

**IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

[2023] SGHC 56

Suit No 554 of 2019

Between

Chia Soo Kiang
(personal representative of the estate of Tan Yaw Lan, deceased)
... Plaintiff

And

(1) Tan Tock Seng Hospital Pte Ltd
(2) Dr Dorai Raj D. Appadorai
(3) Dr Lee Wei Sheng
(4) Dr Ranjana Acharya
... Defendants

JUDGMENT

[Civil procedure – Costs – Quantum]

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Chia Soo Kiang (personal representative of the estate of Tan Yaw Lan, deceased)

v

Tan Tock Seng Hospital Pte Ltd and others

[2023] SGHC 56

General Division of the High Court — Suit No 554 of 2019

Choo Han Teck J

27 February 2023

10 March 2023

Choo Han Teck J:

1 Counsel for the defendants argued that the defendants had jointly made an offer to settle (“the OTS”) on 24 April 2020. It was an open OTS with no deadline for acceptance. The plaintiff did not accept the OTS. The defendants are therefore asking for costs on an indemnity basis.

2 The OTS extended the plaintiffs an offer of \$15,000 in full and final settlement. The action ended on 13 October 2022 upon my dismissal of the plaintiff’s claim entirely. There is no reason not to award indemnity costs under O 22A r 9(3) of the Rules of Court to the defendants from 25 April 2020.

3 The defendants are asking for costs of the action to be fixed at \$625,500 and \$156,107.21 for disbursements. These include the costs of various interlocutory summonses, namely —

- (a) Summons No 746 of 2021: leave to give evidence via video-link;
- (b) Summons No 798 of 2021: for discovery;
- (c) Summons No 835 of 2021: to strike out an affidavit; and
- (d) Summons No 837 of 2021: to amend the statement of claim.

4 The disbursements appear unusually high for a trial that took eight full days and two half days because a large part of that went towards the expenses incurred in paying the expert witnesses and the transport and accommodation of witnesses from overseas.

5 Counsel for the plaintiff submitted that the appropriate costs for the trial should be \$120,000, and \$13,500 for Summonses Nos 798, 835 and 837 of 2021. He submits that no costs should be awarded for Summons No 746 of 2021. I am of the view that costs for all four summonses ought to be paid by the plaintiff.

6 Counsel for the defendants submitted that I ought to take the conduct of the plaintiff into account. It is true that a major amendment was made to the claim a week before the trial commenced. Affidavits of crucial witnesses were filed without leave. The trial had to be vacated and re-scheduled. The action itself was badly conceived. However, all that cannot be blamed on the plaintiff who is only the administrator of the deceased's estate as the action could only proceed on medical and legal advice.

7 How the action progressed and ended as it did have been set out in my judgment of 13 October 2022. What advice the plaintiff received, however, is not a matter of inquiry before me. Costs are not meant to punish a failed civil

action, but when a reasonable offer to settle was refused and the party refusing ended worse off than the terms offered, the other party should not have to bear the resulting costs that might have been saved. In this case, even an offer of mediation was rebuffed. In such circumstances, the law allows the court, unless for strong reasons otherwise, to order indemnity costs. I am of the view that the defendants here ought to be compensated by indemnity costs, and I so order.

8 I am of the view that the costs of this action on a standard basis would be in the region of \$400,000. The amount to be awarded on an indemnity basis would be in the region of \$600,000. Although the plaintiff had been ordered to pay costs for the four summonses that were ruled against him, they attract much lower costs and I therefore exercise my discretion and order that the overall costs be fixed at \$600,000 to include the costs of the summonses, on an indemnity basis, to be paid by the plaintiff to the defendants.

9 The disbursements of \$156,107.21 is high, but a large portion are for payments for the services of the experts. The fees for the defendant's experts, namely, \$21,400 for Dr Kang, \$35,042.50 for Dr Huang, and \$56,422.50 for A/Prof Yeo are, in my view, reasonable. The transcription costs came to \$13,080.75, and a sum of \$6,178.74 was incurred for the witness of fact who had to travel from Malaysia and stayed until she testified.

10 I thus order that the plaintiff pay the defendants costs fixed at \$600,000 and disbursements as claimed. The amount is undoubtedly very high, and from the evidence I have seen at trial, the deceased does not seem to be a wealthy person. It may be that the defendants will not be able to recover the costs. In that sense, they will not even be compensated by costs. Had the parties gone for mediation, a better idea of the merits of the case and the burden of costs may

have been impressed upon them by the mediator, and we might have had a different outcome to this suit.

- Sgd -
Choo Han Teck
Judge of the High Court

Clarence Tan Ming Yew and Low Hong Quan (Fervent
Chambers LLC) for the plaintiff;
Mar Seow Hwei, Lee Qiu Li and Lydia Yeow Ye Xi (Dentons Rodyk
& Davidson LLP) for the defendants
