

SAKHOWAT BEPARI
AND
SINOTRANS (B) SDN BHD
HENGYI INDUSTRIES SDN BHD
RBH SUNSHINE CONTRACTOR
RAHAMI BIN MURNI
RBH SUNSHINE SDN BHD

(Intermediate Court of Brunei Darussalam)
(Civil Suit No.39 of 2020)

APPEAL AGAINST REGISTRAR'S ORDER

Dk Hjh Norismayanti binti Pg Hj Ismail, Judge.

14th May 2026

Civil Law – Appeal – Security for Costs — Appeal against Registrar's refusal — Order 23 Rule 1, Rules of the Supreme Court (Cap. 5) — Plaintiff ordinarily resident out of jurisdiction — whether just to order security — relevant factors — merits of claim — delay in application — oppression and access to justice — absence of affidavit in opposition — whether deemed admission — financial means of Plaintiff — enforceability of foreign judgments — costs in any event.

Robin Cheok (Cheok Advocates & Solicitors) for Plaintiff/Respondent.

Nicholas Chiew (Messrs Pengiran Izad & Lee 1st Defendant/Appellant.

Cases cited in Judgment:

Berkeley Administration Ltd v McCelland [1990] 1 All ER 958

CA Aeronave SPA v Westland Charters Ltd [1971] 3 All ER 531

Shorabuddin Hj Moklasur v Saidin bin Tajudin [1996] 1 BLR 169

Ernesto Pellogo v Tobishima Corporation Sdn Bhd (HCCS No. 333 of 1999)

Ponnusamy Rajapandian v Haji Awg Mohd Hussaini Bin PP Hj Awg Ahmad (COACV/6/2015)

John Anthony Metcalfe v Brunei Shell Petroleum Co Sdn Bhd & Anor [1992] 1 BLR

Goldquest International Ltd v Teh Leong Kiat [2003] 2 CLJ 402

Creative Elegance (M) Sdn Bhd v Puay Kim Seng [1999] 1SLR(R)

Towercon (B) Sdn Bhd (in provisional liquidation) v Pg Mariam bt Pg Dato Paduka Seri Laila Jasa Hj

Mohd Sepiuddin @ Pengiran Hafidah [2002] 1 BLR 109

Ng Hee Thoong & Anor v Public Bank Bhd [1995] 1 MLJ 281

Overseas Investment v O'Brien & Anor [3 MLJ] 332

Wong Piang Yow v Ng Kinn Siong (ICCS No. 109 of 2018)

JUDGMENT

Dk Hajah Norismayanti, Judge:

Introduction

1. This is an appeal by the 1st Defendant, Sinotrans (B) Sdn Bhd ("Sinotrans"), against the decision of the learned Registrar Nuuror-Raheebah Haji Abd Wahab dated 14th January 2026 dismissing its application for Security for Costs ("SFC") in the sum of BND\$25,000 by way of Summons in Chambers entered No. 133 of 2024 ("the SIC") by cash deposit or by way of banker's guarantee, with costs of the application to be paid by the Plaintiff in any event.
2. The Plaintiff opposes the appeal and prays that the Registrar's ruling be affirmed, with costs in any event. The 1st Defendant filed its Appeal Submissions dated 12th March 2026 and Responses in Rebuttal dated 14th March 2026. Oral submissions were heard on the 14th March 2026.

Background

3. The Plaintiff, a Bangladeshi national, was brought into Brunei by the 3rd to 5th Defendants as labour contractors. His work permit was held under the 3rd Defendant. The 2nd Defendant appointed the 1st Defendant to perform freight forwarding and logistical services at its worksite at Pulau Muara Besar ("the said work site"). The Plaintiff worked at the said work site under a pass issued by the 2nd Defendant and under the system of work and instruction of the 1st Defendant.
4. On 4th April 2017 at approximately 1130 hours., the Plaintiff sustained injuries at the said work site while assisting to unload pipes from a ship. The Plaintiff's case is that the crane operator prematurely pulled a pipe before it was properly hooked, causing it to fall from height and crush his right knee. The 1st Defendant denies this, claiming that the pipes were properly secured and that the Plaintiff fell carelessly into a gap between the pipes as he was walking away from the work area. The fact that that the accident occurred, and the Plaintiff's presence at the work site under the 1st Defendant's system of work, are not in dispute.
5. The Plaintiff was repatriated to Bangladesh on 5th September 2021 and subsequently obtained employment in Jeddah, Saudi Arabia. Eight Pre-Trial Conferences have been held between November 2022 and January 2025. The 1st Defendant re-examined the Plaintiff medically in Jeddah in December 2025 but the resulting report has not been served on the Plaintiff or filed with the Court.

