IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2018] SGCA 58

Civil Appeal No 127 of 2017

Between

RESORTS WORLD AT SENTOSA PTE LTD

… *Appellant*

And

GOEL ADESH KUMAR

… *Respondent*

Civil Appeal No 21 of 2018

Between

GOEL ADESH KUMAR

… *Appellant*

And

RESORTS WORLD AT SENTOSA PTE LTD

… *Respondent*

In the matter of Suit No 484 of 2013

Between

GOEL ADESH KUMAR

… Plaintiff

And

RESORTS WORLD AT SENTOSA PTE LTD

… Defendant

And

SATS SECURITY SERVICES PTE LTD

… Third Party

GROUNDS OF DECISION

[Civil Procedure] — [Costs] — [Principles] — [Third party proceedings]

[Civil Procedure] — [Offer to settle] — [Order 22A r 9(3) Rules of Court (Cap 322, R 5, 2014 Rev Ed)]

Resorts World at Sentosa Pte Ltd
v
Goel Adesh Kumar and another appeal

[2018] SGCA 58

Court of Appeal — Civil Appeals Nos 127 of 2017 and 21 of 2018
Judith Prakash JA, Tay Yong Kwang JA and Steven Chong JA
11 September 2018

2 October 2018

Steven Chong JA (delivering the grounds of decision of the court):

Introduction

1 This pair of cross-appeals arose out of the judgment on costs issued by the High Court judge ("the Judge") in Suit No 484 of 2013 ("the Suit"): see *Goel Adesh Kumar v Resorts World at Sentosa Pte Ltd (SATS Security Services Pte Ltd, third party)* [2017] SGHC 43 ("the Costs Judgment"). Civil Appeal No 127 of 2017 was an appeal by Resorts World at Sentosa Pte Ltd ("RWS") against the decision of the Judge in the Costs Judgment for RWS to pay 80% of the costs incurred by the third party to the Suit, SATS Security Services Pte Ltd ("SATS"), on a standard basis on the High Court scale. Civil Appeal No 21 of 2018 was an appeal by Mr Goel Adesh Kumar ("Mr Goel") against the decision of the Judge in the Costs Judgment for: (a) RWS to pay Mr Goel's costs on a standard basis on the Magistrate's Court scale up to 2 July 2014; and (b) Mr Goel to pay RWS's costs on an indemnity basis on the

High Court scale from 2 July 2014. We shall hereinafter refer to each of these cross-appeals as RWS's Appeal and Mr Goel's Appeal respectively.

2 Mr Goel's Appeal, which concerned the application of the costs consequences engaged pursuant to O 22A r 9(3) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("the ROC"), has given us the opportunity to consider and apply various aspects of the recent decision of this Court in *NTUC Foodfare Co-operative Ltd v SIA Engineering Co Ltd and another* [2018] SGCA 56 ("*NTUC*"). At the same time, RWS's Appeal has raised some interesting issues as to the circumstances under which a plaintiff may be ordered to bear the costs of third party proceedings commenced by a defendant in response to a claim. Following the hearing of the appeals on 11 September 2018, we dismissed Mr Goel's Appeal and allowed RWS's Appeal with brief grounds, and indicated that we would provide our full grounds in due course. This, we now do.

Background

3 We begin with a brief overview of the background to these appeals. Mr Goel is a Singapore permanent resident, while RWS is the owner and operator of the casino at Resorts World Sentosa ("the Casino"). Mr Goel visited the Casino on the night of 21 April 2012. After a quarrel erupted between Mr Goel and two other patrons of the Casino in the early hours of the morning of 22 April 2012, Mr Goel was escorted by the Casino's security staff, comprising both RWS's own security officers and SATS's auxiliary police officers ("APOs"), into a separate room, where he was detained for several hours before being escorted out of the Casino ("the Incident"). Mr Goel sustained injuries to his shoulder during the Incident.

4 On 29 May 2013, Mr Goel commenced the Suit against RWS, claiming that RWS was vicariously liable for the acts of assault, battery and wrongful imprisonment committed by *both* RWS's security officers and SATS's APOs, and that RWS was negligent in failing to keep him safe and secure while he was within its premises. Mr Goel eventually quantified his claim on 29 May 2015 at a total sum of S$484,196.16, comprising damages for the pain and suffering and loss of amenities arising from the injuries that he had sustained, loss of liberty for about an hour, medical and transport costs incurred as a result of his injuries, loss of pre-trial income, loss of his year-long membership at the Casino, loss of the credit that he had accumulated in his Genting Rewards Gold Card, as well as for aggravated and exemplary damages for the "haughty and high-handed attitude" that RWS had allegedly displayed during and after the Incident.[1]

