Hj Jameel Ahmed Basheer Ahmed **… Respondent/Plaintiff**

AND

Dyg Hajah Rokiah Binti Haji Mohd Salleh **… 1st Appellant/1st Defendant**
Haji Awang Bin Haji Ali **… 2nd Appellant/2nd Defendant**

(High Court of Brunei Darussalam)
(Originating Summons No. 10 of 2026)

Edward Timothy Starbuck Woolley, J.C.
Date of Hearing: 21st October, 2026.
Date of Decision: 26th October, 2026.

Headnote: Appeal from refusal of stay of execution on arbitration award pending decision on cross-claim in new arbitration – whether special circumstances or prejudice to either party – whether close relationship between claims – relevance of delay

Mr Andrew Jonathan Nyi Tsun Wong (M/S CCW and Partnership) for the Respondent/Plaintiff.
Mr Eric Siow Kin Seong and Mr Jonathan Cheok Teing Seng (M/S J Cheok Eric Advocates & Solicitors) for the Appellants/1st and 2nd Defendants.

Cases cited:
S v G [2022] HKCU 1084
Israel Sorin Shohat v Balram Chainrai [2017] 6 HKC 174
Burnett v Francis Industries plc [1987] 1 WLR 802
CF v SHK & Anor [2024] 5 HKC 303
Hanak v Green [1958] 2 QB 9
Bankes v Jarvis [1903] 1 KB 549
Federal Commerce & Navigation Co Ltd v Molena Alpha Inc [1978] QB 927

DECISION

Woolley, J.A.:

This is an appeal from a decision by Registrar Izzatul Faizah binti Dr Haji Mohamad dismissing the Appellants'/Defendants' application for a stay of execution on a final award dated 2 January 2026 made in an arbitration in Singapore, SIAC Arbitration No. 128 of 2017 (SIAC Arb 128) for which the Respondent/Plaintiff has been granted leave to enforce in Brunei. I will refer to the parties as Plaintiff and Defendants throughout.

Background

2 The history of the dealings between these parties goes back to 2005 when the Plaintiff and the 2nd Defendant acquired a company called Belait Shipping Co (B) Sdn Bhd (hereinafter referred

to as BSC) in which they were equal partners. In the course of time, the Plaintiff started to engage in other businesses in Malaysia and Singapore as well on his own account. Meanwhile the shares in BCS were all, for reasons not explained, registered in the name of the 1st Defendant and one Haji Mohd Nor bin DP Hj Sabtu (Hj. Ariffin). At the request of the Plaintiff, on 15 January 2015, a trust deed was entered into by the Plaintiff, the 1st and 2nd Defendants, and Hj Ariffin under which the 1st Defendant declared that she held 2,500,000 shares in BSC on trust for the Plaintiff (the share trust deed). This trust deed, and the Defendants' dealing in the shares, were the subject of SIAC Arb 128.

3 Prior to this, in 2013, the 2nd Defendant executed a guarantee on behalf of BSC guaranteeing payment of a charter hire in respect of one of the Plaintiff's companies (the 1st guarantee), which the 2nd Defendant maintains he was induced to do by the Plaintiff. On or about 21 May 2015 a second guarantee was executed, the 2nd Defendant says by the Plaintiff without the consent of the directors of BSC, by which BSC guaranteed the obligations of another of the Plaintiff's companies under a facility agreement (the 2nd guarantee). Later the same year the Plaintiff agreed to pledge his shares in BSC as security for any liability under the guarantees, and a deed to this effect was executed on 8 December 2015 (the share pledge deed). In March 2016, notices of demand were issued to BSC in respect of both guarantees and the Plaintiff was served a notice of default under the share pledge deed stating that the Plaintiff's shares in BSC would be transferred to the 2nd Defendant.

4 On 15 August 2016, arbitration proceedings were commenced against BSC under the 1st guarantee under SIAC Arbitration No. 202 of 2016 (SIAC Arb 202) and, on 6 December 2024, in a final award, BSC was found liable for the amount claimed being USD3,518,891.36 plus interest and costs. The 2nd guarantee does not concern me here as apparently the liability was settled by the Plaintiff.