The Registrar's Ruling

6. The learned Registrar dismissed the SIC for SFC on the 14th January 2026. She found that the Plaintiff had a reasonable prospect of success on his claim, that issues of contributory negligence

was a trial issue, and that ordering security in the sum of BND\$25,000.00 would likely stifle his genuine personal injury claim given his financial position as an overseas labourer. While noting that there was no direct evidence of the Plaintiff's current income, she took into account the realities of his circumstances, including the nature of his overseas employment, in assessing whether he would be able to furnish security without real difficulty.

7. The 1st Defendant appeals against that ruling on the grounds that the learned Registrar erred in her assessment of the merits, in her treatment of the absent affidavit in opposition, approach to contributory negligence, and her finding that security would stifle the claim.

Applicable Law on Security For Costs

8. Security for costs is governed by Order 23 Rule 1 of the Rules of the Supreme Court ("RSC"), Cap. 5, which empowers the Court to order a plaintiff ordinarily resident out of the jurisdiction to give such security as it thinks just, having regard to all the circumstances of the case. Ordinary residence abroad is a condition precedent to the application but does not mandate an order: *Berkeley Administration Ltd v McClland* [1990] 1 All ER 958.
9. The relevant factors, as identified by Sir Roberts CJ and affirmed in the leading Brunei authorities — *Shorabuddin Hj Moklasur v Saidin bin Tajudin* [1996] 1 BLR 169; *Ernesto Pellogo v Tobishima Corporation Sdn Bhd* (HCCS No. 333 of 1999); *John Anthony Metcalfe v Brunei Shell Petroleum Co Sdn Bhd & Anor* [1992] 1 BLR and *Ponnusamy Rajapandian v Haji Awg Mohd Hussaini Bin PP Hj Awg Ahmad* (COACV/6/2015) — include: (a) whether the defendant has a strong prima facie defence; (b) the plaintiff's prospect of success; (c) any admission by the defendant; (d) any payment into court or open offer; (e) whether the application stifles a genuine claim; (f) whether the plaintiff's impecuniosity is caused by the defendant; (g) the lateness of the application; (h) whether Brunei judgments are enforceable in the plaintiff's country of residence; (i) whether the plaintiff's poverty alone warrants refusal; and (j) whether the plaintiff has assets within the jurisdiction. A high probability of success is but one factor; all circumstances must be weighed (*Creative Elegance (M) Sdn Bhd v Puay Kim Seng* [1999] 1SLR(R) referred).
10. The court must balance the need to protect a successful defendant's ability to recover costs against the risk of unjustly shutting out a plaintiff with a genuine claim by imposing a financial burden he cannot meet (*Goldquest International Ltd v Teh Leong Kiat* [2003] 2 CLJ 402 referred).

The Preliminary Issue: Absence of Affidavit in Opposition

11. A significant preliminary point raised by the 1st Defendant in both its Appeal Submissions and its Responses in Rebuttal is that the Plaintiff failed to file an Affidavit in Opposition ("AIO") to the SIC, and that this failure constitutes a deemed admission that he does not oppose the application. The 1st Defendant relies on *Towercon (B) Sdn Bhd (in provisional liquidation) v Pg Mariam bt Pg Dato Paduka Seri Laila Jasa Hj Mohd Sepiuddin @ Pengiran Hafidah* [2002] 1 BLR 109 and the Malaysian case of *Ng Hee Thoong & Anor v Public Bank Bhd* [1995] 1 MLJ 281 for the proposition

that where a party makes a positive assertion on a material issue, the failure to contradict it is usually treated as an admission of the fact asserted.

