IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2017] SGHC 43

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

JUDGMENT

[Civil Procedure] – [Costs]

[Civil Procedure] – [Offer to settle]

Version No 1: 27 Oct 2020 (22:40 hrs)

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Goel Adesh Kumar
v
Resorts World at Sentosa Pte Ltd
(SATS Security Services Pte Ltd, third party)

[2017] SGHC 43

High Court — Suit No 484 of 2013
Choo Han Teck J
16 January 2017

9 March 2017 Judgment reserved.

Choo Han Teck J:

1 Mr Goel, the plaintiff, had gone to the defendant's casino at Resorts World at Sentosa ("the Casino") to gamble, and there he picked a quarrel with two other patrons of the Casino. He was escorted by the Casino's security staff to a "cooling-off room" where he was held for several hours before he was released and escorted out of the Casino. He then sued the Casino for negligence, assault, battery, and wrongful imprisonment, claiming a total of $484,196.16 in damages which comprised $60,000 for his injured shoulder, $15,990.74 for medical expenses, $925 for transport expenses, and $407,280.42 for his loss of earnings. Mr Goel also asked for aggravated damages for the way he was treated and exemplary damages as a warning that large organisations should not bully individuals.

2 I found in favour of Mr Goel but apportioned liability against the Casino up to 80% only because some of the tortious acts were committed by SATS Security Services Pte Ltd ("SATS") officers (who were not sued by Mr Goel). I allowed Mr Goel's claim for medical and transport expenses as that was not challenged. The award of damages was made up of —

(a) $4,000 for false imprisonment;

(b) $25,000 for pain and suffering and loss of amenities;

(c) $15,990.74 for pre-trial medical expenses; and

(d) $925 for pre-trial transport expenses.

The Casino's liability at 80% meant that Mr Goel was awarded $36,732.59 (80% of $45,915.74). No orders were made against SATS because Mr Goel did not sue it. Finally, Mr Goel's claim in negligence against the Casino was dismissed.

3 Mr Goel commenced suit against the Casino on 29 May 2013. The Casino joined SATS as a third party on 19 November 2013. Approximately a year before the trial, on 2 July 2014, the Casino and SATS made a joint offer to settle Mr Goel's claim at $62,000. Mr Goel rejected this offer. The trial commenced on 30 June 2015 and ended on 3 September 2015 with breaks in between the dates. On 17 September 2014, the Casino and SATS made a second offer to settle. This time they offered $100,000 and again Mr Goel rejected this offer. The two offers to settle were made without prejudice to the action and thus not disclosed to the court. I delivered judgment on 4 November 2015. The parties now appear before me on the question of costs.

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4 Ordinarily, the party who succeeds will be entitled to costs of the action. Hence, in the normal case, the Casino will have to pay the costs of Mr Goel's claims. In this case, because offers to settle were made to Mr Goel before judgment, the court may refuse costs to him and, conversely, order costs against him. The cost consequences resulting from an offer to settle are set out in Order 22A of the Rules of Court (Cap 322, R 5, 2014 Rev Ed). The procedure for making offers to settle is to encourage litigants to re-evaluate their claims, and, if done reasonably, the parties can settle their dispute without trial. A long, protracted trial like this takes a toll on public funds and thus the inducement of an offer to settle is not only of benefit to the parties but also the public.

5 In this case, Mr Goel suffered some inconvenience and injury but they were not as serious or as costly as he claimed. He sought more than $484,196.16 but was awarded only $36,732.59. He might have received the full $45,915.74 had he joined SATS as a defendant. He did not realise how important it was to make sure that all relevant parties are joined in the action, just as he failed to realise that in addition to suing the right parties, he had to sue in the right causes of action. His claim in negligence was not founded on the evidence and was dismissed. That too will have an impact, though not a major one on the facts of this case, on the award of costs.

6 The first issue before me now is whether the Casino can rely on the first offer to settle or whether it is obliged to stand by its second offer. Both offers were more than what Mr Goel was awarded but the importance lies in the costs that Mr Goel has to pay for not accepting the offers. Had he accepted the first, he would not have to pay costs, but by rejecting it, the costs that accrue after that date has to be borne by him on an indemnity basis.

