

**IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

[2022] SGHC 294

Suit No 415 of 2021

Between

Anpex Pte Ltd

... Plaintiff

And

1. Cheng Yong Sun
2. Lee Chai Yun, Winnie

... Defendants

JUDGMENT

[Civil Procedure – Costs – Principles]

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Anpex Pte Ltd
v
Cheng Yong Sun and another

[2022] SGHC 294

General Division of the High Court — Suit No 415 of 2021
Choo Han Teck J
3, 20 October, 11 November 2022

25 November 2022

Judgment reserved.

Choo Han Teck J:

1 This judgment on costs concerns my decision in *Anpex Pte Ltd v Cheng Yong Sun and another* [2022] SGHC 115 (the “Substantive Judgment”), delivered on 20 May 2022, in which I found for the plaintiff in that the first and second defendants had conspired to misappropriate funds from the plaintiff, and knowingly caused the plaintiff to lose \$578,347.30. The first and second defendants were thus jointly and severally liable to compensate the plaintiff for the sum of \$578,347.30. The trial proceeded only against the second defendant because the first defendant has had judgment entered against him, and had since been made a bankrupt.

2 The plaintiff is seeking costs against the second defendant. Throughout the proceedings, the second defendant was legally aided. Pursuant to s 12(4)(c) of the Legal Aid and Advice Act (Cap 160, 2014 Rev Ed) (the “Act”), where a

litigant is legally aided, he or she is generally not liable for costs to any other party in the proceedings for which he or she is legally aided.

3 However, Mr Farhan Tyebally (“Mr Tyebally”), counsel for the plaintiff, submitted that the second defendant had acted improperly in defending the legal proceedings and in the conduct of these proceedings. Counsel argued that although the second defendant’s defence was that the first defendant had lied to her about the nature of the transactions, she did not call the first defendant to corroborate her version of events. He says that since the plaintiff succeeded in its claim against the first and second defendants for unlawful means of conspiracy, her claim after the event that she was the unwitting accomplice should be dismissed. In support of its position that the second defendant should be liable to pay costs despite being legally aided, Mr Tyebally referred me to ss 14(1)(c) and 14(3) of the Act, which states:

14.-(1) Where it appears to a court that any of the circumstances mentioned in subsection (3) exists in relation to an aided person, the court may order the aided person to pay the costs of all or any of the following persons:

...

(c) the other party.

...

(3) For the purposes of subsection (1), the circumstances are as follows:

(a) the Grant of Aid issued to the aided person has been obtained by fraud or misrepresentation;

(b) the aided person acted improperly in bringing or defending any legal proceedings, or in the conduct of those proceedings.

4 In my view, that the second defendant’s defence failed, is not in itself, evidence of misconduct. There must be evidence, of which there is not, that the defendant conducted her defence in a way that a reasonable defendant would

not. In this case, all she said was that she did not know that the plaintiff had misappropriated the plaintiff's money, and also that the largesse she enjoyed was paid from her own money. I disbelieved her for the reasons set out in the Substantive Judgment. If a legally aided person is to be found in breach of s 14(3)(b) merely because her defence failed, then every plaintiff who succeeds against a legally aided defendant would be entitled to costs. That cannot be so. I thus find that the plaintiff has not discharged its burden in proving that s 14(3)(b) of the Act is satisfied.

5 There was however, also a possibility that s 14(3)(a) of the Act was satisfied. I had previously found in the Substantive Judgment that the first and second defendant misappropriated a total of \$578,347.30 from the plaintiff. The second defendant likely had a substantial sum of monies in her bank account, and there was evidence that from August to October 2020, she made several large purchases of jewellery, cosmetic products and beauty services. In the circumstances, there was thus a possibility that she had also obtained legal aid by fraud or misrepresentation, satisfying s 14(3)(a) of the Act. I asked for evidence of how legal aid was applied and approved.

6 Ms Suriakumari Sidambaram ("Ms Sidambaram"), an Assistant Director of Legal Aid from the Legal Aid Bureau ("LAB"), helpfully filed an affidavit explaining the criteria for means-testing and the second defendant's legal aid application. In particular, Ms Sidambaram confirmed that at the time the second defendant applied for legal aid in May 2021, the second defendant met the criteria as her savings and non-CPF investments were \$10,000 or lower, and that she did not own any other property besides her HDB flat. Ms Sidambaram also stated that the second defendant was not asked to furnish her bank statements prior to April 2021, as a legal aid applicant's wealth is determined at the point of application for legal aid. There was also no reason to

suspect that she earned a salary above what was declared in her CPF statements. LAB also did not have any information that the second defendant was concealing assets.

7 From the evidence, I am satisfied that the second defendant was technically entitled to legal aid at the material time. While the second defendant might have had more monies in her bank account at an earlier time, she likely had spent it all by the time that she made her application for legal aid in May 2021, as evidenced by her large purchases from August to October 2020. This did not exclude her from legal aid, as only her bank statements prior to the month of her application were required to be furnished for her application for legal aid.

8 In the circumstances, there is no reason for me to make an order that the second defendant, who is legally aided, should pay costs to the plaintiff. The plaintiff's application for costs is dismissed.

- Sgd -
Choo Han Teck
Judge of the High Court

Farhan Tyebally (Gomez & Vasu LLC) for the plaintiff;
First defendant absent and unrepresented;
Ng Boon Gan (VanillaLaw LLC) for the second defendant;
Sheela Kumari Devi and Suriakumari Sidambaram (Legal Aid
Bureau) for the third party (watching brief).