

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2016] SGHC 261

Suit No 1057 of 2013

Between

Lim Geok Lin Andy

... Plaintiff

And

Yap Jin Meng Bryan

... Defendant

SUPPLEMENTAL JUDGMENT

[Civil Procedure] — [Costs]

[Civil Procedure] — [Offer to Settle]

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Lim Geok Lin Andy
v
Yap Jin Meng Bryan

[2016] SGHC 261

High Court — Suit No 1057 of 2013
Lai Siu Chiu SJ
8 November 2016

25 November 2016

Judgment reserved.

Lai Siu Chiu SJ:

1 The plaintiff's claim in this suit was dismissed in *Lim Geok Lin Andy v Yap Jin Meng Bryan* [2016] SGHC 234. Pursuant to my directions in the concluding paragraph of the said judgment dated 21 October 2016, parties filed their submissions on costs.

The defendant's submissions

2 The defendant, who was successful in defending the suit, submitted that costs should be awarded to him on an indemnity basis for the following reasons:

- (a) This court had found that the plaintiff's claim was an abuse of process; and

- (b) The plaintiff's case was clearly without basis and brought for an improper motive.

In support of his argument, the defendant relied on the decision of this court in *Wong Meng Cheong and another v Ling Ai Wah and another* [2012] 1 SLR 549 ("*Wong Meng Cheong*"), the decision of the Court of Appeal in *DB Trustees (Hong Kong) Ltd v Consult Asia Pte Ltd and another appeal* [2010] 3 SLR 542 and the recent decision of Chan Seng Onn J in *Airtrust (Hong Kong) Ltd v PH Hydraulics & Engineering Pte Ltd* [2016] 5 SLR 103.

3 The English case of *Three Rivers District Council and Others v The Governor and Co of the Bank of England (No 6)* [2006] (Comm) EWHC 816 was also cited for the guidance it provided on how the discretion to award indemnity costs ought to be exercised. There, Tomlinson J (at [25]) laid down eight principles to assist the court in determining whether costs on an indemnity basis should be allowed. These are the principles that I find are applicable to the present case:

- (a) Insofar as the conduct of the unsuccessful claimant is relied on as a ground for ordering indemnity costs, the test is not conduct attracting moral condemnation, which is an a fortiori ground, but rather unreasonableness;
- (b) The court can and should have regard to the conduct of an unsuccessful claimant during the proceedings, both before and during the trial, as well as whether it was reasonable for the claimant to raise and pursue particular allegations and the manner in which the claimant pursued its case and its allegations; and

(c) Where a claim is speculative, weak, opportunistic or thin, a claimant who chooses to pursue it is taking a high risk and can expect to pay indemnity costs.

4 Even if costs on an indemnity basis were not awarded to him in respect of the entire proceedings, the defendant submitted that costs on an indemnity basis should be ordered against the plaintiff from 25 February 2016 onwards as it was the date that the defendant served his Offer to Settle (“the defendant’s OTS”) on the plaintiff.

5 The defendant’s OTS, served pursuant to Order 22A r 1 of the Rules of Court (Cap 332, R 5, 2014 Rev Ed) (“the Rules of Court”) stated as follows:

The Defendant offers to settle these proceedings on a full and final basis on the following terms:

1 The plaintiff will pay 90% of the defendant’s costs on a standard basis until the date of acceptance of this offer, to be agreed or taxed (“the Settlement Costs”).

2 Within seven (7) days of the Defendant receiving the Settlement Costs, the Plaintiff will file a Notice of Discontinuance of this Suit.

The plaintiff’s submissions

6 The plaintiff argued that he should not have to pay costs to the defendant on an indemnity basis as his conduct was nowhere as reprehensible as that of the plaintiffs in *Wong Meng Cheong*. In the case of *Tan Chin Yew Joseph v Saxo Capital Markets Pte Ltd* [2013] SGHC 274, which was also cited by the defendant, the court had declined to award indemnity costs to the successful defendant even though it found that the plaintiff’s case there was thin, irreconcilable with contemporaneous documents and mostly an afterthought. This was because the court concluded at [100] that the

circumstances of the case was such that the plaintiff's conduct as a whole did not rise to the level where indemnity costs were appropriate.

7 Consequently, the plaintiff urged this court not to award indemnity costs to the defendant as the plaintiff had acted in good faith, genuinely thought he was entitled to his claim and had no ulterior motive in bringing the action. The plaintiff did not address the defendant's OTS at all in his submissions.

The court's decision

8 I note that the defendant's OTS was served before the trial commenced on 29 February 2016.

9 Order 22A r 9 (3) of the Rules of Court states:

Where an offer to settle made by a defendant ---

(a) is not withdrawn and has not expired before the disposal of the claim in respect of which the offer to settle is made; and

(b) is not accepted by the plaintiff, and the plaintiff obtains a judgment not more favourable than the terms of the offer to settle,

the plaintiff is entitled to his costs on the standard basis to the date the offer was served and the defendant is entitled to costs on an indemnity basis from that date, unless the Court orders otherwise.

10 In this case, the plaintiff failed in his claim. There is no possibility of his being awarded costs at all. The judgment is less favourable to the plaintiff than the defendant's OTS, as the former would award the defendant 100% of the costs whereas under the defendant's OTS, the plaintiff would only have had to pay 90% of the defendant's costs. Consequently, the defendant is entitled to his costs on an indemnity basis from 25 February 2016 onwards.

11 The question that remains to be answered is - should the defendant also be entitled to indemnity costs from the commencement of this action on 21 November 2013 until 24 February 2016? Despite the manner in which he conducted this case as well as the unfavourable impression that he made on the court while testifying in the witness stand, the court declines to award the defendant indemnity costs for that period.

12 While the plaintiff's conduct was opportunistic and he was unreasonable in pursuing his claim based on (i) a Minimum Profit Assurance and (ii) a Minimum Financing Period obligation on the part of the defendant, he cannot be said to be unreasonable in thinking he was entitled to what Park was awarded by the Court of Appeal.

13 Consequently, the defendant is entitled to costs on a standard basis before 25 February 2016 and costs on an indemnity basis from that date onwards.

Lai Siu Chiu
Senior Judge

Tan Kheng Ann Alvin and Os Agarwal (Wong Thomas & Leong) for
the plaintiff;
Chin Li Yuen Marina, Liang Hanwen Calvin and Eugene Jedidiah
Low Yeow Chin (Tan Kok Quan Partnership) for the defendant.
