IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2020] SGHC 53

Originating Summons No 827 of 2019 and Summons No 450 of 2020

Between

(1) Goh Kok Liang

… *Plaintiff*

And

(1) GYP Properties Limited
(2) Singapore River Explorer Pte Ltd

… *Defendants*

GROUNDS OF DECISION

[Civil Procedure] — [Offer to settle]

Goh Kok Liang
v
GYP Properties Ltd and another

[2020] SGHC 53

High Court — Originating Summons No 827 of 2019 and Summons No 450 of 2020
Chua Lee Ming J
20 January, 2 March 2020

17 March 2020

Chua Lee Ming J:

Introduction

1 The plaintiff in Originating Summons No 827 of 2019 ("OS827"), Mr Goh Kok Liang ("Goh"), was a defendant in a previous action in Suit 1164 of 2017 ("S1164"), which was brought by the defendants in OS827, GYP Properties Limited (formerly known as Global Yellow Pages Limited) ("GYP") and Singapore River Explorer Pte Ltd ("SRE").

2 In S1164, GYP and SRE accepted an offer to settle ("OTS") made by Goh. Consequently, S1164 was discontinued.

3 In OS827, Goh's case was that his OTS did not settle his claim for costs in S1164 and that he was entitled to an order that GYP and SRE pay his costs

in respect of S1164 on an indemnity basis. I was not persuaded that Goh was still entitled to an order for his costs in S1164 and accordingly, I dismissed his application.

Background

4 On 6 February 2012, GYP and Leisure Empire Pte Ltd ("LE") entered into a joint venture agreement ("JVA") for the purposes of submitting a bid to the Urban Redevelopment Authority ("URA") for a licence to provide water transportation services ("river taxis") along the Singapore River. The URA awarded the licence to them. On 31 December 2012, GYP, LE and the URA entered into a Licence Agreement. LE was wholly owned by Goh.

5 On 19 December 2012, GYP and LE incorporated SRE as the joint venture company to operate the river taxis. GYP and LE each held 50% of the shares in SRE, and Goh was appointed as a director of SRE. SRE and LE entered into a service agreement ("Service Agreement") for LE to provide executive management, finance, human resource and administrative services to SRE.

6 On 15 June 2015, SRE terminated the Service Agreement based on alleged breaches of the Service Agreement by LE, Goh and/or LE's agents. On 31 December 2015, SRE ceased to operate the river taxis.

7 On 11 December 2017, GYP and SRE commenced S1164 against Goh and LE, alleging various breaches of the Service Agreement, the JVA and Goh's duties as a director of SRE. On 13 February 2018, GYP and SRE obtained judgment in default of defence against LE.

8 The claims against Goh were tried before me in February 2019. On 1 March 2019, I heard closing submissions and adjourned the case to 8 March

2019 for me to give my decision. By way of a letter dated 5 March 2019, the solicitors for GYP and SRE informed me that they had accepted Goh's OTS.

9 Goh's OTS was dated 30 May 2018. On 4 March 2019, GYP and SRE served an Acceptance of the OTS on Goh. Goh disputed the validity of the Acceptance because it left out one of the terms of the OTS. On 5 March 2019, at 1.20pm, Goh served a Notice of Withdrawal of the OTS on GYP and SRE. At 4.20pm on the same day, GYP and SRE served a second Acceptance of the OTS on Goh.

10 I heard the parties on 8 March 2019. Goh argued that the second Acceptance was invalid because he had already withdrawn his OTS before it was accepted. Goh conceded that the second Acceptance would be valid if his Notice of Withdrawal of the OTS was not valid. I decided that Goh's withdrawal of his OTS was invalid because he had not given at least one day's prior notice of his intention to withdraw the offer, as required under O 22A r 3(2) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("ROC"). Accordingly, I declared that GYP and SRE had validly accepted the OTS and that S1164 was thereby fully and finally settled between GYP/ SRE and Goh on the terms contained in the OTS.

Goh's application in OS827

11 In OS827, Goh sought declarations that:

(a) he was entitled to pursue a claim for costs (and interest thereon) in respect of S1164 against GYP and SRE;

(b) GYP and SRE were to pay his costs in respect of S1164 on an indemnity basis, with such costs to be taxed; and

(c) GYP and SRE were to pay interest on such costs.

12 As stated earlier, GYP and SRE had accepted the OTS. The key question was whether, on its true interpretation, the OTS permitted Goh to still pursue a claim for costs in respect of S1164. Goh's OTS stated as follows:

> The 1st Defendant offers to settle this proceeding on the following terms (the "Terms") in full and final settlement of all claims against him in [S1164]:
>
> > 1. Without any admission of liability by the 1st Defendant, the 1st Defendant shall pay the Plaintiffs the sum of S$50,000.00 within fourteen (14) days from the date of acceptance of the Terms.

