

Lim Eng Hock Peter v Lin Jian Wei and another
[2010] SGHC 254

Case Number : Bill of Costs No 247 of 2009 (Summonses Nos 803 and 815 of 2010)
Decision Date : 26 August 2010
Tribunal/Court : High Court
Coram : Chan Seng Onn J
Counsel Name(s) : Koh Swee Yen and Suegene Ang (WongPartnership LLP) for the plaintiff; Kristy Tan Ruyan (Allen & Gledhill LLP) for the defendants.
Parties : Lim Eng Hock Peter — Lin Jian Wei and another

Civil Procedure – Costs – Indemnity basis

26 August 2010

Chan Seng Onn J:

Introduction

1 The Plaintiff successfully brought a defamation action against the Defendants and was awarded damages of \$140,000 and aggravated damages of \$70,000 for the libel arising from the Defendants' publication of defamatory statements concerning the Plaintiff to the Scheme Creditors contained in an Explanatory Statement dated 2 November 2005. The Court of Appeal ordered the Defendants to bear the costs of the Plaintiff for the trial on an indemnity basis and for the appeal on a standard basis. Costs of two counsel were allowed.

2 As the Defendants have appealed against my award of costs of \$650,000 for section 1 of the Plaintiff's Bill of Costs for the trial, I now give my reasons.

Indemnity Basis

3 I had taxed the costs on an indemnity basis as set out in O59 r 27 (3) of the Rules of Court (Cap. 322, Rule 5, Revised Edition 2006) which states that:

On a taxation on the indemnity basis, all costs shall be allowed except in so far as they are of an unreasonable amount or have been unreasonably incurred and any doubts which the Registrar may have as to whether the costs were reasonably incurred or were reasonable in amount shall be resolved in favour of the receiving party; and in these Rules, the term "the indemnity basis", in relation to the taxation of costs, shall be construed accordingly.

4 Para 59/27/5 of the Singapore Court Practice 2009 (Jeffrey Pinsler gen ed) (LexisNexis Singapore, 2009) elaborates on the difference between the standard and the indemnity basis:

59/27/5. Observations on standard and indemnity bases. The indemnity basis is also characterised by the reasonableness principle and reflects the former 'solicitor and own client' basis. The standard basis is inclusionary so that the recovery of costs depends on meeting the principle of inclusion. Under the indemnity basis, which is exclusionary in nature, all costs are included unless they come within the scope of the principle of exclusion. Although the principle of

the standard and indemnity bases is the same, the distinction between them lies in determining whether any doubts about the reasonableness of the costs should be resolved in favour of one party or the other. In the case of standard basis, any doubts are to be resolved in favour of the paying party; in the case of the indemnity basis, any doubts are to be resolved in favour of the receiving party. For instance, if the registrar is uncertain about whether certain attendances on the client or witnesses are reasonable (there may be doubt as to whether the attendances were excessive in the circumstances), these costs would not be recovered by the successful party if, as in the ordinary case, the standard principle applies. If the indemnity basis applies, these costs would be recoverable. If there are no doubts about an item on the bill then it is recoverable on either basis.

5 The Defendants thus submitted that the award of party-and-party costs on an indemnity basis does not entitle the receiving party to recover from the paying party all costs which the receiving party paid to his solicitors. The receiving party is only entitled to reasonable costs. However, the burden falls on the paying party to show, on a balance of probabilities, that the costs claimed by the receiving party are unreasonable. I do not believe that these submissions of the Defendants are controversial and I do accept them. The Court of Appeal in *Ng Eng Ghee v Mamata Kapildev Dave and others (Horizon Partners Pte Ltd, intervener) and another appeal* [2009] 4 SLR(R) 155 at [6]–[7] had further clarified as follows:

The costs indemnity principle

6 Before we discuss the issues set out in [5] above, it is important to recall the general rule in Singapore, *viz*, that costs should follow the event except in special circumstances (see *Singapore Civil Procedure 2007* (GP Selvam gen ed) (Sweet & Maxwell Asia, 2007) ("*Singapore Civil Procedure 2007*") at paras 59/3/1 and 59/3/5; see also *Tullio v Maoro* [1994] 2 SLR 489). This principle (*ie*, that an unsuccessful party would generally be ordered to pay the successful party's reasonable litigation costs) has been sometimes termed "the indemnity principle". It is not to be confused with costs on "the indemnity basis", which would be costs taxed on the basis that any doubts as to their reasonableness are to be resolved in favour of the receiving party (O 59 r 27(3) of the Rules of Court (Cap 322, R 5, 2006 Rev Ed) ("the Rules")), as the alternative to costs on "the standard basis", where any doubts as to reasonableness is to be resolved in favour of the paying party (see O 59 rr 27(1) and 27(2) of the Rules).

7 The fundamental conception of costs which underlies the indemnity principle is that costs are imposed to *compensate* the successful party and not to punish the losing party (although costs may sometimes be imposed as a punishment for improper or unreasonable behaviour in the proceedings; see, eg, O 59 rr 7 and 8 of the Rules). As Bramwell B astutely noted in *Harold v Smith* (1860) 5 H & N 381 (at 385); 157 ER 1229 (at 1231):

Costs as between party and party are given by the law as an indemnity to the person entitled to them: they are not imposed as a punishment on the party who pays them, nor given as a bonus to the party who receives them. Therefore, if the extent of the damnification can be found out, the extent to which costs ought to be allowed is also ascertained.

To this we should add that the indemnity principle as applied in Singapore rests on one bedrock feature. It only extends to *costs reasonably incurred and not all costs incurred*. Therefore, the principle, does not, in practice, amount to a full and complete indemnity to the successful party against all the expenses to which he has incurred in relation to the proceedings (see *Singapore Civil Procedure 2007* at para 59/27/5) unless this has been *contractually agreed upon* or *if the*

court makes a special order in exceptional circumstances.

[emphasis in original]

Relevant matters for consideration when awarding costs

6 In exercising my discretion when I was awarding costs to the Plaintiff, I was mindful that I must have full regard to all the relevant circumstances which would include those set out in Appendix 1 of O 59 of the Rules of Court to ensure that the amount of costs to be awarded on the ordered basis of taxation (*i.e.* indemnity basis) is reasonable in all the circumstances of the case. In other words, the costs must be reasonably incurred and must also be reasonable in amount having regard to all the relevant circumstances of the case. Order 59 Appendix 1 states:

Amount of costs

1. —(1) The amount of costs to be allowed shall (subject to any order of the Court) be in the discretion of the Registrar.

