Jet Holding Ltd and Others v Cooper Cameron (Singapore) Pte Ltd and Another [2006] SGHC 20

Case Number	: Suit 1523/2002
Decision Date	: 02 February 2006
Tribunal/Court	: High Court
Coram	: Belinda Ang Saw Ean J
Counsel Name(s)	: Randhir Ram Chandra and Nicole Tan (Haridass Ho and Partners) for the plaintiffs; Prem Gurbani and Bernard Yee (Gurbani and Co) for the first defendant; Tan Teng Muan and Wong Khai Leng (Mallal and Namazie) for the second defendant
Parties	: Jet Holding Ltd; Jet Shipping Ltd; Jet Drilling (S) Pte Ltd; Maurel Et Prom — Cooper Cameron (Singapore) Pte Ltd; Stork Technology Services Asia Pte Ltd (formerly known as Eastburn Stork Pte Ltd)

2 February 2006

Belinda Ang Saw Ean J:

1 This is a supplemental judgment on costs. The main judgment is reported at [2005] 4 SLR 417.

2 The parties appeared before me on 26 September 2005 to submit on the outstanding question of costs. After hearing arguments, the first and second plaintiffs were awarded 30% of their costs. For avoidance of doubt, I confirmed, at the request of counsel for the defendants, that the disbursements of the first and second plaintiffs were also to be capped at 30%. Notably, the costs as awarded reflected the outcome, both overall and on the different issues on which the court heard evidence and arguments on all sides, as well as what was fair and reasonable in the whole of the circumstances. I also made a separate costs order against the third and fourth plaintiffs.

3 The principles governing the award of costs which were elucidated in *Re Elgindata (No 2)* [1992] 1 WLR 1207 have been adopted in Singapore in *Tullio v Maoro* [1994] 2 SLR 489 and more recently in *MCST No 473 v De Beers Jewellery Pte Ltd* [2002] 2 SLR 1 at [57]. The principles are these:

(a) Costs are in the discretion of the court.

(b) Costs should follow the event, except when it appears to the court that some other order should be made.

(c) The general rule does not cease to apply simply because the successful party raises issues or makes allegations on which he fails, but where that has caused a significant increase in the length or cost of the proceedings he may be deprived of the whole or part of his costs.

(d) Where the successful party raises issues or makes allegations improperly or unreasonably, the court may not only deprive him of his costs but may also order him to pay the whole or a part of the unsuccessful party's costs.

4 Turning to O 59 of the Rules of Court (Cap 322, R 5, 2004 Rev Ed), I start with O 59 r 2(2) which provides that costs are in the discretion of the court and the court has the power to determine by whom and to what extent the costs are to be paid. Order 59 r 3(2) states:

> If the Court in the exercise of its discretion sees fit to make any order as to the costs of or incidental to any proceedings, the Court shall, subject to this Order, order the costs to follow the event, except when it appears to the Court that in the circumstances of the case some other order should be made as to the whole or any part of the costs.

Order 59 r 5 allows the court to take into consideration the parties' conduct before and during the proceedings in assessing costs. There is also O 59 r 6A which is aimed at the party who has failed to establish any claim or issue and has thereby unnecessarily or unreasonably added to the costs or complexity of the proceedings. I should mention that the Court of Appeal in *Lim Lie Hoa v Ong Jane Rebecca (No 2)* [2005] 3 SLR 116 clarified that the factors listed in O 59 r 6A are not exhaustive. To summarise, the rules make clear the "costs to follow the event" principle, and the rules at the same time indicate the wide range of considerations which will result in the court making different orders as to costs.

5 Counsel for the first defendant argued that costs should be ordered in the first defendant's favour. The first and second plaintiffs could not be regarded as the successful party in that the first and second plaintiffs were awarded nominal damages for all their claims except for the Blow Out Preventor ("BOP"), which would have ended up in the same way as the other claims, but for the evidence of the first defendant. Counsel for the second defendant also contended that the first and second plaintiffs could not effectively be regarded as the successful party.

6 In *Anglo-Cyprian Trade Agencies, Ltd v Paphos Wine Industries, Ltd* [1951] 1 All ER 873 at 874, Devlin J made these observations on the award of costs to a plaintiff who recovered only nominal damages:

> No doubt, the ordinary rule is that, where a plaintiff has been successful, he ought not to be deprived of his costs, or, at any rate, made to pay the costs of the other side, unless he has been guilty of some sort of misconduct. In applying that rule, however, it is necessary to decide whether the plaintiff really has been successful, and I do not think that a plaintiff who recovers nominal damages ought necessarily to be regarded in the ordinary sense of the word as a "successful" plaintiff. In certain cases he may be, *e.g.*, where part of the object of the action is to establish a legal right, wholly irrespective of whether any substantial remedy is obtained. To that extent a plaintiff who recovers nominal damages may properly be regarded as a successful plaintiff, but it is necessary to examine the facts of each particular case.

7 Ultimately, the facts of each case are important and it is not invariable that a plaintiff who recovers only nominal damages will not get his costs. At any rate, the judgment obtained was for more than nominal damages and I had no difficulty treating the first and second plaintiffs as the successful party. However, I was of the view that in the circumstances of the case, an application of the "costs to follow the event" principle would be unfair and unreasonable. My reasons are as follows.