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7 That is why his counsel argued that the Casino (and SATS), having made a second offer to settle, is bound by that offer and that the first offer cannot be relied upon to mark the date from which Mr Goel has to pay costs. The difference between the two, therefore, is that if the first offer is valid and applicable, Mr Goel has to pay costs to the Casino from 2 July 2014, but if the second offer is applicable, then Mr Goel only needs to pay the Casino costs from 17 September 2014.

8 There is no merit in Mr Goel's counsel's argument that the second offer is the valid and binding one. When a party makes a second offer it is to induce the opposing party to reassess his position. The second offer may be higher or lower than the first. The idea is to encourage the other party to end the proceedings. If the offer is higher, then the other party obtains the benefit of the increase. If he does not, he cannot claim that the offeror cannot rely on the first offer to benefit from its cost consequences. That offer remains otherwise there is no incentive for parties to improve their offers to facilitate a settlement. It is possible that a party's second offer may be lower than the one it first made. There may be good reasons for this. Discovery may lead him to realise that his case is stronger than initially thought. The lowered offer will nonetheless force the other party to reassess his case. In the event that a party makes a second offer that is lower than the first, reason suggests that he ought to state whether he is withdrawing the first.

9 In this case, Mr Goel rejected the first and second offers. He must therefore be responsible for costs incurred after that. The Casino will thus pay him costs up to 2 July 2014. The costs are payable only on the scale of the Magistrate's Court on a standard basis as the damages awarded are within the Magistrate's Court's jurisdiction and the claim ought to have been pursued

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there: see s 39(1)(b) of the State Courts Act (Cap 321, 2007 Rev Ed). Mr Goel will have to pay the Casino costs on an indemnity basis from 2 July 2014.

10 Mr Goel's counsel also submitted that the offers to settle were invalid because there is no procedure for the Casino and SATS, being a third party, to have made a joint offer. In my view, the law is not such an ass as it is sometimes facetiously portrayed. No express legislation or rule is required for the obvious or the trivial. SATS may not be a defendant, but it is still a party from whom the Casino is seeking a contribution, and has an interest in a speedy and inexpensive end to the litigation. A joint offer is neat and ensures that Mr Goel can look to either or both for satisfaction. Mr Goel's counsel's submission that the offers are invalid is thus dismissed.

11 I now move on to the question of costs for the third party proceedings, which I dismissed. The Casino was right to have joined SATS as a third party because some of the tortious acts were committed by the employees of SATS. SATS would have to pay costs if it had been found liable to the Casino but in this case, I think that it ought to be entitled to costs because Mr Goel succeeded against the Casino for up to 80% of his claim. The fair order is therefore for the Casino to pay SATS costs up to 80%.

12 For completeness, I note that the Casino's counsel submitted that Mr Goel should be liable for SATS' costs as the third party proceedings were an inevitable and necessary result of Mr Goel's decision not to make SATS a defendant. It would take exceptional circumstances before a plaintiff is made responsible for costs of third party proceedings, especially when the plaintiff's claim has substantially succeeded, as in Mr Goel's case. The plaintiff has the right to choose who to sue, and unless the real issue of the litigation is between the plaintiff and the third party, or the defendant is clearly the wrong party, it

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is not responsible for the defendant's decision to join third parties to the suit. None of the abovementioned factors are present in this case.

13 For the reasons above, my orders are as follows —

(a) The defendant is to pay the plaintiff's costs on a standard basis on the Magistrate's Court's scale up to 2 July 2014;

(b) The plaintiff to pay the defendant's costs on an indemnity basis on the High Court scale from 2 July 2014;

(c) The defendant to pay 80% of the third party's costs on a standard basis on the High Court scale;

(d) All costs above are to be taxed if not agreed; and

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

- Sgd -
Choo Han Teck
Judge

Prakash Pillai, Koh Junxiang, Debby Ratnasari (Clasis LLC) for the plaintiff;
N. Sreenivasan SC, Shankar s/o Angammah Sevasamy and Derek Ow (Straits Law Practice LLC) for the defendant;
Paul Seah Zhen Wei, Kang Weisheng Geraint Edward and Rachel Chin (Tan Kok Quan Partnership) for third party.

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