(2) In exercising his discretion the Registrar shall have regard to all the relevant circumstances, and in particular to —

- (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 Often as with this case, the real problem lies not with deciding what are the relevant principles to apply and what are the relevant factors to be taken into account in the assessment of the amount of costs to award but in the actual application of those principles and the weighing of the relevant factors in such a manner as to arrive at the appropriate and reasonable quantum in exercise of my discretion having regard to all the relevant facts and circumstances of the case. Counsel must therefore produce as much relevant information as he can in his Bill of Costs to justify his claim for the costs drawn up for the amount of work he has done so that the court can be well assisted to make that determination.

Plaintiff's Bill of Costs for the trial

8 I would like to commend the Plaintiff's counsel for providing detailed particulars in Section 1 of the Bill of Costs which have aided my assessment of the extent of the work done by them. I will briefly set out those relevant particulars:

- (a) Writ: 3 pages.

- (b) Statement of Claim (Amendment No. 1): 14 pages.
- (c) Defence (Amendment No.1): 36 pages.
- (d) Reply (Amendment No.1): 4 pages.
- (e) SUM 4849/2007/S: The Defendants' application for a determination pursuant to Order 14 Rule 12 of the Rules of Court that the words complained of were not capable of any meaning defamatory of the Plaintiff and/or for the Writ of Summons and the Statement of Claim be struck out under Order 18 Rule 19 of the Rules of Court and/or under the inherent jurisdiction of the court. The matter was heard before Tan Lee Meng J over 3 days with a total hearing time of some 9.5 hours. The Plaintiff's submissions totalled 35 pages with 20 authorities. The Defendants' submissions totalled 90 pages with 28 authorities cited. Costs were ordered to be in the cause.
- (f) Attendance at 7 Pre-Trial-Conferences.
- (g) 71 letters exchanged between solicitors, 41 letters exchanged with the court and 145 letters exchanged with the client.
- (h) Documents provided at discovery: 71 documents by the Plaintiff; 3706 documents by the Defendants.
- (i) The Plaintiff's opening statement at trial: 24 pages with 30 cases cited.
- (j) The Defendants' opening statement at trial: 20 pages with 10 cases cited.
- (k) One affidavit of the Plaintiff: 30 pages of text with 13 exhibits running to 559 pages.
- (l) Three affidavits of the Defendants: 67 pages of text with 46 exhibits running to 1115 pages.
- (m) The Plaintiff's bundles: 7 volumes totalling 2341 pages.
- (n) The Defendants' bundles: 52 volumes totalling 14,885 pages.
- (o) The Plaintiff: 1 witness of fact.
- (p) The Defendants: 3 witnesses of fact; 1 expert witness (no witnesses called). The Defendants initially confirmed that they would be calling 8 factual witnesses, 5 of whom had been subpoenaed, and 1 expert witness.
- (q) The Plaintiff's closing submissions for the trial: 171 pages and 7 cases.
- (r) The Defendants' closing submissions for the trial: 234 pages and 22 cases.
- (s) Trial fixed for 10 days: Actual number of days used at trial was 6 days.
- (t) The Plaintiff's submissions on costs: 5 pages with 8 authorities.
- (u) The Defendants' submissions on costs: 5 pages with 4 authorities.
- (v) Hearing on costs took 1.5 hours.

9 To evidence the legal complexity of the case, 23 legal issues were set out in the Bill of Costs as follows:

Legal Issues

- (1) Whether statements made in an Explanatory Statement issued pursuant to section 210 and 211 of the Companies Act could be the subject matter of defamation;
- (2) Whether a preliminary determination on the defamatory words under Order 14 r 12 of the Rules of Court was suitable where defamation by way of innuendo was pleaded;
- (3) Whether the statements in the Explanatory Statement were defamatory of the Plaintiff in their natural and ordinary meaning;
- (4) Whether the Court was entitled to take the Raffles Town Club ("RTC") saga, spanning from 1996 to 2007, into consideration in determining whether the statements were defamatory;
- (5) What defamatory meanings the statements in the Explanatory Statement bore;
- (6) Whether an ordinary and reasonable reader of the Explanatory Statement would regard the statements complained of as bearing the defamatory meanings pleaded by the Plaintiff;
- (7) Whether the Defendants' deliberate omission of important and relevant information from the Explanatory Statement could be considered in determining the defamatory meanings;
- (8) Whether the manner and sequence of information presented in the Explanatory Statement could be considered in determining the defamatory meanings;
- (9) Whether the inclusion of irrelevant and gratuitous information in the Explanatory Statement could be considered in determining the defamatory meanings;
- (10) Whether the inclusion of self-serving statements in the Explanatory Statement could be considered in determining the defamatory meanings;
- (11) Whether the statements in the Explanatory Statement were defamatory of the Plaintiff by way of innuendo;
- (12) Whether the Plaintiff was required to identify and call witnesses to prove their knowledge of the extrinsic facts;
- (13) Whether the defamatory statements were capable of lesser defamatory meanings;
- (14) If the defamatory statements were capable of lesser defamatory meanings, whether the meanings were true on the facts;
- (15) If the defamatory statements were capable of bearing the meanings alleged by the Plaintiff, whether they were substantially true;
- (16) Whether the Defendants could rely on the defence of justification;
- (17) Whether the defamatory statements which were contained in a document required to be sent to the Scheme Creditors under sections 210 and 211 of the Companies Act were published

on an occasion of absolute privilege;

(18) Whether the common law should extend absolute privilege to cover explanatory statements issued pursuant to sections 210 and 211 of the Companies Act;

(19) Whether the Defendants could rely on the defence of qualified privilege where there was no duty to publish matters beyond that of the statutory purpose of the explanatory statement under sections 210 and 211 of the Companies Act;

(20) If the Defendants were entitled to rely on the defence of qualified privilege, whether the defence of qualified privilege was defeated by malice;

(21) Whether the Defendants were successful in their submission of no case to answer;

(22) What the legal implications following a submission of no case to answer were;

(23) What was the burden of proof on the Defendants where a submission of no case to answer was made.

