

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

[2022] SGHC 4

Suit No 1140 of 2018 (Summons No 5465 of 2021)

Between

- (1) Yong Khong Yoong Mark
- (2) Emily Hwang Mei Chen
- (3) Medivice Investment Limited

... Plaintiffs

And

- (1) Ting Choon Meng
- (2) Chua Ngak Hwee

... Defendants

ORAL JUDGMENT

[Civil Procedure — Costs — Principles]
[Civil Procedure — Costs — Taxation]

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Yong Khong Yoong Mark and others
v
Ting Choon Meng and another

[2022] SGHC 4

General Division of the High Court — Suit No 1140 of 2018 (Summons No 5465 of 2021)

Tan Siong Thye J
12 January 2022

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Tan Siong Thye J:

Introduction

1 In my judgment on 29 October 2021, I ordered that “[t]he plaintiffs [were] to pay costs to the defendants, to be taxed if not agreed” (*Yong Khong Yoong Mark and others v Ting Choon Meng and another* [2021] SGHC 246 (“the Judgment”) at [325]).

2 The defendants filed Summons No 5465 of 2021 on 25 November 2021, seeking:¹

- (a) the award of a certificate pursuant to Order 59 rule 19 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) (“ROC”) certifying that

¹ Defendants’ Written Submissions, HC/SUM 5465/2021 (“DWS”), p 3 at para 1.

costs for getting up the case by and for attendance in court of more than two solicitors (“a Certificate of Three Counsel”) be allowed;

(b) in the alternative, that the award of a certificate pursuant to O 59 r 19 of the ROC certifying that costs for the attendance and get up of two solicitors be allowed (“a Certificate of Two Counsel”);

(c) that the court fixes costs in lieu of taxation;

(d) that costs be awarded on an indemnity basis; and

(e) that costs of this application be paid by the plaintiffs to the defendants.

My decision

Certificate of Three Counsel

3 At the hearing on 29 October 2021, I read out the extracts of my judgment to explain briefly the reasons for dismissing the plaintiffs’ case. I further ordered the plaintiffs to pay costs to be agreed or taxed if the parties are unable to agree. Immediately thereafter, the defendants made an oral application for the costs of **two** solicitors.² I informed parties to resolve this issue failing which to refer this matter to me for determination. The plaintiffs appealed against my judgment. The defendants did not appeal against the costs order but took out this application, seeking prayers as stated above (see [2]).

4 I shall now consider the defendants’ application for a Certificate of Three Counsel.

² Plaintiffs’ Written Submissions, HC/SUM 5465/2021 (“PWS”), p 4 at para 9(c).

5 Order 59 r 19(1) of the ROC provides that “the costs for getting up the case by and for attendance in Court of more than 2 solicitors for a party shall not be allowed unless the Court so certifies”. *Singapore Civil Procedure 2021* vol 1 (Cavinder Bull gen ed) (Sweet & Maxwell, 2021) (“White Book”) states the applicable test at para 59/19/2:

Whether the court would allow a certificate for more than two counsel depends on whether the services of more than two counsel are *reasonably necessary for the adequate presentation of the case ... 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.*

[emphasis added]

6 Paragraph 1(2) of Appendix 1 to O 59 of the ROC further sets out the following factors to be considered when determining whether the use of more than two solicitors is reasonable (see *Ng Eng Ghee and others v Mamata Kapildev Dave and others (Horizon Partners Pte Ltd, intervener) and another appeal* [2009] 4 SLR(R) 155 at [36]):

- (a) the complexity of the item or of the cause or matter in which it arises and the difficulty or novelty of the questions involved;
- (b) the skill, specialised knowledge and responsibility required of, and the time and labour expended by, the solicitor;
- (c) the number and importance of the documents (however brief) prepared or perused;
- (d) the place and circumstances in which the business involved is transacted;

- (e) the urgency and importance of the cause or matter to the client;
and
- (f) where money or property is involved, its amount or value.

7 Having regard to the above factors and all the facts and circumstances of the present case, I find that there are no exceptional circumstances which warrant the grant of a Certificate of Three Counsel for the following reasons:

(a) While the trial took more than 19 days (inclusive of closing submissions),³ the present case is not of such exceptional length and complexity as to warrant the use of more than two solicitors. This hearing is a far cry from the 82-day hearing in *Raffles Town Club Pte Ltd v Lim Eng Hock Peter and others (Tung Yu-Lien Margaret and others, third parties)* [2011] 1 SLR 582 (“*Raffles Town Club*”), which was one of the longest civil trials in Singapore (*Raffles Town Club* at [41]). *Raffles Town Club* also involved complex issues. In those circumstances, Chan Seng Onn J found at [41] that the use of more than two solicitors was reasonably necessary for the adequate preparation and presentation of the case and granted a Certificate of Three Counsel.

(b) In a similar vein, the fact that there were more than 31 volumes of documents does not mean that the case was of such exceptional complexity as to warrant a Certificate of Three Counsel, especially when compared to the 300 volumes of bundles of documents in *Raffles Town Club* (see *Raffles Town Club* at [41]).

³ PWS, p 2 at para 6.

