New Civilbuild Pte Ltd v Guobena Sendirian Berhad and Another
[2000] SGHC 47

Case Number : Suit 46/1998

Decision Date : 24 March 2000

Tribunal/Court : High Court

Coram : Lai Siu Chiu J

Counsel Name(s) : Lee Chin Seon (C S Lee) for the plaintiffs; Tan Woon Tiang and Karen Phua (Tan & Tan); K S Chung with Michael Moey (Chung & Co) for the first defendants; BR Rai and Edric Pan (Rajah & Tann) for the second defendants

Parties : New Civilbuild Pte Ltd — Guobena Sendirian Berhad; The Tai Ping Insurance Co Ltd

JUDGMENT:

SUPPLEMENTAL JUDGMENT

1. After delivery of my Judgment dated 29 February 2000 and pursuant to my direction therein, counsel for the plaintiffs and the first defendant presented further arguments before me on the question of costs. As I indicated I would, I now finalise my orders for costs as between New Civilbuild (the plaintiffs) and Guobena (the first defendants).

2. Counsel for Civilbuild quite naturally submitted that costs should be awarded to his clients as they had succeeded in obtaining final judgment on their claim for progress payments and retention monies totalling $1,813,981.95. Guobena on the other hand, had failed in its claim for liquidated damages and had only been awarded interlocutory judgment on their claim for advances made to New Civilbuild, which claim had yet to be assessed; therefore, Guobena should pay the costs of the action.

3. Counsel for New Civilbuild had also inquired whether there was an inconsistency between paras 71 and 100 of my Judgment. To recapitulate, in para 71, I had pointed out that neither New Civilbuild nor Guobena had filed a defence to Tai Ping's counterclaim; I should have made it clear that it was counsel for Tai Ping who canvassed this argument at the hearing of an earlier interlocutory application – that New Civilbuild and Guobena were deemed to have admitted to Tai Ping's counterclaim as a matter of procedure. I should also have added that counsel for Guobena disagreed and rightly so, that there was any requirement under the Rules of Court, for a defendant to plead to the case of a co-defendant in the same suit. Consequently, there was no conflict between para 71 and para 100 of my Judgment where I held that Tai Ping had failed in its counterclaim against Guobena.

4. Finally, counsel asked for the refund of the security for costs ($15,000) furnished by New Civilbuild in favour of Goubena, on the direction of the Registrar. I had refused to increase the amount of security when Guobena applied for the same on 28 June 1999.

5. Counsel for Guobena took a different approach on the issue of costs. In his written submissions, he used a 'scoreboard' method based on the number (8) of issues I had identified in my judgment (see para 12); in the process he arrived at a score of 6 wins for Guobena and 2 for New Civilbuild. Consequently, counsel argued, Guobena should be awarded costs against New Civilbuild for the action. In addition, counsel applied for a certificate for two (2) counsel and submitted that the previous order for costs I made (on 28 June 1999) in favour of New Civilbuild for amendments to the defence should be reversed in his clients' favour; I rejected both requests as being without merit.

6. I shall first give my reasons for rejecting counsel's requests. Granted, there is provision under O 59

r 19 of the Rules of Court 1997 to award costs to a party for more than one counsel for both getting-up as well as for court attendance. There are however no set rules as to when and how the court should exercise its discretion under that provision. I personally am of the view that a court should award a certificate for two (2) counsel as an exception to the general rule that only one counsel should be awarded costs. Such exceptional circumstances would include cases which involve a high degree of complexity of facts and or law or, where there are many issues of both fact and law and, trial is lengthy. Hence, in England it is not uncommon for the courts to award certificate for not only two but three counsel, in infringement of trademark and patent cases.