5 On 19 November 2013, RWS joined SATS as a third party to the Suit, seeking from SATS an indemnity or contribution in respect of Mr Goel's claim and the costs of the Suit ("the Third Party Proceedings").[2] The Third Party Proceedings against SATS was grounded on a contractual indemnity provided for in a letter of agreement entered into between RWS and SATS on 31 August 2009 for SATS to provide security services at the Casino. The relevant terms of the agreement stated as follows:[3]

> **4. <u>Conditions</u>**
>
> a. You shall use reasonable skill and care in the provision of the Security Services in accordance

1 Statement of Facts (Amendment No 2) dated 29 May 2015, ROA Vol 4 Tab 1, pp 23–33, paras 42, 46, 51, 54 and 56.

2 Third Party Notice dated 19 November 2013, ROA Vol 4 Tab 3, pp 63–64.

3 Third Party Statement of Claim (Amendment No 2), ROA Vol 4 Tab 4, pp 69–70, para 12.

> with the requirement specification and good industry practice;
>
> b. You shall provide adequate supervision to reasonably ensure correct performance of Security Services in accordance with this Agreement;
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> …
>
> d. You represents and undertakes [*sic*] to RWS that all your security personnel:
>
> i. carry out all their duties as stated in the requirement specification;
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> …
>
> **5. <u>Banker's guarantee and indemnity</u>**
>
> …
>
> c. In addition, you shall indemnify RWS against all costs, losses, liabilities, damages, claims and expenses (including legal costs on an indemnity bases [*sic*]) incurred or suffered by RWS arising from or in connection with a breach of any term of this Agreement by … you or your employees, servants and/or agents and/or any act, omission or negligence or default of you or your employees, servants and/or agents.

6 Pursuant to these terms, SATS would be contractually liable to indemnify RWS should the latter be found liable to Mr Goel for the actions of SATS's APOs in respect of any failure on the part of SATS's APOs to "use reasonable skill and care" in the provision of security services or SATS to "provide adequate supervision to reasonably ensure correct performance of [s]ecurity [s]ervices".[4]

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[4] Third Party Statement of Claim (Amendment No 2), ROA Vol 4 Tab 4, pp 70–71, paras 13–15.

7 On 2 July 2014, RWS and SATS made a joint offer to fully and finally settle Mr Goel's claim for damages in the Suit for S$62,000, with all parties to bear their own costs ("the First Offer").[5] Mr Goel rejected the First Offer. On 17 September 2014, RWS and SATS made another joint offer, this time offering an increased amount of S$100,000 in full and final settlement of Mr Goel's claim for damages and interest in the Suit and for costs to be in accordance with O 22A of the ROC ("the Second Offer").[6] Mr Goel also rejected the Second Offer. Both the First Offer and the Second Offer will be collectively referred to as "the Offers".

8 Following the trial of the Suit, the Judge found in favour of Mr Goel and awarded him S$45,915.74 in damages, which was a fraction of his claim amount: see *Goel Adesh Kumar v Resorts World at Sentosa Pte Ltd (SATS Security Services Pte Ltd, third party)* [2015] SGHC 289 ("the Liability Judgment") at [50]. In particular, the Judge held that RWS's security officers were 80% liable and SATS's APOs were 20% liable in respect of the torts of wrongful imprisonment, assault and battery committed against Mr Goel (at [19]–[23] and [28]), but rejected the claims: (a) in negligence (at [31]); (b) for damages for pre-trial loss of earnings (at [42]–[44]); and (c) for aggravated and exemplary damages (at [47]–[48]). The Judge also found that RWS and SATS were respectively vicariously liable *only* for the tortious acts of their respective employees (at [24]–[26]), such that RWS was only liable to pay Mr Goel 80% of the damages awarded, whereas SATS was not liable to pay Mr Goel the remaining 20% because it was not a defendant in the Suit (at [27] and [32]). As for the Third Party Proceedings commenced by RWS against SATS, the Judge held that it was "redundant", given that RWS was vicariously

5 Joint Offer to Settle dated 2 July 2014, ROA Vol 4 Tab 6, pp 76–78.

6 Joint Offer to Settle dated 17 September 2014, ROA Vol 4 Tab 7, pp 80–82.

liable only for the acts of its own security officers (and not the APOs), such that there was no basis for RWS to claim an indemnity or contribution from SATS for any damages ordered against it (at [29]–[30]).