12. The 1st Defendant further relies on Order 38 Rule 2(2) of the RSC for the proposition that evidence on applications made by summons or motion shall be given by affidavit, and submits that evidence tendered from the bar by the Plaintiff's solicitor is prohibited under Rules 27 and 28 of the Legal Profession (Practice and Etiquette) Rules and constitutes inadmissible hearsay.
13. The Plaintiff submits that *Towercon* should not be followed as it was decided in reliance on Malaysian authorities (*Ng Hee Thoong and Overseas Investment v O'Brien & Anor [3 MLJ] 332*) which govern the treatment of affidavit evidence in a manner that is not para-materia with Brunei's procedural rules. The Plaintiff submits that in Brunei, as in other common law jurisdictions except Malaysia, an affidavit is a means of placing evidence before the court, and it is for the court to determine what weight, if any, to place on it. An application for security for costs under Order 23 is a matter of pure judicial discretion, not a summary trial of facts.
14. This Court accepts the Plaintiff's submissions on this point. An application for Security for Costs under Order 23 RSC is, at its core, an exercise of judicial discretion requiring the Court to have regard to all the circumstances of the case. It is not a summary determination of the merits of contested factual allegations. The failure to file an affidavit in opposition does not and cannot convert the Court's exercise of discretion into an automatic concession. The Court in *Wong Piang Yow v Ng Kinn Siong* (ICCS No. 109 of 2018), a case relied upon by the 1st Defendant itself, confirmed that the decisive factor in exercising such discretion is whether an order would be "fair and just to the parties affected." The Plaintiff has placed sufficient material before the Court through the pleadings, the documents in the bundles, and the SIC Ruling to permit the Court to discharge that exercise without a further affidavit.
15. As to the evidence from the bar, while this Court notes the general principle that submissions of counsel are not evidence and that disputed facts ought properly to be the subject of affidavit evidence, it also recognises that the Plaintiff's financial circumstances are not wholly unsupported by the record before the Court. The pleadings, the correspondence, and the 1st Defendant's own affidavit in support of the SIC acknowledge that the Plaintiff is a Bangladeshi national working as a cleaner in Jeddah. The Court is entitled to take judicial notice of the realities of such employment. This point does not, however, turn the outcome of this application, as the determination rests upon a holistic consideration of all the relevant factors.

Issues for Determination

16. The primary issue before this Court is whether, having regard to all the circumstances of the case, it is just to order the Plaintiff to provide security for the 1st Defendant's costs. In doing so, the Court addresses the relevant factors in turn.

Consideration of the Factors

(i) Jurisdiction

17. It is not disputed that the Plaintiff is presently residing and working in Jeddah, Saudi Arabia, and is no longer ordinarily resident in Brunei. Jurisdiction under Order 23 Rule 1(a) RSC is therefore established. The threshold requirement is satisfied.

(ii) Merits of the Plaintiff's Claim and Prospects of Success

18. At this stage, only a superficial examination of the merits is required and no detailed determination of the case is to be made: *Shorabuddin; John Anthony Metcalfe*. On that basis, the Plaintiff's claim is genuine. The occurrence of the accident and the Plaintiff's presence under the 1st Defendant's system of work is undisputed. The Plaintiff's case is corroborated at a superficial level by the 1st Defendant's own Accident Report, internal meeting minutes, and Injury Investigation Report, all in the Plaintiff's Supplementary Bundle of Documents.

19. The 1st Defendant contends that the Plaintiff's own medical reports record only soft tissue injuries, which is said to be inconsistent with the Plaintiff's claim of having been crushed by a heavy pipe. However, this Court notes that this is a matter of evidence and medical interpretation to be tested at trial. The medical expert Dr Pande used the phrase "crushing injury" to describe the mechanism, though not necessarily to describe the resulting injury. The 1st Defendant's own medical expert had conducted a re-examination of the Plaintiff in Jeddah in December 2025, but the report has not been served on the Plaintiff to date. The Court takes note of this omission. It would be inappropriate at this interlocutory stage to make any finding on the medical evidence.

(iii) Contributory Negligence

20. The 1st Defendant relies on *Shorabuddin* where security was granted notwithstanding likely contributory negligence. That case is distinguishable: security was ordered there principally because the plaintiff had been found to have deliberately misled the Court, which adversely affected his credibility. Sir Roberts CJ expressly stated his decision "should not be taken as a precedent" for future non-resident applications. No such finding of dishonesty arises here. This factor does not favour the 1st Defendant.