13 GYP and SRE opposed Goh's application. They argued that Goh's OTS was a full and final settlement of all claims in S1164, including costs.

14 Goh submitted that the OTS, as worded, only settled GYP's and SRE's claims *against him* in S1164 and that *his* claim for costs against GYP and SRE was not covered by the OTS. Goh argued that he therefore remained entitled to claim his costs in S1164.

15 I disagreed with Goh's interpretation of the scope of the OTS. In my view, the clear meaning of the OTS was that it was an offer to settle S1164, including the issue of costs.

16 The phrase "full and final settlement of all claims against [Goh]" had to be read in the context of the OTS as a whole. The description of the claims as claims against Goh was purely factual, in that Goh was a defendant in S1164 and he had no counterclaim. What was more important was the description of the offer that was being made. The OTS expressly and unambiguously stated that it was an offer by Goh to "settle this proceeding". The meaning was plain:

the OTS was intended to settle S1164. In my view, Goh's interpretation was inconsistent with this plain meaning. Continued litigation on the issue of costs arising from S1164 itself was hardly consonant with a settlement of S1164.

17 Furthermore, O 22A r 1 ROC provides that an OTS shall be in Form 33. Form 33 states:

> The (identify party) offers to settle this proceeding (*or the following claims in this proceeding*) on the following terms…
>
> [emphasis added]

Form 33 gives the offeror the choice of making an offer to either "settle [the] proceeding" or to settle only specific claims in the proceeding. By framing his OTS as an offer to "settle this proceeding", Goh's intention was clear. His OTS was an offer to settle the whole of S1164.

18 In his submissions, Goh referred to a separate claim by GYP against him in District Court Suit No 542 of 2016 ("DC542"). In DC542, Goh had served an OTS which was stated to be in full and final settlement of "all claims" in DC542. Goh argued that the difference in the wording of the offers showed that the OTS in S1164 did not include his claim for costs. I rejected his argument. The OTS in S1164 was complete on its face and its meaning was plain. There was no reason to bring in the OTS in DC542 to aid the interpretation of the OTS in S1164. In any event, having regard to the OTS in DC542 would not have changed my conclusion that the OTS in S1164 was an offer to settle S1164, including any claims for costs.

19 For the above reasons, I concluded that Goh's OTS settled his claim for costs in relation to S1164 and dismissed his application in OS827. I ordered Goh to pay GYP's and SRE's costs of the application fixed at $3,621.13

inclusive of disbursements. I would add that having heard the trial and the closing submissions in S1164, even if Goh's costs had not been settled by his OTS, I would not have made the order for costs that he sought in any event.

20 Having disposed of Goh's application, it was not necessary for me to deal with the parties' submissions in respect of O 22A r 9 ROC. However, I wish to make some observations in this respect.

21 Goh submitted that, on the basis that his claim for costs was *not* settled by his OTS, GYP and SRE should be ordered to pay costs on an *indemnity* basis. In this regard, he noted the starting position under O 22A r 9(2)(*b*) ROC but argued that the court has an overriding discretion as to costs under O 22A r 9(5) ROC. On the other hand, GYP and SRE argued that Goh could not rely on O 22A r 9 ROC in any event. They contended that Goh's OTS was not a valid OTS under O 22A because, among other things:

(a) the OTS was expressly made without any admission of liability; and

(b) the OTS did not comply with O 22A r 10 ROC in that it was not made on behalf of LE as well.

22 Given my finding that Goh's OTS was a full and final settlement of S1164, including all claims in relation to costs, O 22A rr 9(2) and 9(5) ROC were no longer relevant. O 22A r 9(5) ROC subjects the costs allocation rules in O 22A rr 9(1), 9(2) and 9(3) ROC to the overriding discretion of the court. O 22A rr 9(1) and 9(3) deal with situations in which an OTS is not accepted, while O 22A r 9(2) ROC is only applicable where an accepted offer *does not* provide for costs. None of these situations applies to the present case. Where an OTS

settles costs and has been accepted, O 22A r 9(5) ROC does not apply.