10 To show the factual complexity of the case, the following factual issues were listed in the Bill of Costs:

Factual Issues

Plaintiff's claim that the words were defamatory in their natural and ordinary meaning and/or by way of innuendo:

- (1) Whether the readers of the Explanatory Statement had knowledge of the extrinsic facts pleaded by the Plaintiff;
- (2) If so, what extrinsic facts the readers of the Explanatory Statement had knowledge of.
- (3) Whether the recipients of the Explanatory Statement:
 - a. were familiar with the RTC saga, spanning from 1996 to 2007, and would take a keen interest in the matters covered by the Explanatory Statement;
 - b. were aware of the various queries that had been made as to the reasons why RTC went into financial difficulties;
 - c. paid particular attention to the issue of dividends, in view of the various complaints and queries regarding the lack of information as to when and to whom the total dividends of \$124,213,169 had been paid.

Defendants' plea of justification

- (1) Whether the financial difficulties of RTC were caused substantially by the Plaintiff;
- (2) Whether the Plaintiff mismanaged RTC by taking in 19,000 members, resulting in the Raffles5000 suit where RTC was exposed to claims amounting to almost \$50 million;
- (3) Whether the Plaintiff (and others) had deliberately concealed that the Club had taken on

19,000 members;

- (4) Whether the Plaintiff mismanaged RTC by causing RTC to enter into an agreement with Europa Holdings in respect of management fees paid to Europa Holdings;
- (5) Whether there was commercial basis for RTC to enter into the agreement with Europa Holdings in respect of management fees paid to Europa Holdings;
- (6) Whether the Defendants were aware of the management fees that had been paid to Europa Holdings at the time of their purchase of RTC's shares from Lawrence Ang and William Tan;
- (7) Whether the Plaintiff allowed almost \$65 million to be loaned to Lawrence Ang, William Tan and Dennis Foo and to be offset against dividends;
- (8) Whether the Plaintiff had agreed that the loans to Lawrence Ang, William Tan and Dennis Foo were not repayable and were to be offset against dividends;
- (9) Whether half of the \$52 million borrowed by Lawrence Ang from RTC was applied to the Plaintiff's benefit;
- (10) Whether the construction costs of RTC were excessive or unreasonable;
- (11) Whether the Defendants could support the allegation that the construction costs of RTC were excessive or unreasonable when the Defendants had relied on the reasonableness of the construction costs in the Raffles5000 suit.

Defendants' plea of qualified privilege:

- (1) Whether the Defendants exceeded their duty under Sections 210 and 211 of the Companies Act;
- (2) Whether the Defendants acted for a collateral or improper purpose other than that for which the protection was afforded, thereby losing the protection of qualified privilege;
- (3) Whether the Defendants sought to mislead the recipients of the Explanatory Statement;
- (4) Whether the Defendants published the defamatory words knowing they were false or recklessly not caring whether they were true or false for the dominant improper purpose of:
 - a. deflecting all responsibility for RTC's financial difficulties onto the Plaintiff (and others) when they knew their own conduct was the true cause or alternatively a substantial cause of RTC's inability to meet the damages claims;
 - b. deflecting proper inquiry into their own actions; and/or
 - c. covering up the true reasons for RTC's inability to pay the damages claim.
- (5) Whether the Defendants deliberately omitted to disclose the material fact that it was the Defendants who had approved payment of \$70 million to Lawrence Ang and William Tan to offset loans from RTC to them as part of the consideration in the Defendants' taking over of Lawrence Ang and William Tan's shares in RTC;

- (6) Whether the Defendants deliberately omitted to disclose that the total \$124 million in dividends had been paid out after the Defendants had become directors and/or shareholders of RTC;
- (7) Whether the Defendants deliberately omitted to disclose that they received approximately \$54 million of the dividends paid by RTC;
- (8) Whether the Defendants knew or could have readily ascertained that the Plaintiff did not receive any dividends from RTC;
- (9) Whether by offering to indemnify Lawrence Ang and William Tan against claims provided they supported the Defendants' contemplated legal action against the Plaintiff, the Defendants acted with malice;
- (10) Whether the gratuitous references to the Plaintiff in the Explanatory Statement amounted to malice;
- (11) Whether the commencement of Suit 46 of 2006/J shortly after the scheme of arrangement was approved was evidence of malice;
- (12) Whether the service of the Writ of Summons in Suit 46 of 2006/J on the Plaintiff during the Chinese New Year period amounted to malice;
- (13) Whether the Defendants' silence by their submission of no case to answer was evidence of malice.

11 There was nothing in the notice of dispute from the Defendants' counsel alleging that any of the above legal or factual issues considered by the Plaintiff's counsel were irrelevant or that it was unreasonable for the Plaintiff's counsel to have considered them. Even if I had any doubt on the reasonableness of the Plaintiff's counsel in considering them, I would have resolved it in favour of the Plaintiff and would have awarded costs on the basis that it was not unreasonable for the Plaintiff's counsel to have carefully considered and researched each of those numerous legal issues set out above and to have carefully perused all the documents and thoroughly prepared the case including the evidence and the potential cross-examination of the Defendants and their witnesses in support of the Plaintiff's position on the various legal and factual issues for the interlocutory hearing before Tan Lee Meng J and the trial as the case may be.

12 A perusal of the 82-page grounds of decision by the trial judge would also help to indicate the degree of complexity of the numerous factual and legal issues involved in the case.

13 The Defendants' counsel kept harping on the fact that the Plaintiff's counsel, Mr Alvin Yeo SC, in his opening statement had submitted that, "*This is a straightforward defamation case, and Mr Lim will be the primary person giving evidence on his case ..*" [emphasis added] which was contrary to the Plaintiff's present position that the matter was unusual and complex. The Defendants' counsel emphasised that the Plaintiff himself was the only witness called by the Plaintiff, which suggested that the Plaintiff did not believe that this case was factually or evidentially difficult for him to establish.

