Seng You Morris
v
International Bank of Qatar

[2016] SGHC 22

High Court — Bill of Costs No 232 of 2015 (HC/Summons No 289 of 2016)
Choo Han Teck J
15 February 2016

Civil procedure — Costs — Taxation

22 February 2016 Judgment reserved.

Choo Han Teck J:

1. The respondent is a bank incorporated in Qatar. The applicant holds a bank account in Singapore with DBS Bank Ltd ("the DBS Bank account"). Between April and May 2014, the respondent, acting on instructions received through a series of telefaxes purportedly sent by one of its customers, transferred sums of monies to various bank accounts in Taiwan and to the applicant's DBS Bank account. The respondent later discovered that the instructions were from an imposer and not a customer. It then commenced an action against the applicant on 9 May 2014, alleging that the applicant was in a conspiracy to defraud the respondent. The amount claimed was US$554,200, which translates to about S$750,000. The applicant denied the allegations. He claimed that a woman whom he had met through online chats had told him to expect the monies into his DBS Bank account and that he had, on her instructions, already

transferred the sums to another individual ("X"). On 12 December 2014, the respondent added X as a defendant to the proceedings.

2. This action was fixed for trial from 19 to 28 January 2016. On 6 May 2015, the applicant obtained an order for the respondent to provide security for costs at S$50,000 up to the stage of exchange of Affidavits of Evidence-in-Chief ("AEIC"). The AEICs were due for exchange on 23 October 2015 but on 19 October 2015, the respondent proposed, through its solicitors, to discontinue the action with costs to the applicant and to X at S$15,000 each. X accepted the offer, but the applicant demanded costs at S$50,000. A Notice of Discontinuance was eventually filed but as the applicant and the respondent could not agree on costs, the bill of costs was taxed. The Assistant Registrar ("AR") taxed the costs for work done other than for taxation ("Section 1 costs") at $25,000. Dissatisfied with the AR's decision, the applicant filed the present application for review of the taxation order.

3. On review before me, the applicant contended that the AR ordered security for costs at $50,000 earlier in the action, and since security for costs ought to be indicative of actual costs, he is now entitled to Section 1 costs at $50,000. Mr Parwani, counsel for the applicant, argued that if the situation was reversed and if it was the applicant who was not contesting the original action just prior to the exchange of the AEICs, the respondent would have relied on the security for costs order to justify a claim for costs at $50,000.

4. The quantum of security for costs is only a reasonable estimate, made at the time of the order, of expected costs. If the parties should discontinue the

proceedings subsequently, the AR (or the court, as the case may be) is entitled, and indeed ought to carry out a review in order to determine cost orders that are appropriate. The quantum of security for costs can serve as a reference, but it is not conclusive. Thus, in the hypothetical situation suggested by the applicant, if it had been the applicant who decided not to contest the original action and the respondent who wishes to rely on the security for costs order to justify costs at $50,000, the applicant is entitled to show that the estimate has proven to be excessive.

5. Ultimately, in determining appropriate costs, the court must have regard to all the relevant circumstances, such as the complexity of the original action, the amount of work actually done by the time of discontinuance of the action, and the skill and knowledge required of the solicitor in performing such work. The applicant contends that the original action is a complex one presenting novel issues, and listed a total of six "legal" issues in his Bill of Costs. However, some of these "legal issues" are questions of fact and do not involve points of law. For instance, questions as to whether the applicant was involved in a conspiracy to defraud the respondent, or whether the respondent was acting under a mistake in making the various transfers to the applicant's bank account, are not so much questions of law but rather require factual determinations. Moreover, the applicant was to be the only witness for his case. Even if we were to accept the applicant's contention that time and labour had already been expended in preparing his AEIC by the time the respondent proposed to discontinue the action, the AEIC was, by the applicant's own admission, only 14 pages in text with six exhibits. It is also significant that the proceedings did not involve the discovery of voluminous documents. At the time of

discontinuance of the action, the parties had collectively disclosed only 36 documents totalling 253 pages. Counsel for the applicant pointed to various authorities and precedent bills in trying to convince me that he should be awarded a higher quantum of costs, but I am not persuaded that the authorities cited concerned facts and circumstances that are helpful to his client.

6. Furthermore, I find that several items included in the Bill of Costs are not in order. For instance, the applicant claimed costs for attendance of nine Pre-Trial Conferences ("PTCs"), including for PTCs held on 14 May 2015, 4 June 2015, and 10 September 2015. However, no PTC in fact took place on 14 May 2015 as it was adjourned. The applicant's solicitors also did not attend the 4 June 2015 and 10 September 2015; on both occasions, solicitors of either X or the respondent had attended and mentioned on the applicant's behalf. The applicant also claimed costs for attendance pertaining to applications made by the respondent against X (e.g. for substituted service of writ on X) which do not in fact concern the applicant.

7. In the circumstances, $50,000 does not seem to be a reasonable amount. As the costs are taxed on the standard basis, any doubts as to whether the costs were reasonably incurred or were reasonable in amount must be resolved in favour of the paying party (see Order 59 r 27(2) of the Rules of Court (Cap 332, R 5, 2014 Rev Ed)). I see no reason to disturb the order made by the AR and therefore dismiss the present application. In conclusion, I will add that the AR who taxed the applicant's costs was the AR who ordered the security for costs. He must clearly be of the view that the security ordered was excessive. I will fix the costs of this appeal at $1,000 inclusive of disbursements.

- Sgd -
Choo Han Teck
Judge

Vijai Parwani (Parwani Law LLC) for the applicant;
Lim Tong Chuan and Joel Wee Tze Sing (Tan Peng Chin LLC) for the respondent.
