”), albeit without encouraging the applicants to pursue any further appeal. The Certificate of Result of Appeal ordered the parties to exchange written submissions on costs within two weeks, and file responsive submissions within a week thereafter.

- [2] The respondents served their submissions within the time limited, but the applicants did not. Outside the time limited for their initial submissions, the applicants wrote to the Registrar noting that they were entitled to respond to the respondents’ submissions (even though they had not filed any initial submissions in time). Subsequently, the Court invited response submissions, and the respondents filed such submissions in the time limited by the Court.
- [3] I have read, and taken account of, all the submissions filed. I should be clear that I am unimpressed by the applicants’ conduct in relation to the costs submissions; the Court imposed a time limit for initial costs submissions and they did not file any within that time. In other words, they did not, within the time permitted by the Court, ask for any costs order in their favour. Further, their conduct in this regard is of a piece with their conduct in relation to the applications disposed of by the February Judgment. None of those applications was made in time and therefore all sought an extension of time.
- [4] The respondents’ reply submissions suggest that even following the extension of time granted by the February Judgment, the applicants’ Notice of Appeal was filed out of time and has apparently resulted in an application for yet a further extension of time, explaining that the deadline was missed due to ‘an administrative error and the difficulties in taking instructions between different time zones’.
- [5] The respondents ask for their costs of the Summary Judgment Leave Application and the Injunction Extension Application. Those applications were dismissed and were they separate applications such an order would follow as a matter of course.

- [6] The respondents also ask for their costs of the Contempt Extension Application that was granted, for reasons that are explained in paragraph 13 to 15 of their written submissions on costs, which I have considered.
- [7] The applicants seek their costs of pursuing the Content Extension Application and suggest they should have their costs of that application. They refer to a number of authorities, all of which I have considered. They also refer to CPR 64.6(5). The applicants do not expressly concede that the respondents should have their costs of the two applications that were dismissed.
- [8] In my view, the correct order is that the applicants should pay the respondents' costs of the Summary Judgment Leave Application and the Injunction Extension Application because they were not successful on those applications.
- [9] I consider that the costs of the Contempt Extension Application should be costs in the Contempt Appeal. Whilst the applicants were ultimately successful on the Contempt Extension Application it was not reasonable for them to await the outcome of this Court's decision on the substantial Contempt Appeal before launching the Contempt Extension Application. As noted in the February Judgment, the applicants should have taken appropriate steps far sooner than they did if they wished to appeal the findings in the contempt application. The February Judgment was critical of the applicants' conduct in relation to all the applications. If the applicants are successful in the appeal, they should have their costs of that application, but not otherwise.

I concur.
Gertel Thom
Justice of Appeal

I concur.
Trevor Ward
Justice of Appeal

By the Court

Chief Registrar