(c) I find that the facts of the present case are closer to that in *Parakou Shipping Pte Ltd (in liquidation) v Liu Cheng Chan and others* [2017] SGHC 91 (“*Parakou*”), which took 14.5 days of trial and had 19 volumes of documents totalling 12,171 pages. Chua Lee Ming J found that the case, “although complex, was not of such a high degree of complexity as to warrant a certificate for costs for three solicitors” (*Parakou* at [15]).

(d) Further, the factual and legal issues in this present case were not so complex as to justify a Certificate of Three Counsel. I further note that there was significant overlap in the authorities referred to by both the plaintiffs and the defendants in their closing submissions.⁴ There was no real dispute on the law, and the dispute was confined within the four walls of established authorities on misrepresentation and unlawful means conspiracy in Singapore.⁵

(e) The quantum of the plaintiffs’ claim, at S\$5 million, is also not so exceptionally large as to warrant a Certificate of Three Counsel.

8 Accordingly, I decline to grant a Certificate of Three Counsel as requested by the defendants.

Certificate of Two Counsel

9 The defendants have argued, in the alternative, for an award of a certificate pursuant to O 59 r 19 of the ROC certifying that costs for the

⁴ PWS, pp 8-9 at para 21.

⁵ PWS, p 8 at para 20.

attendance and get up of *two* solicitors be allowed.⁶ For the same reasons that I dismiss the application for a Certificate of Three Counsel, I am of the view that it is not reasonable to warrant a certificate for two solicitors as the facts and issues in this case of fraudulent misrepresentation and conspiracy to defraud are not extraordinary. Hence, I dismiss the defendants’ application for a Certificate of Two Counsel.

Costs on the indemnity basis

10 Order 59 r 27(4) of the ROC provides that “[w]here the Court makes an order for costs without indicating the basis of taxation or an order that costs be taxed on any basis other than the standard basis or the indemnity basis, the costs shall be taxed on the *standard* basis” [emphasis added]. Since I already ordered on 29 October 2021 for costs “to be taxed if not agreed” (at [325] of the Judgment), the costs should be taxed on the standard basis. There are no special or exceptional reasons for the court to award costs against the plaintiffs on an indemnity basis.

11 It is trite that the court will only award costs on the indemnity basis in exceptional circumstances (White Book at para 59/27/4). As Chan Seng Onn J observed in *Airtrust (Hong Kong) Ltd v PH Hydraulics & Engineering Pte Ltd* [2016] 5 SLR 103 (“*Airtrust*”) at [17], “an order of costs on the indemnity basis is the exception rather than the norm and requires justification”. Exceptional circumstances may exist where a party’s conduct reflects a “high degree of unreasonableness” and is not “merely ... wrong or misguided in hindsight... the extent of a party’s dishonest and unscrupulous intentions and actions, where

⁶ DWS, p 3 at para 1.

present, will be relevant factors for the court to take into account” (*Airtrust* at [50]).

12 The defendants have asserted, *inter alia*, that (a) the plaintiffs had advanced a case that they knew was completely baseless;⁷ (b) the plaintiffs and their witnesses took inconsistent positions and were untruthful during the trial;⁸ and (c) the plaintiffs made disparaging allegations against the defendants’ character.⁹

13 I do not think that there are exceptional circumstances which warrant an order for indemnity costs, *ie*, that the plaintiffs’ conduct rose to such a level of unreasonableness which would warrant such an order. In *GTMS Construction Pte Ltd v Ser Kim Koi (Chan Sau Yan (formerly trading as Chan Sau Yan Associates) and another, third parties* [2021] SGHC 33 (“*GTMS Construction*”), I ordered that the defendant pay the plaintiff costs on an indemnity basis. In that case, the defendant had made serious allegations of fraud against the plaintiff for which he was unable to provide any shred of evidence in support (*GTMS Construction* at [16]). The defendant in that case had made highly unreasonable and exaggerated claims against the plaintiff and the first third party, and had, *during trial*, raised new evidence and new allegations that had not been set out in his pleadings or AEICs (*GTMS Construction* at [18]).

14 In this case, while the plaintiffs amended their pleadings on two occasions, this was prior to the start of the trial. Further, I do not think that the

⁷ DWS, p 34 at para 72.

⁸ DWS, pp 35-42 at paras 76-82.

⁹ DWS, pp 42-44 at paras 83-88.

conduct of the plaintiffs before or during the trial constitutes an abuse of process, or belies an intention to advance an action in bad faith or one that is “clearly without basis” (*Airtrust* at [23]). The plaintiffs’ conduct did not reach a level of unreasonableness that could be considered as exceptional circumstances which warrant an order for indemnity costs.

15 I, therefore, dismiss the defendants’ application for costs on the indemnity basis.

Conclusion

16 For the above reasons I dismiss Summons No 5465 of 2021.

Tan Siong Thye
Judge of the High Court

Nair Suresh Sukumaran and Bhatt Chantik Jayesh (PK Wong & Nair
LLC) for the plaintiffs;
Khan Nazim, Kuan Chu Ching and Kunal Haresh Mirpuri (UniLegal
LLC) for the defendants.