8 The fact that nominal damages of S$10 and US$1m were awarded after a single trial on liability and quantum was a reason for refusing the first and second plaintiffs their full costs. The final outcome of the trial was a reflection of the fact that the first and second plaintiffs had succeeded as to only a relatively small part of the US$21m claimed by them. The trial took place over a period of 20 days. The plaintiffs closed their case after 13 days of hearing (equivalent to 65% of the trial time). Fortunately for them, the case they sought to make in contract and/or negligence at trial was made and sustained after evidence in relation to liability emerged from cross-examination in the course of the third party proceedings. Similarly, the first and second plaintiffs called no admissible evidence on damages. The first and second plaintiffs should have, but did not appreciate, that they would not be able to successfully prove damages. The evidential difficulty of proving the quantum of their losses

was present from the outset and continued throughout as the long trial proceeded. To prove damages, the documents, which the first and second plaintiffs relied upon, were contained in six lever arch files. The defendants still had to evaluate the nature and quality of the evidence to make their point on admissibility of the evidence. Of the 11 heads of damages, the first and second plaintiffs were awarded nominal damages for all these claims except for the BOP. Even so, in their claim for the replacement costs of the BOP, the first and second plaintiffs were allowed a sum of US$1m (as compared to their claim figure of US$6.5m) but that was based on evidence led by the first defendant. As counsel for the first defendant observed, the first and second plaintiffs, on their own evidence, failed to establish the quantum of their losses. In the end, the first and second plaintiffs only succeeded in "establishing" less than 5% of their claims as submitted. That result, coupled with their conduct of the litigation involving rejection of much of the evidence put forward for one reason or another, constituted sufficient grounds to deny the first and second plaintiffs their full costs. An added appreciation of the latter point can be gathered from the comments below.

9 There were other additional factors that further impinged on the question of costs. In the main judgment, attention was drawn to the inordinate amount of paperwork placed before the court and the indiscriminate manner in which the first and second plaintiffs advanced their case. The first and second plaintiffs exchanged affidavits of evidence-in-chief of ten witnesses of fact, but they only called six to the stand. Their documents were contained in 60 lever arch files. As I stated in the main judgment, only a few documents were actually referred to. Seemingly, the approach adopted was to "throw in everything available" with little or no regard for saving costs and time. That approach had also created and brought about the magnitude of the litigation that was pursued before me. Courts have been known to deprive a successful party of full costs because it was responsible for some "wasted costs". The court's approach as to costs is intended to influence the manner in which litigants advance or defend their case. Litigants have to be focused and selective in the points taken, for it is decidedly foolhardy to assume that they will be able to recover full costs as long as they win.

10 In *Chan Choy Ling v Chua Che Teck* [1995] 3 SLR 667, the Court of Appeal at 675, [23] highlighted the indiscriminate compilation of voluminous bundles of documents (which contained more irrelevant than relevant documents) that were placed before the appellate court. The appellant was deprived of costs for or in connection with the preparation of those voluminous documents. See also *L & M Airconditioning & Refrigeration (Pte) Ltd v SA Shee & Co (Pte) Ltd* [1993] 3 SLR 482 at 488, [19] and [20].

11 In the present case, the first and second plaintiffs sought to justify the overwhelming quantity of documents on the basis that they were required to show that they had been compiling and storing information on the operations and activities of the drill ship and its departments and that management had acted on those documents. It was pointed out at [20] of the main judgment that from the very outset, it was clear that the failure of the slip joint had nothing to do with the drill ship's safety procedure, practices or reporting. The defendants were not asserting that a failure in safety or operational procedures on board the *Energy Searcher* had caused the failure of the slip joint. It was common ground that the incident was due to equipment failure which was a result of over-machining. The nub of the dispute was concerned with identifying the fractured slip joint and finding the party responsible for the defective workmanship. Thus, in the circumstances of this case, a departure from the application of the "costs to follow the event" principle was necessary to penalise the first and second plaintiffs who had not been focused and selective as to the points they took and had unnecessarily or unreasonably overburdened the proceedings and added to the costs thereof.

12 On 19 October 2005, the first defendant gave a "without prejudice" offer to settle the claim. The first defendant argued that the first and second plaintiffs had only recovered slightly more than

the offer stated in its Calderbank letter. I did not agree with the first defendant that the court should take into account its without prejudice offer in determining costs. The offer did not protect the first defendant's costs position for it was not, in my view, a Calderbank letter. A Calderbank letter is only available to a party who could not have protected his position by payment into court because of the nature of the claim (see *Singapore Court Practice 2005* (LexisNexis, 2005) at para 22A/1/1). This was not the case with the first defendant. There was no apparent reason why the first defendant could not have made payment into court. As an aside, I noticed that the without prejudice offer was for a global figure of US$1m inclusive of interest and costs. It was inaccurate to submit that the judgment sum was slightly more than the without prejudice offer.

13 As between the first and second defendants, I awarded the first defendant its costs of the third party proceedings. I also declared that the second defendant should indemnify the first defendant to the extent of 50% of the costs including disbursements payable to the first and second plaintiffs.