14 I would regard the characterisation by Mr Alvin Yeo SC in his opening statement that this was a straightforward defamation case more as a gambit to try to convince the trial judge that he had a strong, open and shut case. The degree of simplicity or complexity involved should, in my judgment,

be objectively assessed based on the primary facts relevant to the taxation as set out broadly in the detailed particulars provided in the Bill of Costs. Debating whether this defamation case is to be characterised as extremely complex, reasonably complex or somewhat complex, or for that matter whether it is at the other extreme end of the scale as being a simple straightforward case does not take us very far. What I find most important for the purpose of taxation is to study the particulars in the Bill of Costs and assess, *inter alia*, how much time and effort needs to be reasonably spent or how much work needs to be reasonably done to attend to those specific matters or issues listed in the particulars therein. Even a simple half page letter takes time and effort to draft and is work done. Perusal of a half page document supplied by the Defendant is still work done and time is needed. Attendance at a Pre-Trial Conference is still time spent. Everything thus adds up when one has to consider the totality of the time and effort spent by counsel in attending to the case. So it is more worthwhile in my view not to debate on the degree of the overall complexity, simplicity or novelty of the matter but to look at the actual particulars provided in the Bill of Costs in order to assess holistically how much time and effort is reasonably needed given the nature of each of the numerous matters set out in the Bill which had to be attended to, some of which may be relatively simple whilst others may be relatively more complex or more novel.

Relevancy of *Raffles Town Club v Lim Eng Hock Peter* and work done by Plaintiff's counsel in relation to it

1 5 *Raffles Town Club Pte Ltd v Lim Eng Hock Peter and others (Tung Yu-Lien Margaret and others, third parties)* [2010] SGHC 163 ("Suit 46") was another High Court action involving Raffles Town Club ("RTC"), the Plaintiff and the Defendants (and some other parties), which eventually concluded after some 87 days of hearing in the Megacourt. RTC in that suit alleged that, in the period from 1997 to 1999, the present Plaintiff and three other persons, while they were the directors and shareholders of RTC, had in breach of their fiduciary duty, conspired to siphon out monies from RTC by way of (a) management fees paid to a company known as Europa under a sham management agreement; (b) other consultancy and directors' fees; and (c) loans. They had also breached their duties owed to RTC by accepting too many members into RTC resulting in the members' action for which RTC had to pay damages. The complicated matters in Suit 46 became of relevance in the defamation action when the Defendants themselves annexed RTC's statement of claim (of 25 pages) in Suit 46 as a schedule to the Defendants' defence in the defamation action as particulars of their plea of justification. I agree with the submission of the Plaintiff's counsel that the Defendants were the ones who had transplanted the discovery in Suit 46 into the defamation action, disclosing over hundreds of thousands of documents. Obviously, the Plaintiff's counsel would have to carefully consider all the documents disclosed to them in the light of the justification defence based on the particulars alleged by RTC in Suit 46 against the Plaintiff here. Clearly, the Plaintiff's counsel would have to prepare rebuttals to the allegations raised by RTC in Suit 46 in order to refute the justification defence. They would have to spend time preparing for cross-examination of the Defendants as the current directors of RTC on RTC's allegations that the Plaintiff together with three other then directors of RTC had, from 1997 to 1999, acted in breach of trust and mismanaged RTC.

16 The degree of importance of Suit 46 to the defamation trial could be seen in the opening remarks of the Defendants' counsel that they "*intend to show by way of reference, inter alia, to matters raised in [suit 46] that the said meaning is indeed justified*" [emphasis added]. In fact, the Defendants' counsel had spent most of the time cross-examining the Plaintiff on matters in Suit 46 and had devoted a substantial part of their closing submissions to the matters in Suit 46.

17 Counsel for the Defendants argued that the Plaintiff had always taken the position that Suit 46 was irrelevant to the defamation action, and that the defence of justification was not the main issue at the trial, thereby suggesting that the Plaintiff's counsel would have spent only a minimal amount of

time considering the matters raised in Suit 46. The Defendants' counsel submitted that the consistent position taken by the Plaintiff during the trial that Suit 46 was irrelevant and that evidence pertaining to justification was unimportant belies any present attempt by the Plaintiff's counsel to argue that extensive preparation was done for cross-examination of the 8 factual witnesses and 1 expert witness that the Defendants had intended to call in relation to the justification defence. I reject the argument. Work must still be done by the Plaintiff's counsel to go through the voluminous documents carefully in relation to Suit 46 to first consider how relevant they were before mounting a submission that the matters and issues raised in Suit 46 were irrelevant. Detailed preparation must also be done for the rebuttal of those matters and issues raised by the Defendants in Suit 46 in the event that the court disagrees and finds to the contrary that those matters and issues raised are indeed relevant. Hence, it would not be unreasonable for the Plaintiff's counsel in this case to fully prepare the case also on the basis that the allegations against the Plaintiff in Suit 46, even if relevant, were untrue, baseless or unsupportable on the evidence and hence, the Defendants' plea of justification based on the matters in Suit 46 would fail.

18 In my judgment, it was also not unreasonable for the Plaintiff's counsel to prepare the case and the cross-examination of the Defendants on the additional basis that it was not the Plaintiff but the Defendants themselves who had mismanaged RTC to the point that RTC was unable to pay the damages ordered of \$3,000 per member to its members and RTC had to resort to a Scheme of Arrangement with its creditors. In the event that the Defendants could establish that the alleged defamatory words in the Explanatory Statement were made on an occasion of qualified privilege, it was also not unreasonable for the Plaintiff to thoroughly prepare the case (including the cross-examination of the Defendants) to prove that the Defendants had in fact acted with malice, *inter alia*, by:

- (a) Exceeding their duty under Sections 210 and 211 of the Companies Act;
- (b) Acting for a collateral or improper purpose other than that for which the protection was afforded, thereby losing the protection of qualified privilege;
- (c) Intentionally misleading the recipients of the Explanatory Statement;
- (d) Publishing the defamatory words knowing they were false or recklessly not caring whether they were true or false for the dominant improper purpose of:
 - i. deflecting all responsibility for RTC's financial difficulties onto the plaintiff (and others) when they knew their own conduct was the true cause or alternatively a substantial cause of RTC's inability to meet the damages claims;
 - ii. deflecting proper inquiry into their own actions;
 - iii. covering up the true reasons for RTC's inability to pay the damages claim;
 - iv. deliberately omitting to disclose that they received approximately \$54 million of the dividends paid by RTC; and
 - v. making gratuitous references to the plaintiff in the Explanatory Statement.
- (e) Serving the Writ of Summons in Suit 46 of 2006/J on the plaintiff during the Chinese New Year period.