9 On 1 December 2015, Mr Goel filed Civil Appeal No 215 of 2015, which was an appeal against, among other things, the Judge's dismissal in the Liability Judgment of his claims for damages for negligence, pre-trial loss of earnings as well as for aggravated and exemplary damages, and named both RWS and SATS as co-respondents to the appeal.[7] On 11 December 2015, SATS filed Court of Appeal Summons No 329 of 2015 ("SUM 329"), seeking to strike out the Notice of Appeal insofar as SATS was named as a co-respondent to the appeal. We granted SUM 329 on 31 March 2016. On 17 August 2016, this Court dismissed the appeal.[8]

10 The issue of costs of the Suit was remitted to the Judge, who issued the Costs Judgment on 9 March 2017. The Judge held that: (a) RWS was to pay Mr Goel's costs of the Suit on a standard basis on the Magistrate's Court scale up to 2 July 2014 (*ie*, the date of the First Offer) (at [9] and [13(a)]); and (b) Mr Goel was to pay RWS's costs of the Suit on an indemnity basis on the High Court scale from 2 July 2014 (at [9] and [13(b)]).

11 As for the costs for the Third Party Proceedings, the Judge held that RWS was to pay 80% of SATS's costs on a standard basis on the High Court scale (at [13(c)]). The Judge reasoned that first, SATS (and not RWS) was entitled to costs in the Third Party Proceedings given that RWS was

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7 Notice of Appeal to the Court of Appeal (CA/CA 215/2015), ROA Vol 4 Tab 1, pp 111–113.

8 Order of Court (CA/ORC 108/2016), ROA Vol 4 Tab 2, pp 115–116.

vicariously liable *only* for the acts of its own security officers (and not SATS's APOs), and hence no question of indemnity against SATS arose for determination (at [11]). Second, RWS (and not Mr Goel) should be liable for SATS's costs in the Third Party Proceedings because Mr Goel, as the plaintiff in the Suit, had the right to choose not to make SATS a defendant in the Suit, and had in fact substantially succeeded (in terms of liability but not the quantum) in his claim against RWS. Mr Goel would be liable for costs of the Third Party Proceedings only if the real issue of the Suit turned out to be between Mr Goel and SATS, or RWS was clearly the wrong party to sue; neither of these scenarios presented themselves in the Suit (at [12]). Consequently, the Judge considered it fair to order RWS to pay 80% of SATS's costs in the Third Party Proceedings.

12 On 29 June 2017, the Judge granted the application by RWS in Summons No 1264 of 2017 ("SUM 1264") seeking leave to appeal against the Judge's decision in not ordering Mr Goel to indemnify it in respect of SATS's costs incurred in the Third Party Proceedings.[9] RWS duly filed its Notice of Appeal on 24 July 2017.[10]

13 On 2 October 2017, Mr Goel filed Summons No 4600 of 2017 ("SUM 4600"), seeking an extension of time from the High Court for leave to appeal against the Costs Judgment.[11] Although the Judge granted Mr Goel leave to appeal out of time, Mr Goel failed to file a Notice of Appeal accompanied by a certificate for security for costs on time.[12] On 20 December

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9 Order of Court (HC/ORC 4662/2017), ROA Vol 2 Tab 4, p 13.

10 RWS's Notice of Appeal to the Court of Appeal (Amendment No 1) (CA/CA 127/2017), ROA Vol 2 Tab 1, pp 4–5.

11 Summons for Extension of Time (HC/SUM 4600/2017), DBD (OS 24) Tab 5.

2017, Mr Goel filed Court of Appeal Originating Summons No 24 of 2017 ("OS 24"), seeking leave, this time from the Court of Appeal, to file and serve a Notice of Appeal against the Costs Judgement out of time.[13]

14 At the hearing fixed for both RWS's Appeal and OS 24 on 6 February 2018, we allowed OS 24, and adjourned RWS's Appeal to be heard together with Mr Goel's Appeal. We also reserved the costs of OS 24 to be determined together with the costs of the cross-appeals.[14] Mr Goel filed his Notice of Appeal on 7 February 2018.[15]

Our decision

15 With this background in mind, we now turn to explain our decisions in respect of these cross-appeals, beginning first with Mr Goel's Appeal.

Mr Goel's Appeal

16 Mr Goel submitted that this Court should order RWS to pay him costs incurred in the Suit on a standard basis on the High Court scale from the commencement of the Suit.[16] We disagreed.

17 Order 22A r 9(3) of the ROC states that where a defendant makes an offer to settle that the plaintiff does not accept, unless the Court orders otherwise, the plaintiff is entitled to costs on the standard basis to the date the

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12 Mr Goel's Affidavit dated 20 December 2017, DBD (OS 24) Tab 2, pp 2–3, paras 8–9 and 13–14 and Exh GAK-1.

