

Banque Nationale De Paris v Tan Nancy and Another
[2001] SGCA 78

Case Number : CA 168/2000
Decision Date : 05 December 2001
Tribunal/Court : Court of Appeal
Coram : Chao Hick Tin JA; L P Thean JA; Yong Pung How CJ
Counsel Name(s) : Michael Hwang SC, Christopher Anand Daniel (instructed) and Herman Jeremiah (Helen Yeo & Partners) for the appellants; Philip Fong and Jenny Chang (Harry Elias Partnership) for the first respondent; Chiah Kok Khun and Simon Jones (Wee Swee Teow & Co) for the second respondent
Parties : Banque Nationale De Paris — Tan Nancy; Anor

Agency – Construction of agent's authority – Appellant's employee conducting transactions in shares and foreign exchange on respondents' accounts – Whether authority given to conduct disputed transactions – Whether actual or apparent authority

Civil Procedure – Costs – Principles governing award of costs – Costs following the event – Whether to allow successful appellants costs at trial and at appeal – Whether to allow successful appellants costs for more than one solicitor – Whether to allow appellants separate set of costs against each respondent – O 59 r 19 Rules of Court

Judgment

(Costs)

1. When we delivered our judgment on 21 November 2001, we had reservations whether the general rule that costs follow the event should apply in the circumstances of this case. We therefore invited counsel to submit written arguments on the question of costs. Accordingly, written arguments from counsel were submitted, which we have now considered.

2. We think that there are good reasons why we should not apply the general rule here with regard to costs here and below. In the proceedings below, BNP raised numerous claims against the respondents, which took up a great deal of the time and occasioned considerable costs. In our view, their claims against the respondents for dishonestly assisting Gary to commit a breach of his fiduciary duties to BNP, for procuring Gary to commit a breach of contract, for conspiracy to injure BNP, and for breach of duty by the respondents to BNP, had no merits and should not have been raised at all. These heads of claim formed a very substantial part of what they had pleaded in the amended statement of claim. From the judgment below, it appears that lengthy arguments had been addressed to the judge on these claims. Instead, BNP should have focussed their attention on the following issues: (i) whether the respondents knew or were aware that Gary was carrying out the transactions in question in their names and for their account, and (ii) whether Gary had actual and/or apparent authority to carry out such transactions.

3. In our judgment, BNP had raised claims and issues which unnecessarily protracted proceedings below and added to the complexity of those proceedings. In the circumstances, they should not be allowed the whole of the costs below. We would award BNP only 25% of the costs below. We so order.

4. Before us, counsel for BNP submits that a certificate of two counsel under O 59, r 19 should be allowed on the ground that the appeal involved complex issues of fact and law, and the documents and record of the trial were voluminous. We do not agree. We did not find any complex issues of fact

or law raised in the appeal. The main issues were the two referred to in 2 on which we said that BNP should have focussed their attention. It is true that the documents and record of the trial were voluminous, but that was due substantially to the manner in which BNP had presented their case below. Further, a great deal of the documents before us consisted of forms of acknowledgements and confirmations, which in substance were repetitive.

5 . Next, counsel for BNP seeks an unusual order. Shee Chin and Nancy were separately represented by solicitors and counsel in the proceedings below and before us, and on that ground counsel for BNP asked that their clients be awarded a set each of costs against Shee Chin and Nancy. It is best we set out their arguments verbatim:

7. This is on the basis that the Respondents chose two separate sets of solicitors even though they were, essentially, running the same defence and the Appellant had to meet two separate submissions and cases.

8. In fact, the Respondents were each awarded a separate set of costs of the trial and the same should be applied against them when the appeal has been allowed. The Appellant relies on the case of ***Lim Heng Hoo v Tan Hock Hai & Ors*** [1976] 2 MLJ 159.

This argument has absolutely no merit, and we have no hesitation in rejecting it. The respondents, though separately represented, raised the same defences in law. Their interests in the proceedings coincided and no separate issues were raised. The position would still be the same, if they were both represented by the same solicitors and counsel. There was no reason to award to BNP a separate set of costs payable by each of the respondents.

6. We now come to the issue of whether BNP should be allowed the full costs of the appeal. In the Appellants Case, and also in the arguments before us, BNP still maintained their claim against the respondents for dishonestly assisting Gary in committing a breach his fiduciary duties to BNP and devoted a substantial part of the arguments on that issue. As we have said, this claim had no merit. It unnecessarily incurred costs and added to the complexity of the appeal.

7 . Lastly, although BNP in their Case dealt at great length with the facts showing that the respondents knew or were aware that Gary was carrying out the transactions in question in their names and for their account, on the issue of law on the actual and apparent authority, we did not find that BNP provided much assistance. No authorities were cited by them in support of their arguments on the question of actual or apparent authority.

8. In all the circumstances, we would allow BNP only 40% of the costs of the appeal. We so order. There will be the usual consequential order for the refund to BNP or their solicitors of the deposit in court, with interest, if any.

Sgd:
YONG PUNG HOW
Chief Justice

Sgd:
LP THEAN
Judge of Appeal

Sgd:
CHAO HICK TIN
Judge of Appeal