19 In my view, it might well be remiss of the Plaintiff's counsel not to thoroughly prepare the case on the alternative basis that the matters in Suit 46 raised by the Defendants were relevant in order to ameliorate the risk to the client, despite an insistence by way of submission by the Plaintiff's counsel that the matters in Suit 46 were irrelevant to the issues before the court. If I had any doubt I would have resolved it in favour of the Plaintiff's counsel that it was reasonable for them to have prepared for extensive cross-examination of the Defendants' witnesses, in particular of the Defendants themselves, on all the matters raised in Suit 46. In fact, I entertained no reasonable doubt that if the Defendants had taken the witness stand, the Plaintiff's counsel would have had a field day cross-examining the Defendants to show that it was due to their own financial mismanagement of RTC during the entire period they were in charge and to their siphoning of moneys from RTC by way of large amounts of dividends to themselves that caused RTC (a) to be in financial difficulties and (b) to enter into a Scheme of Arrangement with its creditors after RTC had lost the members' suit. The Plaintiff's counsel clearly would want to prove that RTC's financial difficulties had nothing at all to do with the Plaintiff in order to demolish the plea of justification. There would be lots of fertile areas for cross-examination of the Defendants which the Plaintiff's counsel would no doubt have spent a lot of time and effort making extensive preparations for.

Urgency of the work

20 I was informed that less than one month before the commencement of the defamation trial, the Defendants' counsel suddenly disclosed over 100 arch files of documents and 40 cartons of working papers which had earlier been disclosed by RTC in Suit 46. This was followed by another late disclosure of a further 30 arch files of documents which had earlier been disclosed by another party in Suit 46, less than two weeks before this defamation trial was to commence. One week before the trial, the Defendants disclosed another 11 itemised documents. At the trial, the Defendants tendered 52 volumes of documents totalling 14,885 pages. Further, affidavits of evidence-in-chief ("AEICs") intended to be AEICs for Suit 46 (including an AEIC from an expert witness) were also filed. All the discovery documents were primarily in support of the Defendants' plea in justification. For the Defendants' justification, they were basically relying on their allegations in Suit No 46 in their entirety, as well as the allegations made by Tan Buck Chye in *Nganthavee Teriya (alias Gan Hui Poo) v Ang Yee Lim Lawrence and others* [2003] 2 SLR(R) 361.

21 The fact that voluminous documents were disclosed by the Defendants at very late stages of the proceedings would have added to the urgency of the work and unnecessarily added to the stress levels experienced by the Plaintiff's counsel in combing through the hundreds of thousands of documents in the course of performing their duty diligently to their client. No responsible counsel would take the risk of cursorily going through the voluminous documents simply because they were delivered to them relatively late in the day. Overtime work and working after office hours would likely have to be resorted to. Counsel would be remiss in their obligations to their client if they did not spend sufficient time to carefully consider all the documents produced by the Defendants in relation to all the issues and in particular the defences in the defamation claim.

Importance to the client

22 Counsel for the Plaintiff submitted that the defamation suit was of importance to their client because the defamatory statements had attacked the competence and integrity of the Plaintiff. The defamatory statements obviously had serious consequences on the Plaintiff's personal and professional reputation as a prominent businessman and investor. This is evidenced in part by the amount of damages awarded to him by the Court of Appeal for the defamation.

23 As the Explanatory Statement of some 391 pages was drafted with the assistance of

professional advisers such as lawyers from Allen & Gledhill LLP and accountants from Ernst & Young, who must have carefully vetted the Explanatory Statement before its publication and had in fact ensured that every positive fact stated therein was in fact accurate and true, counsel for the Plaintiff obviously had to take greater care to study the matter before advising the Plaintiff to launch a defamation suit based on certain passages in the Explanatory Statement. Having regard to the Plaintiff's standing in the business community, it is no light-hearted matter to hold the Defendants responsible for the defamatory statements found in the Explanatory Statement when the Defendants might well have relied heavily on their professional advisers to draft the Explanatory Statement on their behalf. What if the Defendants were to take the stand and testify that they left the entire drafting completely in the hands of their professional advisers as to (a) what facts may be inserted into the Explanatory Statement and (b) how the facts should be presented in order to show that they harboured no malice towards the Plaintiff and that they had no intention to use the Explanatory Statement for any improper motive. The Plaintiff's counsel had to be alive to such an eventuality when advising the Plaintiff on and preparing for the case.

24 To allege that parts of the Explanatory Statement had become defamatory of the Plaintiff merely because the amount of dividends taken by the Defendants themselves totalling \$54 million had not been expressly stated within the main text of the Explanatory Statement was not that straightforward. This omission of fact from the main text formed the principal basis for the Plaintiff's defamation action.

25 Hence, this is not the ordinary defamation case where the positive allegations themselves are clearly defamatory on its face. It is not the relatively simpler case of finding the meaning of the words spoken based on their construction. It was a more complex case of deducing whether it was nevertheless still defamatory and if so, what the sting of the defamation was, based on what was *not* disclosed in the main text but which could still be deduced mathematically or discovered perhaps by a very discerning reader from the total dividends paid out which had been stipulated accurately elsewhere in an appendix to the Explanatory Statement.

26 Additionally, if the defamatory remarks came within the occasion of qualified privilege, then the Plaintiff would have to further prove malice or improper motive on the part of the Defendants, who might well have relied completely on professional advisers to advise them and eventually to draft the whole Explanatory Statement for them.

27 In paragraphs 7 and 8 of the amended defence, it was stated that:

7. Pursuant to RTC's application, the Court ordered a meeting of the Scheme Creditors to be held on 30 September 2005. Under section 211 of the Companies Act and by order of the Court RTC was obliged to send to all Scheme Creditors an explanatory statement explaining the effect of the proposed scheme and giving all information reasonably necessary to enable the recipients to exercise their judgment on the proposed scheme and decide how to vote. Such information had to include full, clear and sufficient information as to the reasons for the company's financial difficulties, so that creditors could be assured that the proposed scheme could and would remedy the company's difficulties.

8 ... In circulating the Explanatory Statement to the Scheme Creditors, the Defendants acted pursuant to RTC's legal obligations as set out above and ***in accordance with professional advice*** .