13 Originating Summons (CA/OS 24/2017), DBD (OS 24) Tab 1.

14 Minute Sheet (CA/OS 24/2017 & CA/CA 127/2017) dated 6 February 2018, p 2.

15 Mr Goel's Notice of Appeal to the Court of Appeal (CA/CA 21/2018).

16 Appellant's Written Submissions (CA/CA 21/2018), para 74.

offer was served and the defendant is entitled to costs on an indemnity basis from that date, provided: (a) the offer was not withdrawn and has not expired before the disposal of the claim; and (b) the plaintiff obtains a judgment that is not more favourable than the terms of the offer to settle (see *NTUC* at [15]).

18 In our view, the Judge was correct to apply the general costs consequences provided for under O 22A r 9(3). First, it was undisputed that Mr Goel had rejected the First Offer (see [7] above). Second, the First Offer was not withdrawn before liability in the Suit was disposed of on appeal on 17 August 2016 (see [9] above). The First Offer was *not* deemed to have been withdrawn even though RWS and SATS subsequently made the Second Offer (see *RBG Resources plc (in liquidation) v Banque Cantonale Vaudoise and Others* [2004] SGHC 167 at [12] and [32], citing *LK Ang Construction Pte Ltd v Chubb Singapore Pte Ltd (judgment on costs)* [2004] 1 SLR(R) 134 at [18]). Nor did the First Offer expire, given that the offer did not specify any time within which it had to be accepted (see O 22A r 3(5) of the ROC and *NTUC* at [16]), and hence remained open for acceptance any time before the final disposal of the Suit on appeal (see *NTUC* at [17], citing *Man B&W Diesel S E Asia Pte Ltd and another v PT Bumi International Tankers and another appeal* [2004] 3 SLR(R) 267 ("*PT Bumi*") at [20]).

19 Third, the judgment sum of S$45,915.74 obtained by Mr Goel in the Liability Judgment was not, even when taken together with the costs incurred by Mr Goel up to the date of the First Offer, more favourable than the settlement sum of S$62,000 offered in the First Offer. As recently emphasised by this Court in *NTUC* (at [23] and [25(c)(i)]), it was necessary to add to the judgment sum the costs incurred by Mr Goel up to the date of the First Offer when determining if the judgment sum was "not more favourable" than the settlement sum, since the First Offer did not make separate provision for

Mr Goel to be paid his costs up to the date of the offer (see [7] above). Nevertheless, we were satisfied that these costs would not exceed the difference between the judgment sum awarded and the settlement sum offered (the difference being S$16,084.26) for the following reasons:

(a) First, these costs should be calculated only on the Magistrate's Court scale (pursuant to s 39(1)(*b*) of the State Courts Act (Cap 321, 2007 Rev Ed) ("the SCA")) because: (i) Mr Goel was only awarded S$45,915.74 in damages, which is below the Magistrate's Court limit of S$60,000 (s 2 of the SCA); and (ii) Mr Goel was unable to show that there was "sufficient reason" for him to have brought the Suit in the High Court (s 39(4) of the SCA and O 59 r 27(5) of the ROC), or that there was "reasonable ground" for supposing that the amount recoverable in the Suit could have been in excess of the amount recoverable in an action commenced in the State Courts (s 39(6) of the SCA). As regards the latter requirement in particular, having regard to the "factual prism existing when the proceedings were initiated" (see *Cheong Ghim Fah and another v Murugian s/o Rangsamy* [2004] 3 SLR(R) 193 at [14]), which included the speculative nature of the claims brought by Mr Goel seeking damages for loss of pre-trial income as well as aggravated and exemplary damages, we were satisfied that Mr Goel failed to demonstrate that it was reasonable for him to have commenced the Suit in the High Court.

(b) Second, these costs, being on the Magistrate's Court scale, were unlikely to exceed S$16,084.26 because: (i) the scales of costs statutorily provided under para 1 of Part IV of Appendix 2 to O 59 of the ROC state that for *completed* Magistrates' Courts cases where the sum awarded is between S$40,000 to S$60,000 (which is at the upper

limit of the Magistrate's Court's jurisdiction), the costs that should generally be allowed are between S$5,000 to S$18,000; and (ii) as of 2 July 2014, the Suit was far from being close to completion.

