

IN THE COURT OF FINAL APPEAL OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION

FINAL APPEAL NO. 14 OF 2017 (CIVIL)
(ON APPEAL FROM CACV NO. 272 OF 2015)

BETWEEN

- (1) ASTRO NUSANTARA INTERNATIONAL B.V.
- (2) ASTRO NUSANTARA HOLDINGS B.V.
- (3) ASTRO MULTIMEDIA CORPORATION N.V.
- (4) ASTRO MULTIMEDIA N.V.
- (5) ASTRO OVERSEAS LIMITED (formerly
known as AAAN (Bermuda) Limited)
- (6) ASTRO ALL ASIA NETWORKS PLC
- (7) MEASAT BROADCAST NETWORK
SYSTEMS SDN BHD
- (8) ALL ASIA MULTIMEDIA NETWORK FZ-LLC

Applicants/Claimants in the Arbitration/
Judgment Creditors
(Respondents)

and

- (1) PT AYUNDA PRIMA MITRA
- (2) PT FIRST MEDIA TBK (formerly known
as PT BROADBAND MULTIMEDIA TBK) (Appellant)
- (3) PT DIRECT VISION

Defendants/Respondents in the Arbitration/
Judgment Debtors

Before: Chief Justice Ma, Mr Justice Ribeiro PJ,
Mr Justice Tang PJ, Mr Justice Fok PJ and
Lord Reed NPJ

Date of Judgment: 18 July 2018

JUDGMENT ON COSTS

Mr Justice Ribeiro PJ:

1. This is the judgment of the Court on costs.
2. On 11 April 2018, the Court handed down its judgment¹ unanimously allowing First Media’s appeal against the Astro companies (“Astro”) and granting First Media an extension of time to apply to set aside the orders which Astro had obtained granting Astro leave to enforce the arbitration awards and to enter judgment thereon against First Media.
3. In so holding, this Court reversed the judgments of Chow J² and the Court of Appeal³ and made an order *nisi*:
 - (a) that Astro pay to First Media the costs of the appeals in this Court and in the Court of Appeal;
 - (b) that First Media pay half of Astro’s costs before Chow J since it was necessary for First Media to seek the Court’s indulgence for an extension of time, thus compelling Astro to incur costs. Astro was, however, not given all its costs since First Media has shown that his

¹ FACV No 14 of 2017, [2018] HKCFA 12.

² HCCT 45/2010 (17 February 2015).

³ Kwan JA and Lok J, CACV 272/2015 (5 December 2016).

Lordship's exercise of discretion miscarried on both grounds relied on when refusing an extension.

4. Written submissions to vary the order *nisi* were lodged by First Media⁴ and resisted by Astro⁵. First Media seeks variations resulting in orders to the following effect:

- (a) That Astro pay to First Media the costs of the appeals in this Court, and in the Court of Appeal with certificates for three counsel.
- (b) That Astro pay to First Media the costs of the hearing before Chow J with certificates for three counsel.
- (c) That First Media pay to Astro the costs of First Media's summons and the costs of the hearing of First Media's summons before Burrell J; and,
- (d) That, subject as aforesaid, the parties have liberty to apply to a first instance judge to resolve all matters arising out of the costs orders in these proceedings.

Paragraphs (a) and (d): Three counsel and liberty to apply

5. Astro have no objection to the proposed orders in (a) and (d) above. We vary the order *nisi* accordingly.

Paragraphs (b) and (c): The costs at first instance

6. First Media submits that a distinction should be drawn between the costs which relate strictly to the application for an extension of time (which it accepts it should bear) and costs relating to the merits of the proposed setting

⁴ Dated 8 May 2018.

⁵ Submissions dated 5 June 2018.

aside application dealt with by Chow J (which, in the light of the eventual outcome, First Media argues it should not have to pay). Thus, in paragraph (c) above, First Media accepts that it should bear the costs of the summons and the hearing before Burrell J (who adjourned the matter) but that the costs of the substantive hearing before Chow J should be borne entirely by Astro (as per paragraph (b)). First Media argues that if costs orders are made in favour of respondents because applicants for a time extension need to seek the court's indulgence, this would encourage unreasonable resistance to the grant of an extension.

7. We do not accept First Media's argument. First Media had chosen not to challenge the awards in the supervisory court in Singapore and assumed the risk of not challenging the Hong Kong orders, believing that there were no assets here. The extension which it eventually had to seek was to enable orders authorising enforcement of New York Convention arbitration awards to be contested some 14 months out of time. It was therefore an application made against the background of statutory rules strictly limiting the grounds of such challenge and promoting speedy finality. Chow J obviously needed to examine the merits of the proposed application in deciding whether time should be enlarged. It is quite unrealistic to approach costs on the basis that First Media's liability can be limited only to the costs attributable to the question of extension, severed from the costs of considering the merits of the proposed application to set aside. Given Astro's success before Chow J and the Court of Appeal, it cannot be said that Astro's decision to resist the grant of such an extension was unreasonable.

8. We consider that the balance struck by the order *nisi* is appropriate: First Media should bear the costs of obtaining an extension of time, but is relieved of paying half of those costs because it was ultimately shown that the Judge had erred in the grounds he relied on for refusing an extension.

Disposition

9. Accordingly, in place of the order *nisi* we make the following orders as to costs, namely, that:

- (a) Astro do pay First Media's costs of the appeals in this Court and in the Court of Appeal certified fit for three counsel;
- (b) First Media do pay 50% of Astro's costs of First Media's application (including the costs of the summons and the hearings) before Burrell J and Chow J, certified fit for three counsel;
- (c) Subject as aforesaid, that the parties be at liberty to apply to a judge of the Court of First Instance in respect of any matters arising out of the costs orders in these proceedings.

(Geoffrey Ma)
Chief Justice

(R A V Ribeiro)
Permanent Judge

(Robert Tang)
Permanent Judge

(Joseph Fok)
Permanent Judge

(Lord Reed)
Non-Permanent Judge

Written submissions by Mr Mark Strachan SC and Mr Jeffery Chau, instructed by Cordells, for the Appellant

Written submissions by Mr Bernard Man SC and Mr Justin Ho, instructed by Clifford Chance, for the Respondents