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Application of the Extended Doctrine of *Res Judicata* in Favour of Non-Parties in Earlier Proceedings

***CIX v DGN* [2025] SGCA 10**

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LEGAL UPDATE



In this Update

In *CIX v DGN [*2025] SGCA 10, the Court of Appeal ("**CA**") affirmed that the extended doctrine of *res judicata* ("**Doctrine**") would apply to an action before the Court, if the issue in that action could, and ought to, have been raised in an earlier arbitration. Significantly, for the first time, the CA addressed the circumstance where a party to the later proceeding was not a party to the earlier arbitration, and held that the Doctrine could nonetheless apply if the issue should have been raised in the arbitration.

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INTRODUCTION

In *CIX v DGN [*2025] SGCA 10 ("***CIX***"), the Court of Appeal ("**CA**") affirmed that the extended doctrine of *res judicata* ("**Doctrine**") would apply to an action before the Court, if the issue in that action could, and ought to, have been raised in an earlier arbitration. Significantly, for the first time, the CA addressed the circumstance where a party to the later proceeding was not a party to the earlier arbitration, and held that the Doctrine could nonetheless apply if the issue before the Court should have been raised in the arbitration.

This update discusses the Court's decision.

BACKGROUND

The Appellant entered into an agreement with a third party ("**Buyer**") to sell the Appellant's shares in a company ("**Shares**"). 62.5% of the Shares were sold at a fixed price and 37.5% of the Shares were sold under terms that required a valuation exercise based on the company's average adjusted profit after tax and minority interest ("**PATMI**"). As part of the exercise, several adjustments to the PATMI were to be made. One of the adjustments involved the determination of the difference between the actual compensation received by 6 management personnel and the market benchmark for the relevant financial year. The sale and purchase agreement between the Appellant and the Buyer ("**SPA**") provided that that the market benchmark was to be determined by an independent expert and that such determination would be final and binding. The Respondent was appointed as the independent expert to provide this market benchmark figure. As required to indicate its independence, the Respondent made a declaration of no conflict of interest ("**COI Declaration**") before it was appointed. The Respondent subsequently issued reports ("**Reports**"), identifying *28* market benchmark figures in *7* different compensation levels. The Appellant and Buyer could not agree which figure was to apply.

The Appellant and the Buyer referred the dispute to arbitration ("**Arbitration**"). The Appellant's case was that the Reports were inconclusive and could not be solely relied on, making reference to concerns as to the manner in which the Respondent had prepared the Reports. The Buyer argued that market benchmark figures in the median range, as presented in the Reports, should apply. The Respondent was not called as a witness in the Arbitration.

The Tribunal issued its First Partial Award, finding that the market benchmark figures must be derived from the Reports given that the Appellant and the Buyer had agreed to appoint the Respondent as the independent expert. The Tribunal held that market benchmark figures in the median range would apply and noted that it was not in the position to determine if there was bias or manifest error by the Respondent in

preparing the Reports. The Appellant applied to set aside the First Partial Award but was unsuccessful. The Appellant appealed and that appeal was dismissed.

The Appellant had concurrently made an application in the Arbitration to request that the Tribunal investigate the Respondent and/or the Buyer for corruption and further, to determine whether it was safe to rely on the Reports in the Arbitration ("**Corruption Application**"). The Tribunal rejected the Corruption Application, holding that any allegations of corruption could and ought reasonably to have been raised by the Appellant at the evidentiary hearing before the First Partial Award was issued.

Having failed in his attempt to set aside the First Partial Award and in the Corruption Application, the Appellant commenced proceedings ("**S 885**") against the Respondent to recover the loss of earnings or income he would have been entitled to under the SPA but for the Respondent's alleged misrepresentations and/or misconduct. The Appellant alleged that the Respondent had made misrepresentations in relation its independence and breached its duty of care owed to the Appellant.