17.a. ... the Defendants published the Explanatory Statement ***upon professional advice*** .
[emphasis added in bold italics]

28 It bears repeating that with lawyers and accountants from an eminent law firm and accounting firm closely associated with the preparation and drafting of the Explanatory Statement, counsel for the Plaintiff would obviously have to take extra care and effort in ascertaining whether or not they could indeed prove malice or improper motive on the part of the Defendants (and by implication on the part of their advisers too depending on the Defendants' testimonies) because failing in a defamation action would also bring adverse consequences to the Plaintiff. It would not do the Plaintiff's personal reputation much good to launch the defamation suit, bring publicity on himself, attract attention to the alleged defamatory remarks and then fail in the defamation action.

29 The Plaintiff gave evidence that he knew the implication of his defamation suit was very, very serious and he had to be very, very careful due to the involvement of professionals in the drafting of the Explanatory Statement. I am quite sure that he would have made this known to his solicitors, who therefore had to do comprehensive getting up to be fairly confident of the correctness of their advice to him to proceed with the defamation action. If they had to ensure that the legal research done, the fact finding and perusal of all documents were as thorough as possible by spending much more time and effort on account of the importance of the matter to the Plaintiff, I would not consider that to be unreasonable. If I had any doubt whether or not extra time and effort was spent in this regard, I would resolve it in favour of the Plaintiff in view of the indemnity basis of this taxation.

Time and labour expended

30 In the Bill of Costs, the Plaintiff's counsel set out the following hours expended by each of the members of the team of lawyers working on the defamation case and the amounts claimed. Based on the amounts claimed and the hours expended by each member of the team, I have also worked out (a) the hourly rates charged by each counsel of different seniority and (b) the blended hourly rate based on the total amount claimed and the total number of hours spent by the team as a whole:

- (a) Alvin Yeo, SC (20 years) -- 297.3 hours @ \$900 per hour = \$267,570
- (b) Chan Hock Keng (14 years) --- 451.2 hours @ \$750 per hour = \$338,400
- (c) Koh Swee Yen (3 years) --- 485 hours @ \$425 per hour = \$206,125
- (d) Jacelyn Chan up to 29 January 2008 (3 years) --- 135.5 hours @ \$425 per hour = \$57,587.50
- (e) Suegene Ang (1 year) --- 463.3 hours @ \$325 per hour = \$150,572.50
- (f) Reina Chua (0.5 year) --- 477 hours @ \$200 per hour = \$95,400

Total time spent of 2,309.3 hours @ \$483.11 (blended hourly rate) = \$1,115,655 as the total amount claimed. (For 1 lawyer working for 2309.3 hours, it is equivalent to 288 man days at 8 hours a day or 12.5 man months based on 23 working days per month. If it is based on 2 lawyers working concurrently, then 2309.3 hours is equivalent to 2 lawyers working concurrently on the case for 6.25 months approximately. This gives a better overall sense of how long 2309.3 hours is.)

31 I noted that the charge out rates applied by M/s WongPartnership LLP for counsel of different seniorities ranged from \$900 per hour for Alvin Yeo SC to \$200 per hour for Reina Chua. They did not appear to me to be way out of line with the prevailing market rate. As the Defendants' counsel had not made any submissions to me on them, I assumed that they were not contending that those

charge out rates applied were unreasonable or excessively high when compared to the prevailing market rate.

32 I further assumed that various members of the legal team in M/s WongPartnership LLP led by Alvin Yeo SC had honestly and accurately tracked the amount of time actually spent by each of them on various matters concerning the case. The information provided does not appear to be based on estimates (or guesswork) but on a careful live tracking by way of an in-house computer system of the hours spent as the case progressed and as work was done on a daily basis. I further assumed that the total time spent had been correctly computed for each team member and the information provided in the Bill of Costs above is true and correct and has not been artificially inflated so that a bigger claim on costs can be made. If there is any allegation by the Defendants' counsel that the case is otherwise, I would have been prepared to inspect the system used in M/s WongPartnership LLP for recording and tracking the time spent by the Plaintiff's legal team to establish if there is any basis for such an allegation that the information provided of the actual amount of time spent is non-bona fide or inflated. As the time spent by each member of the legal team does not appear to be based on guesstimates but appears to me to be true and accurate, I will accordingly place appropriate weight on the figures presented in the Bill of Costs for the purpose of taxation in so far as they represent the *actual* time spent.

33 The only question is whether that time had been ineffectively or unreasonably spent, whether there was any overlap and whether some of the hours claimed had been for work done for which fixed costs had already been awarded. If time had been inefficiently or ineffectively spent in the sense that a piece of work should not have taken so long when compared with the time that a reasonably skilled and diligent counsel would have taken, then appropriate deductions would have to be made.

34 In the notice of dispute, the Defendants basically argued that the number of hours claimed of 2309.3 hours was excessive given the limited hearing days and the lack of complexity of the matter, and that some of the hours had been spent on minor interlocutory applications for which costs had been fixed or already provided for. They said that there was overlap in the getting up by the solicitor replacing Ms Jacelyn Chan on the file. The costs claimed were submitted to be excessive, unreasonable and out of proportion to current benchmarks.

35 At the hearing of the taxation below, the assistant registrar directed the Defendants' solicitors to state the total number of hours spent by them in relation to the trial proceedings from 20 July 2007 to 24 March 2009 presumably to compare the actual total hours spent by them with that spent by the Plaintiff's legal team and thereby ascertain if the total number of hours claimed by the Plaintiff's counsel was excessive and to consider how much costs to tax off. The Defendants' solicitors revealed that the time spent by them was recorded as 1,149 hours, which is approximately half of the total number of hours of 2309.3 claimed by the Plaintiff's counsel.

36 I must have regard to the fact that the Defendants' solicitors had the benefit of acting for RTC in Suit 46 and therefore, they would already have intimate and detailed knowledge of all matters in Suit 46, such that the time spent getting up on matters concerning Suit 46 relevant to their plea of justification in this action would have been significantly reduced. Yet the Defendants' solicitors had to spend a total of 1,149 hours on the defamation case alone. On the other hand, the Plaintiff's solicitors did *not* act at all for the Plaintiff in Suit 46. Essentially it meant that the Plaintiff's solicitors (unlike the Defendants' solicitors) would have to do fresh getting up for the entire Suit 46 based on the Suit 46 documents sent to them and this involved a lot of work as can be seen from the voluminous documents given to the Plaintiff's solicitors that stemmed from the Defendants' action in making Suit 46 relevant to this defamation action from the perspective of their justification plea. Hence, it was not surprising that the Plaintiff's counsel actually had to spend much more time than the Defendants'

counsel in preparing for the defamation case.