20 Finally, we also saw no reason to conclude that the Judge ought to have exercised his discretion to depart from the general rule on costs provided under O 22A r 9(3) of the ROC. The quintessential situation in which the court may exercise its discretion to vary the default cost consequences specified under O 22A r 9(3) is where the offer to settle was not a reasonable, serious or genuine offer that was aimed at inducing or facilitating settlement. In this regard, this Court held in *PT Bumi* (at [8] and [10]) as follows:

> 8 In *The Endurance I* [1998] 3 SLR(R) 970, this court, recognising that O 22A was of recent origin, took into account the approaches taken by some Commonwealth countries, where provisions similar to our O 22A exist, *eg*, Canada and Australia, and held that, generally speaking, ***the element of compromise should be present in an offer to settle***. It said at [45] that 'the lack of compromise would be a material consideration in determining whether the plaintiff or the defendant should be penalised with higher costs in cases where there are genuine issues of liability raised'. This is because ***the rationale behind O 22A is to encourage the speedy termination of litigation by agreement of the parties. The offer to settle should therefore be a serious and genuine offer and not just to entail the payment of costs on an indemnity basis. It should contain in it an element which would induce or facilitate settlement***: see *Singapore Airlines Ltd v Fujitsu Microelectronics (Malaysia) Sdn Bhd* [2001] 1 SLR(R) 38 … at [10] …
>
> …
>
> 10 What would constitute a serious and genuine offer to settle must depend on the circumstances and issues of the case. …
>
> [emphasis added in bold italics]

This Court also held in *Singapore Airlines Ltd v Tan Shwu Leng* [2001] 3 SLR(R) 439 (at [38], cited more recently in *Ong & Ong Pte Ltd v Fairview Developments Pte Ltd* [2015] 2 SLR 470 at [18]) that:

> ***[t]he scheme of things under O 22A is verily to encourage the plaintiffs*** to be realistic in their assessment of what they are entitled to and on the part of the defendants, ***to make reasonable offers***, on pain of having to bear the costs on the indemnity basis if they should persist in their exaggerated claims or maintain their unreasonable position (in respect of an offer from the plaintiff). ***The order seeks to promote responsible conduct on the part of both parties. It discourages obstinacy***. … [emphasis added in bold italics]

21 Mr Goel submitted that the First Offer was not a reasonable, serious or genuine offer containing elements that would have facilitated or induced settlement between the parties because it ought to have taken account of his claim for pre-trial loss of income, which Mr Goel quantified at S$407,280.42. We disagreed. In our judgment, the First Offer was a reasonable, serious and genuine offer to settle for the purposes of O 22A of the ROC because it was unnecessary for the First Offer to take into account Mr Goel's claim for pre-trial loss of income.

22 In determining whether an offer to settle is reasonable, serious or genuine, it would suffice that there is a legitimate basis for the offer made *and* the offer is not illusory – in other words, the offer should "not [be made] just to entail the payment of costs on an indemnity basis" (*PT Bumi* at [8]), and should not be one where "the offeror effectively [expects] the other party to capitulate" (*PT Bumi* at [14]). There is no strict necessity for the offer to provide for each head of the contested claim. Nor is there any requirement for the offer to bear some proportionality to the claim. To hold otherwise would suggest that a modest but realistic offer will not be treated as a reasonable, serious or genuine offer for the purposes of O 22A as long as the sum offered

is substantially less than the amount claimed. Such an interpretation would undermine the very purpose of O 22A, which is designed to protect a defendant who has made a realistic offer in response to an inflated claim from escalating costs should the eventual judgment be less than the amount offered. In the same way as it is for a plaintiff to quantify his claim amount, it is likewise a defendant's right to assess the likely sum which the plaintiff may be awarded in order to protect himself from adverse costs consequences by making an appropriate offer to settle. At the end of the day, if the offer is more than the judgment sum, then the costs consequences under O 22A would be engaged even if the offer made is significantly less than the amount claimed, provided that, as stated above, the offer has a legitimate basis *and* is not illusory.

23 We should emphasise that although such an outcome might appear to be at odds with the earlier decision of this Court in *Singapore Airlines Ltd and another v Fujitsu Microelectronics (Malaysia) Sdn Bhd and others* [2001] 1 SLR(R) 38 ("*Singapore Airlines*"), on reflection, we did not consider the reasoning in *Singapore Airlines* to be inconsistent with the analysis undertaken in this appeal. In *Singapore Airlines*, the defendant-appellants offered S$347 to settle a claim of US$286,344.14 made by the plaintiff-respondents for the loss of a package that the appellants had carried from Tokyo to Kuala Lumpur via Singapore. The appellants successfully argued on appeal that it was entitled to the protection of limitation of liability laid down under the Convention for the Unification of Certain Rules Relating to International Carriage by Air (12 October 1929) 137 LNTS 11 (entered into force 13 February 1933), as amended by the Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air (28 September 1955) 478 UNTS 371 (entered into force 1 August 1963)

(collectively, "the amended Warsaw Convention"), under which the appellants' liability was limited to S$312. This Court held that the appellants' offer to settle was not a genuine or serious offer to settle as it did not in substance contain any incentive to settle, and did not evince a genuine or serious effort to seek a compromise as to the crux of the dispute, which "related to the difference between the actual value of the lost package and the sum laid down in the amended [Warsaw] Convention as being payable to the respondents for the loss" (at [11]). The court thus exercised its discretion to order the respondents to pay the appellants costs for the action from the date of the offer on the standard basis (instead of on the indemnity basis) (at [12]).