As S 885 proceeded, the Tribunal issued its Second Partial Award and Third Partial Award, finding that the Buyer would have to pay the Appellant an additional amount for the Shares, based on the market benchmark figure determined and the adjusted PATMI.

The High Court judge ("**Judge**") dismissed the Appellant's claims in S 885 on two grounds, finding that (a) they were an abuse of process, having regard to the prior arbitral and court decisions against the Appellant; and (b) the Appellant's claims against the Respondent failed on their merits. The Judge ordered indemnity costs against the Appellant in favour of the Respondent.

The Appellant appealed against the Judge's decision. In parallel to the Appellant filing the appeal, the Appellant and the Buyer entered into a settlement.

THE COURT OF APPEAL'S DECISION

The Court of Appeal dismissed the Appellant's appeal. The Court held that the extended Doctrine applied even though the Respondent was not a party to the Arbitration. The Appellant could and should have put the Respondent's independence into issue in the Arbitration, yet the Appellant had not called the Respondent as a witness or applied for production of documents relevant to his allegations against the Respondent's conduct.

The CA held that the essence of the extended Doctrine was to prevent collateral attacks against prior decisions. It is therefore crucial to determine the nature of the claim and the essential issues in the earlier proceedings

(whether in court or arbitration). For the extended Doctrine to apply, there is no requirement that the claims in the earlier proceedings should be the same as those pursued in court. The question is whether the claims put forward in the later proceedings could have and should have been raised in the earlier proceedings.

The CA clarified that the legal burden is on the party invoking the extended Doctrine in the later proceedings to demonstrate that the claims could have been brought in the earlier proceedings. Thereafter, the evidential burden would fall on the other party to explain why those claims could not have been so brought. In the case where the earlier proceeding was an arbitration, the party invoking the extended Doctrine would need to demonstrate that the claims in the later proceeding came within the scope of the arbitration agreement. It was noted by the CA that in arbitration, the Tribunal did not have the power to join a non-party to the arbitration agreement and the Court could not compel a non-party to participate in an arbitration. To the extent that the inability to join a non-party may have led to documents and information not being obtainable in the arbitration, there may be reasonable grounds not to apply the extended Doctrine. In applying the extended Doctrine in the context of earlier arbitration proceedings, therefore, the court must be satisfied that the claims and/or issues arising under the later proceedings could and ought to have been raised in the earlier arbitration proceedings, bearing in mind the limitations inherent in arbitral proceedings.

The question in *CIX* was, however, not whether the Respondent could have been joined in the arbitration, but rather if he could and should have been called to give evidence on his alleged misrepresentations. The CA held that the Appellant could and ought to have raised the issue of the Respondent's independence by calling the Respondent as a witness. The Appellant did not offer good reason for omitting to call the Respondent as a witness. The extended Doctrine therefore applied in favour of the Respondent in S 885 and the appeal, even though the Respondent was a non-party to the Arbitration.

KEYPOINT

The extended Doctrine can apply to situations where the parties to an action before the Court are not identical to the parties in an earlier arbitration, if the issue should have been raised in the earlier proceeding.

The CA also held that the Appellant's use of the same material in the Corruption Application and s 885 constituted an abuse of process.

COMMENTARY

The CA's decision in *CIX* is a landmark decision in clarifying the application of the extended Doctrine. It affirms that the extended Doctrine applies regardless of whether the earlier proceeding was before the Court or in arbitration. Importantly, the CA clarified that the application of the extended Doctrine is not dependent on whether the parties to the earlier and later proceedings are identical, but on whether the issue in the later proceedings could have been raised the earlier proceedings. For example, the relevant issue could have been raised in the earlier proceeding either by way of joining the non-party (if procedurally possible) or by calling the non-party as a witness in the appropriate circumstances.

CIX is a timely reminder of the ultimate objectives of judicial efficacy and finality in litigation. Parties to litigation or arbitration must be mindful that piecemeal litigation will not be looked upon favourably if used to circumvent the dispute resolution process.

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