37 I accepted the Defendants' counsel's contention that that some of the hours had been spent on minor interlocutory applications for which costs had been fixed or already provided for and further that there was overlap in the getting up by the solicitor replacing Ms Jacelyn Chan who ceased work on the file on 29 Jan 2008 and had to be replaced. I also accepted that there was some degree of overlap of issues in the interlocutory application before Tan Lee Meng J and the main trial but I had to balance that against the need for refreshing of the getting up by counsel on these overlapping issues since much time had elapsed between the hearing before Tan Lee Meng J and the actual trial. I further noted that in the Plaintiff's reply in the defamation case to the plea of justification which was premised on the statement of claim in Suit 46, the Plaintiff had adopted his response (drafted by another set of solicitors from a different firm) as set out in his defence and third party proceedings against the present Defendants in Suit 46. This however did not mean that the Plaintiff's solicitors could blindly adopt the response drafted by another set of solicitors in Suit 46 without first evaluating and considering all the evidence and the materials to satisfy themselves that it was indeed appropriate to adopt that response without modification in the reply to the defence of justification. It would be remiss of them not to do so. However, I would take into account the fact that some time would have been saved by not having to re-draft an entire fresh response to the plea of justification in the reply. More importantly, there was certificate only for two counsel and placing so many solicitors in a legal team handling the case meant that there was considerable duplication of effort and overlap by more than two solicitors in attending to and getting up on the same matters though I accept that there may be some division of work within the team of six lawyers.

38 To account for such overlaps and a certain amount of double counting for work for which costs had already been fixed, I made a deep cut on the amount of hours claimed and slashed it down by 1200 hours, which is more than halving the amount of hours claimed. Although the amount of hours claimed based on time sheets or computerised tracking, though accurate in themselves, are not conclusive of the total amount of time which the court would actually allow as having been reasonably spent, they are useful as a guide to assist in the process of assessing or quantifying the reasonable and appropriate quantum of costs (which could be evaluated based on the total time the court regards as reasonably spent multiplied by the general prevailing legal market hourly rate for a reasonably skilled counsel).

39 I basically allowed only 1,100 hours which is about 3 months of full time work by two counsel working concurrently on the defamation case (based on 8 hours per day and 23 working days per month). I am of the opinion that 3 months worth of work by two counsel represents a fair and reasonable amount of time and effort needed to be expended on this case having regard to all the relevant circumstances. I then applied a market charge out rate of \$600 per hour thereby giving a total quantum of costs of \$660,000 based on 1,100 hours. I rounded it down to a figure of \$650,000 as the amount of costs to be awarded on an indemnity basis for Section 1 which I considered to be a fair quantum in all the circumstances of the case.

40 What does this mean? In essence, the Bill of Costs claiming a total cost of \$1,115,655 had been taxed off by more than 40% to \$650,000. \$650,000 would have been sufficient to reimburse the Plaintiff for the costs claimed by:

- (a) A team of two reasonably senior counsel comprising Alvin Yeo, SC (20 years) --- 297.3 hours @ \$900 per hour = \$267,570 and Chan Hock Keng (14 years) --- 451.2 hours @ \$750 per hour = \$338,400 with a total cost claimed of \$605,970. On this basis, the Plaintiff was not reimbursed for the costs claimed by the rest of the other four lawyers on the team, namely, Koh Swee Yen, Jacelyn Chan, Suegene Ang and Reina Chua; or

(b) A team of one senior counsel assisted by two more junior lawyers comprising Alvin Yeo, SC (20 years) --- 297.3 hours @\$900 per hour = \$267,570; Koh Swee Yen (3 years) --- 485 hours @ \$425 per hour = \$206,125 and Suegene Ang (1 year) --- 463.3 hours @ \$325 per hour = \$150,572.50 with a total cost claimed of \$624,267.50. The costs claimed by the rest of the other three lawyers on the team, namely, Chan Hock Keng, Jacelyn Chan and Reina Chua would not have been covered.

41 After having slashed the costs claimed by the Plaintiff by more than 40%, I do not think that the amount awarded of \$650,000 for this case remains excessive or unreasonable for the reasons that I have stated. The Plaintiff would be out of pocket for his legal fees by as much as \$465,655 were the solicitor and client bill to be \$1,115,655 as claimed in this party and party Bill of Costs.

Comparison with other cases

42 I will now consider the comparable cases brought up by counsel. At the outset, I must state that one cannot really compare based solely on the absolute quantum of costs awarded as every case tends to be very different in terms of the nature of the factual and legal issues, the number of issues, the number of trial days, the number of witnesses, the number of documents to be considered and the kind of research and getting up that need to be done. Often the information is not detailed enough to make proper comparisons. However, I find that the number of hours claimed by counsel in the Bill of Costs for the comparable cases, assuming that they are all bona fide and accurate, is a good proxy or indicator for the amount of time and effort needed to attend to all the matters in each case, which would have taken into account the difficulty and complexity of the various matters because a more difficult matter or issue would naturally require more getting up and more time and effort to attend to. All of this would somehow be captured within the overall time taken as claimed by counsel. Dividing the actual costs awarded by the court by the number of hours *claimed* would give the hourly rate based on the hours *claimed*. This hourly rate could be used to make a comparison whether the actual costs awarded have been excessive when the hourly rate computed for the "hours *claimed*" is shown to be much higher than other comparable cases, or whether the actual costs awarded have been manifestly inadequate when the hourly rate computed for the "hours *claimed*" is shown to be way below that of other comparable cases. However in most cases, no information is provided in the comparable cases about the actual hours *allowed* by the court as the reasonable number of hours expended. In most cases, the court simply states the final total quantum of costs allowed without stating what was the total number of hours *allowed* that was reasonable. Hence, it is not possible to compute the hourly rate for the "hours *allowed*" for the purpose of comparison.

43 The pitfall is to compare the hourly rate computed for the "hours *allowed*" with the hourly rate computed for the "hours *claimed*". In the present case before me, the hourly rate computed for the "hours *claimed*" is $\$650,000 \div 2309.3 \text{ hours claimed} = \$281 \text{ per hour as claimed}$, whereas the hourly rate for the "hours *allowed*" is $\$650,000 \div 1100 \text{ hours allowed (by the court as reasonable)} = \$590 \text{ per hour as allowed}$. Hence, it is clear that the hourly rate based on the "hours *claimed*" is very different from the hourly rate based on the "hours *allowed*".