5 Meanwhile, on 28 April 2017, the Plaintiff commenced arbitration proceedings against the 1st Defendant, adding later the 2nd Defendant, in relation to the share trust deed entered into in January 2015, in SIAC Arb 128 and, on 7 May 2024, in a partial award, the Defendants were found liable, *inter alia*, for breach of the trust deed and dishonestly procuring a breach of trust. In the final award, dated 2 January 2026, the Defendants were found liable to pay to the Plaintiff the sum of SGD12,090,365.22 with interest and costs. It is on this award that the Defendants seek a stay of execution.

6 Following the final award in SIAC Arb 128, on 1 April 2026, the 2nd Defendant commenced arbitration proceedings against the Plaintiff in SIAC Arbitration No. 137 of 2026 (SIAC Arb 137) based on the share pledge deed, claiming:

a. A declaration that the Plaintiff had breached the share pledge deed;

b. An award of damages quantified as the full amount of liabilities which BSC is liable to pay under the SIAC Arb 202;

c. An order that the aforesaid damages be set of against the amount which the 2nd Defendant has been ordered to pay the Plaintiff in SIAC Arb 128;

d. In the alternative, an indemnity in favour of the 2nd Defendant in respect of the amount that BSC is liable to pay under the SIAC Arb 202 final award.

e. Costs and interest.

7 The application is for a stay of execution until the 2nd Defendant's arbitration, SIAC Arb 137, is completed. In support of the application the Defendants contend that there are special circumstances which justify a stay of execution, that the prejudice to the Defendants by having to satisfy the award in SIAC Arb 128 outweighs any prejudice the Plaintiff might suffer and, that any prejudice to the Plaintiff can be compensated in costs and interest.

Special circumstances

8 In support of the submission that execution may be stayed where there are special circumstances which render it inexpedient to enforce a judgment or order, Mr Siow has drawn my attention to a number of cases which he says support this contention. In *S v G* [2022] HKCU 1084 the general principles were expressed (at paragraph 22) as follows:

> *"It is a matter of discretion and balancing exercise for the Court to decide whether or not to grant a stay of execution. Generally, the starting point is that a judgment debtor is entitled to enforce the judgment he has secured against the judgment debtor. The discretion of the Court in granting stay of execution/enforcement should only be exercised in exceptional circumstances where an injustice would otherwise be caused, to prevent abuse, to preserve the dignity of the Court or to facilitate the administration of justice."*

In *Israel Sorin Shohat v Balram Chainrai* [2017] 6 HKC 174 where, in a similar situation to this case, the judgment debtor was putting forward a cross-claim, the relevant factors to consider as set out by Bingham LJ (as he then was) in *Burnett v Francis Industries plc* [1987] 1 WLR 802 were repeated and may be summarized as follows:

(1) strength of the cross-claim;

(2) the size of the claim relative to the size of the cross-claim;

(3) any delay before the cross-claim will be disposed of;

(4) the extent of prejudice to the award creditor if it is denied the fruits of its award/judgment until the cross-claim is determined; and

(5) the risk of prejudice to the award debtor if it makes payment under the award/judgment.

These factors were again referred to in *CF v SHK & Anor* [2024] 5 HKC 303 where Mimmie Chan J said not only that there must be *very* special circumstances (my emphasis) to justify a stay of enforcement, but then went on to say that: *"The Court should not otherwise prevent a judgment creditor from enjoying the fruits of the judgment, short of there being 'abuse or manifest injustice'."*

9 The last of the principles I am asked to consider is the close relationship between the respective claims. As to this Mr Siow referred me to the judgment in *Hanak v Green* [1958] 2 QB 9 and the description therein of a *"close relationship ... between the dealings and transactions which gave rise to the respective claims"* and the necessity for the cross-claims to be *"closely associated with and incidental to the contract ... on which the plaintiff sues for breach".* The words quoted actually come from another case referred to by the learned judge, Morris LJ, in the

judgment: *Bankes v Jarvis* [1903] 1 KB 549 where it was a question of whether another claim by the Defendant against the Plaintiff's son could be raised as a set-off to a claim by the Plaintiff. While that case was not concerned with a stay of execution, it was referred to in *S v G,* as was the judgment of Lord Denning MR in *Federal Commerce & Navigation Co Ltd v Molena Alpha Inc* [1978] QB 927 where he said:

> *"But one thing is quite clear: it is not every cross-claim which can be deducted. It is only cross-claims that arise out of the same transaction or are closely connected with it. And it is only cross-claims which go directly to impeach the plaintiff's demands, that is, so closely connected with his demands that it would be manifestly unjust to allow him to enforce payment without taking into account the cross-claim.*"

Bearing in mind these general principles I will look at the Defendants' reasons put forward in support in turn.