(iv) No Admission and No Payment into Court

21. There is no admission of liability by the 1st Defendant, and there has been no payment into Court or open offer made. These factors are neutral in the exercise of the Court's discretion.

(v) Whether the Application is Oppressive and Stifles a Genuine Claim

22. This is the most significant factor in the present case. The Plaintiff is an individual foreign labourer who, at the time of the accident, was 24 years of age and was brought to Brunei to work

under the labour contracting arrangement of the 3rd to 5th Defendants. He has since been repatriated and is presently working overseas. Taking judicial notice that such employment yields a modest income, a requirement to furnish BND\$25,000.00 would, for all practical purposes, bring the Plaintiff's claim to an end. This is precisely the outcome the courts in Brunei have sought to prevent in personal injury cases involving foreign labourers: *Ernesto Pellogo v Tobishima Corporation Sdn Bhd* (HCCS No. 333 of 1999). The financial disparity between an individual labourer and a well-resourced international corporation is stark. There is a real risk that the application operates, even if not deliberately, to discourage the pursuit of a legitimate claim. This factor weighs decisively against granting security.

23. The Court notes at the outset that there is no affidavit evidence filed by the Plaintiff formally establishing his current income or financial means. The 1st Defendant has, in its own Affidavit in Support of the SIC, deposed that the Plaintiff is presently working as a cleaner in Jeddah. It is on the basis of the 1st Defendant's own affidavit evidence and not from any assertion made by the Plaintiff, that this Court proceeds to consider the Plaintiff's financial circumstances. The Court also notes that the figure of approximately 1,200 Saudi Riyals per month (equivalent to approximately BND\$430.00) was put forward by the Plaintiff's solicitor from the bar during oral submissions. While the Court is mindful that submissions from the bar do not constitute evidence and that the 1st Defendant has rightly taken issue with this pursuant to Rules 27 and 28 of the Legal Profession (Practice and Etiquette) Rules, the Court does not rely on that figure as a proven fact. Rather, the Court confines itself to what is established by the 1st Defendant's own affidavit evidence, namely, that the Plaintiff is employed as a cleaner in a foreign country, and takes judicial notice of the obvious reality that the remuneration of a cleaner employed overseas is modest.
24. This factor weighs against the granting of security.

(vi) Whether the Plaintiff's Financial Constraints are Attributable to the Defendant's Conduct

25. The Plaintiff's financial difficulties are, at least in part, a consequence of the accident itself. He suffered injuries, incurred medical expenses, lost income from the date he was sent back to Bangladesh in September 2021 until he secured employment in Jeddah, and has since had to work in a lower-capacity role as a cleaner. His impecuniosity is not self-induced.
26. 1st Defendant bears, at minimum, a potential liability for these consequences if the Plaintiff succeeds at trial. This factor accordingly weighs in the Plaintiff's favour.

(vii) Delay in Bringing the Application

27. The Writ of Summons was filed on 30th March 2020. The Plaintiff's Amended Statement of Claim was filed on 3rd November 2021. The 1st Defendant's Amended Defence was filed on 22nd December 2021. The SIC for security was only filed on 14th November 2024, over 4 years after

the commencement of proceedings and over 3 years after the close of pleadings. The Plaintiff's nationality was apparent from the outset.

28. The 1st Defendant submits that the delay of 9 months from the date it became aware of the Plaintiff's circumstances in Jeddah (February 2024) to the filing of the SIC (November 2024) was not inordinate, as time was needed to assess the viability of the application. However, this explanation addresses only the final 9-month window and not the broader question of why no such application was made at a far earlier stage of the proceedings, particularly since the Plaintiff's foreign nationality was known from the start.
29. The Court of Appeal in *Ponnusamy Rajapandian* dismissed an appeal against refusal of security for costs in part on grounds of delay, where the application was made after the trial had been adjourned twice and full trial preparations had been made. While the facts there involved a longer period, the principle remains that delay in seeking security, particularly where it causes prejudice to a plaintiff who has actively progressed his claim, works against granting the order.
30. Eight Pre-Trial Conferences have been held in this matter. The parties are at an advanced stage of preparation, with only the 1st Defendant's medical expert report outstanding. Ordering security at this stage would be unjust and would not serve the purpose of the security for costs regime, which is to protect defendants from the outset, not to be positioned as a tactical obstacle at the eve of trial.
31. This factor weighs against the granting of security.