44 If a comparison is made of the hourly rate of \$590 for the "hours *allowed*" in this case with the hourly rate for the "hours *claimed*" in the comparable cases, then it is akin to comparing apples with oranges and is entirely flawed. In the absence of information in the comparable cases of the hourly rate for the "hours *allowed*", a comparison based on the hourly rate for the "hours *allowed*" cannot be carried out. The only way is to compare the present case with the comparable cases based on the hourly rate for the "hours *claimed*".

45 As can be seen from the comparable cases brought to my attention (see Annex A to this Grounds of Decision), the hourly rate for the "hours *claimed*" ranged from \$133 to \$500 per hour *claimed*. The present case of \$281 for each hour *claimed* is in fact very reasonable being somewhere mid-way in the range of the hourly rates established from the comparable cases. This rate for each hour *claimed* of \$281 is in fact much below that of the other two defamation cases assessed on a standard basis which were \$345 per hour *claimed* for *Jeyasegaram David (alias David Gerald Jeyasegaram) v Ban Song Long David* [2005] 1 SLR(R) 1 and \$339 per hour *claimed* for *Oei Hong Leong v Ban Song Long David and others* [2005] 1 SLR(R) 277. On no account based on the available information from the comparable cases of the hourly rate for the "hours *claimed*" can it be said that the amount I awarded of \$650,000 is excessive and out of the normal range. At this juncture, it is worth reiterating that making a comparison based merely on an absolute award of costs without dividing by the number of hours whether as *claimed* or *allowed* is not at all helpful and is overly simplistic and flawed. The best way is to compare the hourly rate based on the "hours *allowed*". The second best way is to compare the hourly rate for the "hours *claimed*" (assuming genuine claims by counsel on hours spent) when no information is available on the number of hours *allowed* by the court during the taxation of those comparable cases.

46 In this case, I have given the hours allowed as 1,100 hours so that future comparisons may be made based on the hourly rate for the "hours *allowed*". With time, more benchmarks could be established for comparison purposes based on the hourly rate for the "hours *allowed*".

Annex

	BC 247/2009 <i>Lim Eng Hock Peter v Lin Jian Wei and another</i> [2008] 4 SLR(R) 444	BC 216/2005 <i>Jeyasegaram David (alias David Gerald Jeyasegaram) v Ban Song Long David</i> [2005] 1 SLR(R) 1	BC 215/2005 <i>Oei Hong Leong v Ban Song Long David and others</i> [2005] 1 SLR(R) 277	BC 143/2008 <i>S 218/2007 – Gamma Services Pte Ltd v Otis Elevator Co. (S) Pte Ltd</i>	BC 307/2005 <i>Advantest Corporate Office (Singapore) Pte Ltd and Another v SL Link Co Ltd (also known as Solar Link Co Ltd) and Another</i> [2005] SGHC 75	BC 83/2006 <i>Fornet Enterprise Co Ltd v Howell Universal Pte Ltd and Others</i> [2006] 2 SLR 349	BC 253/2006 <i>Pertamina Energy Trading Ltd v Credit Suisse</i> [2006] SGHC 4	BC 195/2006 <i>Trek Technology (Singapore) Pte Ltd v FE Global Electronics Pte Ltd and others and other suits</i> [2005] 3 SLR(R) 389	BC 296/2004 <i>PT Bumi International Tankers v Man B&W Diesel S E Asia Pte Ltd and another</i> [2004] 3 SLR(R) 69	BC 123/2005 <i>Soh Lup Chee and Others v Seow Boon Cheng and Another</i> [2004] SGHC 8	BC 102/2006 <i>S 314/2007 – Novelty S.E. Pte Ltd v Jewel 1 Pte Ltd & 6 Others</i>
Subject Matter	Defamation	Defamation	Defamation	Contract, Sale of Goods	Contract, Injunctions	Agency, Companies, Contract	Banking, Fraud	Patents and Inventions	Negligence	Companies, Valuation of shares, Fraud	Contract – S of immovable property
Days of Trial	6	4	16	6	6	11	12	18	28	3	1
Witnesses	P: 1 Fact (called) Ds: 3 Fact, 1 Expert (all not called)	5 Fact	6 Fact 1 Expert	5 Fact 5 Expert	5 Fact 2 Expert	5 Fact 1 Expert	14 Fact 2 Expert	9 Fact 3 Expert	Unclear	8 Expert	13 Fact
Senior Counsel	Y	Y	Y	N	N	N	Y	Y	N	Y	N
Basis	Indemnity	Standard	Standard	Standard	Standard	Standard	Indemnity	Standard	Standard	Standard	Standard & Indemnity
Certificate of 2 counsel	Y	N	N	N	N	N	Y	Y	Y	N	N
No. of Hours Claimed	2,309.3 hrs	200 hrs	530 hrs	748.9 hrs	500 hrs	1,500 hrs	1,900 hrs	2,250 hrs	1,200 hrs	1,410 hrs	1,200 hrs
Section 1 Claimed	\$1,115,655	\$100,000	\$320,000	\$240,576.50	\$140,000	\$595,000	\$1,625,000	\$1,500,000	\$600,000	\$554,000	\$380,000
Section 1 Awarded	\$650,000	\$69,000	\$180,000	\$100,000	\$100,000	\$450,000	\$459,000	\$668,000	\$600,000	\$320,000	\$240,000
Hourly Rate for Hours Claimed	\$281 per hour claimed	\$345 per hour claimed	\$339 per hour claimed	\$133 per hour claimed	\$200 per hour claimed	\$300 per hour claimed	\$241 per hour claimed	\$297 per hour claimed	\$500 per hour claimed	\$227 per hour claimed	\$200 per hour claimed
No of Hours allowed at Taxation by the Court	1100 hours allowed	NO INFORMATION AVAILABLE ON NUMBER OF HOURS ALLOWED BY THE COURT									
Hourly Rate for Hours Allowed	\$590 per hour allowed	HOURLY RATE BASED ON HOURS ALLOWED CANNOT BE COMPUTED									

Copyright © Government of Singapore.