24 On the face of the outcome arrived at in *Singapore Airlines*, it might appear that the court had compared the offer made of S$347 with the sum claimed of US$286,344.14 and found that even though the offer ultimately exceeded the judgment sum of S$312, the usual costs consequences pursuant to O 22A r 9(3) of the ROC should not apply given that the offer was vastly disproportionate to the claim made. However, as we see it, the court in *Singapore Airlines* had rightly declined to award the appellants costs for the action from the date of the offer on the indemnity basis, *not* because the offer was disproportionate to the claim made, but because the offer *lacked any legitimate basis*. Although the fact that the appellants were relying on the limitation of liability under the amended Warsaw Convention appeared to give the offer made a veneer of legitimacy, the court nevertheless made the following observations (at [7]):

> … While it is true that at the trial the appellants did dispute their liability for the loss, that was not the main issue. ***It is ludicrous to suggest that any sensible litigant would go through a trial of some twenty days only to defend a claim for $312. We think that the denial of liability was taken for strategic reasons, rightly or wrongly, in order not to jeopardise in any way their real defence of***

> ***limitation of liability.*** This was obvious from the fact that the appellants offered to settle in accordance with the limitation laid down in the amended [Warsaw] Convention. The respondents would have known as much. [emphasis added in bold italics]

Hence, while it was arguable as to whether the offer of S$347 was entirely illusory, the offer was considered to lack any legitimate basis because it had been made purely to secure for the appellants the payment of costs of the action by the respondents from the date of the offer on the indemnity basis in the event that the respondents prevailed at the trial.

25 Conversely, in the present appeal, the First Offer, being an offer to settle the claims in the Suit for S$62,000, was clearly by no means an illusory one. Also, we were satisfied that there was a legitimate basis for the sum proposed in the First Offer – when the First Offer was made, RWS had no evidence of Mr Goel's alleged pre-trial loss of income, which Mr Goel eventually only quantified at S$407,280.42 in his affidavit of evidence-in-chief filed on 4 May 2015 (see Liability Judgment at [43]). RWS thus could not have been expected to take this amount into consideration in making the First Offer.

RWS's Appeal

26 We turn next to address RWS's Appeal. We agreed that Mr Goel, instead of RWS, should pay 80% of SATS's costs incurred in the Third Party Proceedings on a standard basis on the High Court scale.

27 RWS submitted that Mr Goel (and not RWS) should pay for SATS's costs in the Third Party Proceedings because it was inevitable and necessary for RWS to have made SATS a third party to the Suit, and SATS should have been made a co-defendant to the Suit so that the question of liability arising

from the SATS's APOs' tortious acts could have been directly determined between Mr Goel and SATS.

28 The principles governing when a plaintiff may be made to bear the costs of third party proceedings were recently canvassed in some detail in the decision of the High Court in *Telemedia Pacific Group Ltd v Credit Agricole (Suisse) SA (Yeh Mao-Yuan, third party)* [2015] 4 SLR 1019 ("*Telemedia*"), in which George Wei J undertook a compendious survey of the relevant case authorities in this regard. In our judgment, the relevant principles that can be distilled from *Telemedia*, and which we now affirm, are as follows:

(a) A plaintiff should be ordered to bear the costs of third party proceedings if: (i) the *plaintiff* has acted *improperly and unreasonably* in instituting its main claim against the defendant instead of the third party (regardless of whether the defendant has acted properly and reasonably in instituting the third party proceedings) (at [77] and [89(e)]); *and* (ii) the third party proceedings are *inevitable* as a *direct result* of the plaintiff's claim (at [76] and [89(a)]).

(b) Two non-exhaustive scenarios in which the plaintiff's conduct may be found to justify such a costs order include: (i) when the *real issue* at the heart of the main claim is one that ought to be properly litigated between the plaintiff and the third party, rather than the plaintiff and the defendant (at [84] and [89(b)]); and (ii) when the main claim is *clearly against the wrong party* and there is clearly another party that the plaintiff should have sued (at [88] and [89(c)]).