7. Undoubtedly, trial in this case was spread over 15 days in two (2) tranches with an interval of four (4) months in between. However, that factor alone does not warrant a successful litigant being awarded a certificate for two (2) counsel. He will be adequately compensated by way of refresher for the break in the two portions of the trial as well as for the length of the trial, by the taxing registrar. Counsel for Guobena had submitted that the fact all parties were represented by two (2) counsel each was indicative of how difficult the proceedings were. With respect, I disagree. The submission is in any case inaccurate as there was only one counsel for New Civilbuild throughout the proceedings. As for Guobena and Tai Ping, I am of the view they had two (2) counsel each by choice and not necessity. The fact that I identified eight (8) issues does not mean that there were complex legal issues involved or that the facts were convoluted. The documentation was indeed voluminous but that is to be expected of any construction case especially one where both liability and quantum were disputed. Again this factor will be taken into consideration in the taxation process. I am also of the view that a test for the applicability of O 59 r 19 must be whether it was reasonable of the defendants in this case to appoint two instead of, one counsel; I think it was not.

8. As for Guobena's argument on reversing my previous order for costs in favour of New Civilbuild, this submission was no longer open to them as they could have but failed to, appeal within the time stipulated under the Rules of Court. Further, it would be a departure from the norm if I were to award costs in any event to instead of against, a party applying for amendments at the very late stage which Guobena did, in the midst of trial. Consequently, the sum of $5,000 which I awarded to New Civilbuild pending taxation of their costs for those amendments (and presently held by Guobena's counsel as stakeholder) should forthwith be released to their counsel.

9. I turn now to the main issue of costs. One other argument put forth by counsel for Guobena was, that it could not be said that New Civilbuild had succeeded in their claim for progress payments on the merits as that was a concession by his clients right from the start. That is correct from the point of view of Guobena's pleadings but that concession did not extend to allowing New Civilbuild to obtain final judgment against the first defendants but with a stay of execution pending the outcome of Guobena's counterclaim. Indeed, Guobena applied to set aside New Civilbuild's ex-parte injunction by relying on their counterclaim. Therefore the concession did not save the court's time or the parties' costs. As for the retention monies, no concession at all was made by Guobena.

10. What is clear is that New Civilbuild succeeded in obtaining final judgment on two (2) out of the three (3) claims pleaded in their statement of claim; I had disallowed their claim in excess of $2m for costs incurred for variations works and for damages resulting from delay in completion which I held was largely due to their own fault.

11 As for Guobena, I had dismissed their claim for liquidated damages which (after amendment) was reduced to $3m from $6,180,000. Consequently, based on the particulars in para 29 of Guobena's defence, what remains of their counterclaim against New Civilbuild (when assessed) would at most, amount to $270,913, after taking into account (which they must and have) the sum received from Tai Ping under the bond.

12. I had in para 97 of my Judgment, already reserved to the Registrar the question of costs on assessment of the damages pursuant to the interlocutory judgements awarded to New Civilbuild and Guobena on their respective claim and counterclaim. Consequently the 'scoreboard' as it stands, using the methodology adopted by counsel for Guobena, is that New Civilbuild have obtained final judgement (and interlocutory judgment) in sums which exceed and would likely exceed what was awarded to Guobena. In these circumstances, I am of the view for expediency, that there should be a global order for costs in that New Civilbuild be given costs of the action but with f reduction to take into account Guobena's successful counterclaim, but with full disbursements up to judgment. Conversely, Guobena are entitled to be reimbursed by New Civilbuild their full disbursements on a standard basis, up to and including judgment.

13. Further, the sum of $15,000 paid into court by New Civilbuild as security for Guobena's costs cannot be withdrawn until the conclusion of the Registrar's assessment of damages. For the avoidance of further dispute between the parties, New Civilbuild are not entitled to receive and Guobena are not obliged to pay, the judgment sum of $1,813,981.95 pending the assessment. However, to ensure that New Civilbuild are not prejudiced by any delay in the assessment process, I award them interest at 6% on the said sum from date of writ (14 January 1998) until judgment (29 February 2000).

14. Finally, as I had not anticipated this undue delay between release of my Judgement and the hearing on costs, I am rescinding my previous direction dated 28 November that for purposes of appeal, time runs from 29 February 2000. Instead, for purposes of appeal on the question of liability only, time runs from the date of this Supplemental Judgment.

LAI SIU CHIU

JUDGE