23 In any event, it was no longer open to GYP and SRE to challenge the validity of the OTS. In S1164, they had pre-empted a decision by accepting the OTS at the eleventh hour. GYP and SRE had clearly proceeded on the basis that the OTS was valid and capable of acceptance under O 22A. On his part, Goh had not argued that his OTS was invalid; his case was simply that he had validly withdrawn his OTS. In the circumstances, it would have been unjust to allow GYP and SRE to now argue that the OTS was invalid for non-compliance with O 22A. Before me, counsel for GYP and SRE accepted that it was no longer open to GYP and SRE to now argue that the OTS was invalid.

24 I also did not agree with GYP's and SRE's submission that an OTS under O 22A cannot be made without an admission of liability. GYP and SRE referred me to *Colliers International (Singapore) Pte Ltd v Senkee Logistics Pte Ltd* [2007] 2 SLR(R) 230 ("*Colliers*") in which the High Court stated (at [119]) as follows:

> The defendant's offer to settle quite simply did not comply with O 22A. An offer to settle cannot be qualified as a non-admission of liability nor can it be an ex gratia offer. It has to be made to settle the proceedings in a suit or a claim or counterclaim as the case may be. …

25 No explanation was given in *Colliers* for the statement set out above. Counsel for GYP and SRE informed me that he did not find any other authority on this point. In my respectful view, there is no reason why an OTS cannot be made without an admission of liability. While O 22A r 1 ROC states that an OTS shall be in Form 33, there is nothing in Form 33 that prohibits such a qualification. Neither does such a qualification make the OTS any less of an offer to settle the proceedings.

26 It also bears highlighting that O 22A was introduced to "spur the parties to bring litigation to an expeditious end without judgment and thus to save costs and judicial time" (see *Singapore Airlines Ltd v Tan Shwu Leng* [2001] 3 SLR(R) 439 at [37]). Allowing an OTS to be made on a "without admission of liability" basis would not be inconsistent with the objective of O 22A. Indeed, on the contrary, it might be argued that doing so could be conducive to speedy out-of-court settlements.

27 As for GYP's and SRE's submission that the OTS was invalid because it had not been made on behalf of LE and therefore did not comply with O 22A r 10 ROC, the simple answer was that default judgment had already been entered against LE by the time Goh served his OTS on 30 May 2018. There was no basis to include LE in the OTS since the claims against LE had already been disposed of. In the circumstances, O 22A r 10(*b*) ROC was simply irrelevant.

Goh's application for leave to appeal

28 By way of Summons No 450 of 2020, Goh applied for leave to appeal against my dismissal of OS827. It is well-established that leave to appeal may be granted where there is:

(a) a *prima facie* case of error;

(b) a question of general principle decided for the first time; or

(c) a question of importance upon which further argument and a decision of a higher tribunal would be to the public advantage.

See *Lee Kuan Yew v Tang Liang Hong and another* [1997] 2 SLR(R) 862 at [16].

29 In oral submissions before me, Goh submitted that:

(a) There was a *prima facie* case of error in the interpretation of the OTS.

(b) There was a question of general principle in respect of which a decision of the Court of Appeal would be useful.

***Prima facie* case of error**

30 Goh first submitted that I had not taken into account the words "against him" in the OTS when interpreting the terms of the OTS. This was clearly incorrect and he subsequently accepted that I had considered those words when interpreting the terms of the OTS.

31 Goh next submitted that I had not considered the specific context of the OTS, *ie*, that it was inconceivable that he would have wanted to incur potentially irrecoverable legal fees. Goh explained that had GYP and SRE chosen to accept the OTS only at the very end of the trial in S1164, his legal fees would have far exceeded the amount offered in the OTS. Goh argued that his interpretation (that the OTS excluded his costs) was consistent with this specific context. This argument was not made during the hearing of OS827. Be that as it may, in my view, it was without merit. The specific context relied upon by Goh was as consistent with an interpretation that the OTS settled his costs in S1164, as it was with an interpretation that it excluded his costs. The fact that the OTS included Goh's costs would not inexorably lead to Goh being exposed to irrecoverable legal fees. It remained open to Goh to withdraw his OTS whenever he was of the view that it no longer made sense to maintain the offer because of the costs he had incurred.

32 Goh also submitted that I had not considered the general context of the OTS, *ie*, that it would generally be the objective of all OTSes to preserve recourse to costs should an obstinate claimant proceed with litigation and refuse to accept a reasonable OTS. Goh argued that this general context would encourage early settlement, which was the very function of an OTS. This, too, was not argued during the hearing of OS827. In any event, underlying this submission was the litigant who chooses to proceed with litigation instead of accepting a fair OTS. In my view, this argument was no different from Goh's earlier submission with respect to the specific context of the OTS. This argument was symmetric – it could also be argued that an interpretation that the OTS included Goh's costs in S1164 would encourage GYP and SRE to accept the OTS, thereby settling S1164 in full and promoting the very objective of the O 22A regime. Therefore, the general context of the OTS (to promote responsible litigation) did not inevitably lead to the conclusion that Goh's interpretation of the OTS was correct.