(viii) Enforceability of Brunei Judgments

32. It is accepted that there is no Reciprocal Enforcement of Foreign Judgments arrangement between Brunei and either Saudi Arabia or Bangladesh. A Brunei costs order would not be automatically enforceable in either country. This is a factor that weighs in favour of the 1st Defendant's application.
33. However, as stated by Chief Justice Roberts in *Shorabuddin*, the difficulty of enforcing a cost order abroad is but one factor to be weighed alongside all others. It does not, standing alone, mandate an order for security.

(ix) Plaintiff's Poverty and Assets within the Jurisdiction

34. Plaintiff has no assets within the jurisdiction. This is not disputed. However, as consistently held in the Brunei authorities, the poverty of a Plaintiff and the absence of local assets are not sufficient grounds on their own to order security. As stated by Sir Roberts CJ in *Shorabuddin*, this is not, by itself, a sufficient ground for refusing security; nor, by extension, does it automatically justify granting it.

35. The absence of affidavit evidence in opposition filed by the Plaintiff was highlighted by counsel for the 1st Defendant. However, the Court does not accept that the absence of an affidavit in opposition constitutes an admission that security should be granted. The ordering of security for costs remains a matter of judicial discretion, to be exercised on all the facts and evidence before the Court. The relevant facts regarding the Plaintiff's financial position are sufficiently supported by the existing record, including the pleadings and the documents in the bundles.

Conclusion

36. considered all the circumstances of this case and the relevant factors, this Court is not satisfied that it would be just to order the Plaintiff to provide security for the 1st Defendant's costs.

37. The factors favouring refusal of the application are, in this Court's view, significant. The Plaintiff has a bona fide claim with a reasonable prospect of success on a superficial assessment of the pleadings and evidence before the Court. He is a foreign labourer of modest means who has, on the undisputed facts, been repatriated from Brunei following the accident and is presently employed in a low-income capacity overseas. This Court makes no finding as to whether the Plaintiff's financial circumstances are attributable to the conduct or negligence of the 1st Defendant, that is a matter which falls squarely within the domain of the trial court and must await full determination of liability.

38. It suffices to observe that the Plaintiff's reduced financial position is a relevant circumstance that the Court takes into account in the overall exercise of its discretion, without attributing fault to any party at this interlocutory stage. The amount sought as security of BND\$25,000.00 would, on the evidence before this Court, effectively stifle the Plaintiff's genuine personal injury claim and deny him meaningful access to justice. The application was made at a very late stage in proceedings that have been actively conducted over several years. These considerations, taken together, outweigh the legitimate concern that, if the 1st Defendant succeeds at trial, it may face difficulty recovering costs from the Plaintiff.

39. This Court therefore dismisses the 1st Defendant's appeal and upholds the learned Registrar's decision refusing the application for security for costs.

Costs

40. On the question of costs, the Court has considered the appropriate order carefully. The Plaintiff urges an award of costs on a solicitor-client indemnity basis, to be paid forthwith. While the Court acknowledges the financial disparity between the parties, the lateness of the application, and the fact that prior notice of the relevant authorities was given to the 1st Defendant before it proceeded, the Court is also mindful that the 1st Defendant had a legitimate jurisdictional basis to bring this application and that its underlying concern, the potential inability to enforce a costs order against a foreign plaintiff with no assets in Brunei, is a genuine one recognised by the law. A security for costs application that fails does not, without more, warrant an immediate award of costs on an indemnity basis.

41. In the circumstances, and guided by the approach taken by Sir Roberts CJ in *Shorabuddin Hj Moklasur v Saidin bin Tajudin* [1996] 1 BLR 169, the Court considers it just and fair to order that the costs of this appeal and the SIC be costs in any event to the Plaintiff.

Orders

42. This court orders as follows:

- (1) The 1st Defendant's appeal is dismissed.
- (2) The Registrar's ruling dated 14th January 2026 dismissing SIC No. 133 of 2024 is affirmed.
- (3) The costs of this appeal, SIC No. 133 of 2024, and all related hearings shall be costs in any event to the Plaintiff, to be taxed if not agreed.



DK HJH NORISMAYANTI PG HJ ISMAIL
Judge, Intermediate Court