The strength of the cross-claim and the size of the claim relative to the cross claim

10 The first thing to bear in mind here is that the award which the Plaintiff seeks to enforce is against the Defendants personally and I have to look at who benefits from any successful cross-claim and whether, if successful, it would reduce the Defendants' liability. The share pledge deed upon which the cross-claim is based in effect secures the Plaintiff's shares against any liability of BSC under the two guarantees. The only benefit to anyone other than BSC is as to expenses and costs incurred by the 2nd Defendant during enforcement of the security under paragraph 8(g)(i) of the share pledge deed, of which no evidence has been put forward. Yet the only claimant in SIAC Arb 137 is the 2nd Defendant. As I have set out in paragraph 6 above, the claim against the Plaintiff in SIAC Arb 137 is an indemnity for the sums payable by BSC in SIAC Arb 202. Although there is also a claim for an indemnity in favour of the 2nd Defendant, there is no award against him personally in that arbitration. It follows that, were the claim on the share pledge deed to be successful, the only possible benefit to the 2nd Defendant would be at best a comparatively modest sum for costs and expenses. If BSC were added as a claimant, any other benefit would be to BSC alone.

11 It follows that there would be little or no benefit to the 2nd Defendant personally from a successful enforcement of the share pledge deed upon which SIAC Arb 137 is based and it can be no reason for a stay in SIAC Arb 128

Delay

12 It has been submitted on behalf of the Defendants that there are similar issues in SIAC Arb 137 which have already been ventilated in the other arbitrations and it is possible that this arbitration can proceed at a rate which might see it completed in 18 to 24 months. However, this seems pure speculation. There will inevitably be legal issues arising which will have to be addressed and the history of the two previous arbitrations do not bode well for the time line. SIAC Arb 202 took over 8 years before the final award was issued and in SIAC Arb 138 the partial award on liability was issued 7 years after the claim was filed and the final award nearly two years later. It seems to me likely that a stay pending the 2nd Defendant's arbitration would keep the Plaintiff from exercising his rights under the award for some years more.

13 I would add to this that the 2nd Defendant has not been particularly prompt in filing his claim under SIAC Arb 137 for an indemnity in respect of SIAC Arb 202, which award was made in December 2024. While it is possible that he was waiting until the outcome of SIAC Arb 138, the award on liability was issued in May 2024, yet SIAC Arb 137 was not filed until 1 April 2026. There is no good explanation offered for this delay. In the event of a stay, the overall delay in the Plaintiff being able to enforce his award is in my view an overwhelming factor mitigating against such a stay.

14 The question of delay goes to the matter of prejudice to the award creditor, which is self-evident.

Prejudice to the award debtor

15 The Defendants put forward two submissions under this head: inability to pay and the effects of bankruptcy, and the difficulty of enforcing any award under SIAC Arb 137 against the Plaintiff outside Brunei.

16 As to the inability to pay, no evidence has been put forward to support this. I have no information as to the Defendants' means – their income or assets or other liabilities. The submission remains therefore a bare assertion upon which I can make no finding. In his first affidavit the 2nd Defendant goes further and puts forward what he says is the likely effect of the enforcement on the companies of which he is a director and shareholder. Again, there is no evidence of the likelihood of the catastrophic effects on these companies and their employees that he predicts. While listing the indebtedness of these companies under financing facilities, he produces nothing to show whether this is secured or not by assets or income of the companies. No company accounts have been produced or even an estimate of the companies' value. BSC alone is clearly not a small company, having 242 employees and being allowed financing facilities of some BND 154,000,000.00 by the banks. In the absence of any evidence to support these contentions, I have to reject them.

17 The last matter put forward under this head is the alleged difficulty of enforcing an award against the Plaintiff should the 2nd Defendant be successful in SIAC Arb 127. The only ground for this is the fact that the Plaintiff is only a permanent resident of Brunei Darussalam and has extensive business interests in Malaysia and elsewhere. In the light of the longstanding arrangements between countries in this area for mutual enforcement of judgments, as these proceedings show, in the absence of some evidence of the Plaintiff hiding assets to avoid meeting financial obligations, there is no merit in the submission.

Conclusion

18 For the above reasons this appeal is dismissed with costs to the Respondent/Plaintiff to be taxed if not agreed.



EDWARD TIMOTHY STARBUCK WOOLLEY
Judicial Commissioner