33 Goh next referred to the fact that the letter enclosing the OTS was marked as "without prejudice save as to costs". Goh argued that this caveat showed that the OTS excluded his costs in S1164. This argument was similarly not raised during the hearing of OS827. In my view, this argument was also without merit. The words "without prejudice save as to costs" are used to protect the letter from disclosure to the court except for the limited purpose of arguments on costs – for example, if Goh's OTS had not been accepted and GYP and SRE obtained a judgment that was not more favourable than the terms of his OTS. These words did not mean that the OTS enclosed in the letter therefore excluded Goh's costs in S1164. Further, under O 22A r 4 ROC, all OTSes are deemed to be offers of compromise made without prejudice save as

to costs. Clearly, O 22A r 4 ROC does not mean that all OTSes therefore exclude the offeror's costs.

34 Finally, Goh referred to his OTS in DC542. I have already dealt with this at [18] above.

35 In my view, Goh had not shown any *prima facie* error of law. It was clear to me that what Goh really disagreed with was my interpretation of his OTS. This was in itself no reason for leave to appeal to be granted.

Question of general principle

36 Goh submitted that the correct approach to be adopted in interpreting the terms of an OTS was a question on which a decision of the Court of Appeal would be useful. To be granted leave to appeal based on this limb, Goh had to show that:

(a) there were different approaches that could be used in interpreting the terms of an OTS; and

(b) one of these approaches would have yielded the interpretation that was put forth by Goh.

37 Goh submitted that the correct approach was to apply principles of contractual interpretation while bearing in mind the context of the O 22A scheme. When queried as to possible alternative approaches, Goh could only come up with the vague suggestion of ignoring contractual principles and interpreting the OTS based on the broad policy aims of O 22A.

38 I agreed with Goh that in interpreting the terms of an OTS, the court should apply principles of contractual interpretation and that in so doing, the scheme under O 22A was a relevant context. However, in my view, the alternative approach suggested by Goh was too vague to be meaningful.

39 Goh also referred me to *Ong & Ong Pte Ltd v Fairview Developments Pte Ltd* [2015] 2 SLR 470 ("*Ong & Ong*"), in which the Court of Appeal said (at [53]):

> It is clear that the authorities from these other jurisdictions also support the view that an offer to settle under a regime like O 22A must be interpreted according to its own terms and not according to contractual principles. Having said that, it does not follow that contractual principles have no place at all under O 22A. This will be considered under the third issue.

40 In making the statement that "a regime like O 22A must be interpreted according to its own terms and not according to contractual principles", the Court of Appeal was dealing with the question of whether contractual principles governing offer and acceptance applied to an OTS under O 22A. The Court of Appeal held (at [47]) that these contractual principles are not to be applied to the O 22A regime, noting that O 22A rr 3 and 6(2) ROC expressly modified the contractual rules on the withdrawal of an offer and the effect of a rejection of an offer respectively. The second statement in [53] of *Ong & Ong* recognised that contractual principles had a place in relation to O 22A r 8(1) ROC (see *Ong & Ong* at [56], [63] and [69]). *Ong & Ong* did not concern the interpretation of the terms of an OTS. In any event, *Ong & Ong* did not assist Goh in framing the question of general principle that required a decision from the Court of Appeal.

41 Goh further submitted that it would be useful to have a Court of Appeal decision on whether an offer which fails to comply with the requirements of O

22A may nevertheless be regarded as a *Calderbank* letter that may influence the court's discretion to award costs. It suffices to say that this was not a live issue as both parties accepted during the hearing of OS827 that Goh's OTS complied with the requirements of O 22A. This question was therefore academic and did not give rise to any reason to grant leave to appeal .

42 In the circumstances, there was in reality no question of general principle on which a decision of the Court of Appeal would be useful.

43 I therefore dismissed Goh's application for leave to appeal. I ordered Goh to pay GYP's and SRE's costs of the application fixed at $2,800 all-in.

Chua Lee Ming
Judge

Ng Ka Luon Eddee, Loh Weijie, Leonard, Toh Zhen Teck, Jeremy and Darren Ng Zhen Qiang (Tan Kok Quan Partnership) for the plaintiff;
Ng Lip Chih (instructed), Jennifer Sia Pei Ru and Rezvana Fairouse d/o Mazhardeen (NLC Law Asia LLC) for the first and second defendants.