29 The application of the above principles to a claim where only one party is alleged to be liable and where the dispute is whether such a party is the

correct defendant to be sued is generally uncontroversial. However, in a situation such as the present case where the claim involved liability of more than one party but where only one party has been sued, it becomes essential to examine whether as regards *all* aspects of the claim, it was proper to have commenced proceedings only against *one* defendant. We should add that the mere fact that a defendant is found to be liable in some aspects of a claim does not *per se* rule out a plaintiff from being liable for the costs of third party proceedings. The Judge appeared to have adopted a contrary view: see Costs Judgment at [12]. In our view, it remains relevant to determine whether such a plaintiff has acted properly and reasonably in bringing *all* aspects of the claim against that one defendant. In a situation where an action brought by a plaintiff raises a claim which implicates a party beyond the defendant, and at least one of the issues ought to be litigated between that plaintiff and a third party (and not between that plaintiff and the defendant), that plaintiff could be said to have commenced the claim in respect of those issue(s) *against the wrong party*. In such a situation, the plaintiff may be found to have acted improperly and unreasonably in failing to include the third party as a co-defendant to its claim in respect of the aforementioned issue(s), and in failing to do so, has made it inevitable for the defendant to commence third party proceedings to seek an indemnity or contribution in respect of that issue. Such a plaintiff should be made liable for the costs of the third party proceedings.

30 Given this clarification, we pause to consider the decision in *Telemedia*, which was a case that appeared, like the present appeal, to involve liability on the part of more than one party but where only one party had been sued. In *Telemedia*, the plaintiff, Telemedia Pacific Group Ltd ("Telemedia"), sued the defendant bank, Crédit Agricole (Suisse) SA ("Crédit Agricole"), for executing a transfer of some shares out of Telemedia's account with Crédit

Agricole. The shares were transferred on the instructions of one Yeh Mao-Yuan ("Yeh"), who was listed as an authorised signatory of Telemedia in the account-opening documents. Crédit Agricole joined Yeh as a third party to the suit, claiming an indemnity against Yeh on the ground of fraudulent misrepresentation. Wei J found in favour of Crédit Agricole, holding that the transfer of the shares was not wrongful because Yeh had actual authority to transfer the shares on behalf of Telemedia. The third party claim thus did not arise. In relation to the issue of the costs of the third party claim, Wei J held that Crédit Agricole (and not Telemedia) was to bear the costs of the third party proceedings. With respect, we agree with that decision. In our view, there was no question of Crédit Agricole being the "wrong party" as there was no dispute that it was the party who transferred the shares on the instructions of Yeh – the question was whether there was liability on Crédit Agricole for acting on Yeh's instructions. Further, unlike the present case, there was no question of Yeh bearing some portion of the liability should the claim against Crédit Agricole succeed because *vis-à-vis* Telemedia, Crédit Agricole was either liable in full or not at all.

31 Turning now to the facts before us, it was of significance to us that the Judge effectively found in the Costs Judgment (at [5]) that Mr Goel should have added SATS as a co-defendant as SATS was found to be liable for the tortious acts of the APOs. In addition, the Judge also found (at [11]) that RWS was "right to have joined SATS as a third party because some of the tortious acts were committed by the employees of SATS [*ie*, the APOs]". Given these findings, it was somewhat surprising that Mr Goel was not ordered to bear the costs of the Third Party Proceedings.

32 In our judgment, in addition to the above findings by the Judge, there were several additional reasons why Mr Goel should be ordered to bear the

costs of the Third Party Proceedings. First, we examined the pleadings. In the original Statement of Claim filed by Mr Goel on 29 May 2013 (at paras 3, 19, 20, 23, 26 and 28), Mr Goel averred that RWS was "liable", "vicariously liable" or "responsible" for the acts or omissions of the personnel, servants and/or agents of RWS, who were at all material times acting under RWS's direction and control in performance of their respective duties, but whose identities were unknown to Mr Goel at that time. However, in the original Defence filed by RWS on 14 June 2013, RWS expressly pleaded at para 14 that:

> [p]rior to the arrival of the police, [RWS's] staff activated two [APOs] of the [SATS] Auxiliary Police to escort [Mr Goel]. Insofar as the acts or omissions of the SATS [APOs] are concerned, [RWS] says that the same exercised police powers in their own right and not as servants or agents of [RWS]. [RWS] further avers that the two SATS [APOs] were not its servants and agents and that [RWS] is not liable, directly or vicariously, for their acts and omissions. [RWS] reserves the right to join such third parties as are appropriate and/or to claim indemnity / contribution from such third parties as are appropriate, within these proceedings or by separate recovery proceedings.

At paras 26 and 30 of the Defence, RWS further denied any liability for the actions of SATS's APOs. Moreover, in the list of interrogatories served on RWS on 7 May 2014, Mr Goel posed, among others, the following query:

> 12. Please state the number of times and the total amount of time that LCP Adi Mirza Sadli and LCP Anuar Bin Kamis had each been deployed by [SATS] Auxiliary Police to work in [the Casino].

To this, on 21 May 2014, RWS responded as follows:

> Answer: LCP Adi Mirza Sadli and LCP Anuar Bin Kamis are from a permanent pool of [APOs] deployed in [RWS] since 2009. They are deployed on an 8 hour shift. LCP Adi Mirza Sadli has been deployed in [RWS] since 4 September 2010 and

> LCP Anuar Bin Kamis has been deployed in [RWS] since 11 May 2011.

33 Through the pleadings and the answers to the interrogatories, it must have been clear to Mr Goel that some of the tortious acts might have been committed by the employees of SATS. This explained why Mr Goel eventually amended his Statement of Claim on 8 August 2014 to particularise the officers to include SATS's APOs who were involved in the Incident. However, while he saw it fit to amend his Statement of Claim to include specific allegations against the employees of SATS, Mr Goel did not add SATS as a co-defendant.

34 Next, we examined the terms of the Offers. Given that they were joint offers made by RWS and SATS (see [7] above), it should have been self-evident to Mr Goel that SATS itself recognised that it bore some potential liabilty to him in relation to the Incident. This should have prompted Mr Goel to take steps to add SATS as a co-defendant. Despite having ample time to do so, he elected not to.

35 From the foregoing, it was clear to us that Mr Goel knew, at least from 14 June 2013 when the Defence was filed (which was more than a year prior to the First Offer), that two of the security personnel involved in the Incident were SATS's APOs. Accordingly, at the material time, the various issues that Mr Goel ought to have known were in play in the Suit included: (a) whether RWS's security officers and/or SATS's APOs had committed the alleged tortious acts in the Incident; (b) who bore the liability for the actions of RWS's security officers; and (c) who bore the liability for the actions of SATS's APOs.

36 In the circumstances, it should have been plain and obvious to Mr Goel that the specific issue in relation to the alleged tortious acts of SATS's APOs ought to have been litigated between himself and SATS (and not between himself and RWS). This was in fact vindicated by the Liability Judgment, in which SATS was found to be 20% liable to Mr Goel (see [8] above). We should also mention that Mr Goel himself belately acknowledged that he should have added SATS as a co-defendant when he attempted to add SATS as a co-respondent in his Notice of Appeal against the Liability Judgment (see [9] above). This Court allowed SATS's application to strike out the Notice of Appeal insofar as SATS was named as a co-respondent to the appeal because a party who was not a co-defendant at a trial (*ie*, SATS) simply could not be added as a co-respondent for any appeal arising therefrom.

37 The upshot of the foregoing discussion was that while it may be true that it was Mr Goel's prerogative to decide who he should sue, as the Judge aptly observed at [12] of the Costs Judgment, his decision could give rise to adverse costs consequences if he had acted improperly and unreasonably in omitting to include a party whom he knew, from the very nature of his claim, ought to have been added as a co-defendant. Hence, in our judgment, Mr Goel had, in effect, wrongly commenced the Suit against RWS in respect of the tortious acts of SATS's APOs and, in so doing, made it inevitable for RWS to commence the Third Party Proceedings against SATS. In the result, it should be Mr Goel, and not RWS, who should be made to bear 80% of SATS's costs incurred in the Third Party Proceedings on a standard basis on the High Court scale.

Conclusion

38 For the reasons stated above, we dismissed Mr Goel's Appeal and allowed RWS's Appeal. Accordingly, in relation to the costs below, we substituted the following orders for the orders made by the Judge in the Costs Judgment:

(a) RWS shall pay Mr Goel's costs incurred in the Suit on a standard basis on the Magistrate's Court scale up to 2 July 2014.

(b) Mr Goel shall pay RWS's costs incurred in the Suit on an indemnity basis on the High Court scale from 2 July 2014.

(c) Mr Goel shall pay 80% of SATS's costs incurred in the Third Party Proceedings on a standard basis on the High Court scale.

(d) All costs stated above shall be taxed if not agreed.

(e) Parties liable to costs shall also be liable to pay all reasonable disbursements.

39 As regards the costs of the cross-appeals and the accompanying ancillary proceedings in SUM 1264, SUM 4600 and OS 24, we ordered Mr Goel to pay RWS a global sum of S$27,000 inclusive of all disbursements, such sum to be paid out from the security deposits placed by Mr Goel for his appeal. As for RWS's Appeal, the usual consequential orders for the release of the security deposits were to apply.

Judith Prakash	Tay Yong Kwang	Steven Chong
Judge of Appeal	Judge of Appeal	Judge of Appeal

Narayanan Sreenivasan *SC*, Shankar s/o Angammah Sevasamy and Ow Yan Rong Derek (Straits Law Practice LLC) for the appellant in Civil Appeal No 127 of 2017 and the respondent in Civil Appeal No 21 of 2018;
the respondent in Civil Appeal No 127 of 2017 and the appellant in Civil Appeal No 21 of 2018 in person.
