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Lim Koon Park
v
Yap Jin Meng Bryan and others

[2016] SGHC 29

High Court — Suit No 184 of 2010
Lai Siu Chiu SJ
17, 25 November 2015

Damages — Assessment

3 March 2016

Judgment reserved.

Lai Siu Chiu SJ:

1 This judgment is supplemental to this court's judgment in *Lim Koon Park v Yap Jin Meng Bryan and others* [2015] SGHC 284 dated 29 October 2015 ("the main judgment") which related to the inquiry before this court to determine the plaintiff's 25% share of the net profit made by Riverwealth from the sale of its two properties at River Valley Road ("the Properties"). In order to determine the plaintiff's profit entitlement, this court had to ascertain the allowable deductions from the gross profits made by Riverwealth, which exercise was the subject of the main judgment. Pursuant to [91] of the main judgment, parties appeared before this court again to deal with two outstanding issues not resolved in the main judgment *viz*:

- (a) Costs for the 7 days' assessment; and

(b) Interest payable to the first defendant on his loan of \$22,580,621.99 (“the principal sum”) to Riverwealth as allowed by the Court of Appeal in *Lim Koon Park and another v Yap Jin Meng Bryan and another* [2013] 4 SLR 150 (“the CA judgment”)

At the inquiry, the first defendant presented a figure of \$3,091,130.28 as his claim for interest (see [10] of the main judgment).

2 In the two days’ hearing before this court, the parties were unable to agree on the method of computing the first defendant’s claim for interest, let alone the quantum, despite the plaintiff’s production of exhibits P5 and P6 and the first defendant’s new charts in exhibits D3 to D6, on the various permutations of interest calculations. The court had rejected the first defendant’s initial calculations in exhibit D2 as it was shown to be flawed – interest therein had (but should not have) been calculated on the principal sum on a straight line basis because the principal sum was not drawn down all at once but periodically as and when required.

3 Although the first defendant rectified his error in D2, his subsequent computations of interest in exhibits D3 to D6 were also not acceptable to the plaintiff as there was disagreement on how the GST refund of \$3,395,902.70 (“the GST refund”) to Riverwealth made on 1 September 2008 should be treated – as repayment of interest or of capital on the principal sum or both in equal proportions.

4 In the result, the court decided to and did order the parties to file written submissions to show the quantum of (compound) interest chargeable on the principal sum at 7.5% per annum calculated on monthly rests. Parties were told that once the ceiling of the principal sum was reached, no interest would accrue on any amount in excess of the principal sum (“the excess”). However,

whenever the principal sum was reduced to a figure below the excess, whether it was due to the GST refund or partial repayments of the principal sum, the further advances made by the first defendant could be added onto the principal and interest continues to accrue until the next time the excess is again reached when it will stop. This exercise would continue until the principal sum was fully repaid on or about 28 December 2009.

The plaintiff's submissions

5 The plaintiff presented two alternative computations for the court's consideration, as reflected in Tables A and B attached to this judgment. In Table A, the plaintiff showed that the principal sum was reached for the first time on 28 April 2008. That being the case, no interest would accrue on the excess. Whenever a part-payment/refund of the principal sum was made, the same would be correspondingly reduced and interest would accrue on the principal sum until it was again exceeded. The plaintiff's computation deducted \$1m of the principal sum before calculating the interest chargeable. Based on Table A, the plaintiff arrived at a figure of \$2,909,827.56 as interest due to the first defendant.

6 In Table B, the plaintiff's computation was based on the principal sum with the \$1m equity for Riverwealth deducted at the end *viz* on 30 September 2008. The amount of interest computed in table B was \$2,975,830.02.

7 I had pointed out to counsel for the plaintiff that while it was common ground that the first defendant did inject \$1m as equity into Riverwealth, nothing was said in the CA judgment that \$1m should be deducted from the principal sum or that interest should only be charged on the reduced amount of \$21,580,621.99. Reading the CA judgment, I am of the view that the CA must have arrived at the quantum of the principal sum net of the \$1m equity injected

into Riverwealth. Despite the court's reminder to counsel however, the plaintiff's computations of interest in Tables A and B made deductions of the \$1m equity contribution. Consequently, I reject both Tables A and B and the computations of interest amounting to \$2,909,827.56 and \$2,975,830.02 respectively.

The first defendant's computation

8 I turn now to the first defendant's computation of interest which is contained in Table C. The first defendant's computation is based on the court's direction in [4] and showed a figure of \$2,990,263.79. This figure is just \$14,433.77 more than the plaintiff's figure of \$2,975,830.02 in Table B. The shortfall in the plaintiff's interest calculation could well be due to plaintiff's deduction of \$1m from the principal sum for equity contribution. I see no reason not to accept the first defendant's computation of interest and accordingly I award him interest of \$2,990,263.79 for his loan of the principal sum to Riverwealth.

The plaintiff's 25% share of the net profit made by Riverwealth

9 With the issue of interest payable by Riverwealth to the first defendant finally resolved, the quantum of the plaintiff's 25% share of the net profit (now crystallised at \$3,178,279.49) made from the sale of the Properties could be determined. The first defendant's submission (at para 19 of his written submissions) calculated the plaintiff's profit to be \$794,569.87. That meant that Andy's 25% share would be the same (if proven in Suit No. 1057 of 2013) while the first defendant's 50% entitlement would be \$1,589,139.74. The plaintiff's entitlement to \$794,569.87 is based on the following computation:

	Deductions allowed in [86] of the main judgment	Net
Sale price		\$60,080,000.00
Purchase price		(\$48,500,000.00)
	i. \$5,108,676.58 ii. \$300,000.00	(\$5,408,676.58)
Balance:		\$6,171,323.42
Add :		
i. Further (agreed) deduction	\$2,780.14	
ii. Interest to 1 st Defendant on loan to 2 nd Defendant	\$2,990,263.79	(\$2,993,043.93)
Net Profit on the sale of the Properties		\$3,178,279.49 ÷ 4
Plaintiff's 25% entitlement to net profits on the sale of the Properties		\$794,569.87

10 The above computation is based on the figures in [86] of the main judgment (save for the preceding interest calculation itself). The court was informed by counsel on 25 November 2015 that the previously disputed amount of \$2,780.14 had now been accepted by the plaintiff without the need for further submissions. That sum was a global figure described as “for payments between end 2007 to May 2008” (at para 10 in the first defendant’s AEIC filed for the assessment hearing (on 30 March 2015) as well as in his AVA (at para 60) filed on 4 April 2015. The sum comprised, *inter alia*, entertainment expenses incurred by the plaintiff and travel expenses incurred by Clarence Tan. I would also add that Clarence Tan’s 2.5% share of the net sale profits (pro-rated) is to

come from the profits of the plaintiff and the first defendant pending the determination of Andy's claim in Suit No. 1057 of 2013.

Costs

11 I had indicated to counsel at the hearing that I was minded to award costs of the assessment to the plaintiff subject to an appropriate deduction that counsel for the plaintiff had conceded to (for the inordinate amount of time he spent cross-examining the first defendant and his two expert witnesses on the issue of interest) and his further concession of \$5,000 for the first defendant's preparation of five affidavits pertaining to formal proof of the first defendant's documents. The affidavits were ultimately not required as the plaintiff eventually decided to dispense with formal proof of those documents.

12 In regard to costs, I am of the view that there has to be a discount of 35% for two reasons. First, counsel for the plaintiff and the first defendant were constantly engaged in a war of words while the latter was in the witness stand, prompting the court to advise both parties that being personal was unbecoming behaviour (and also unnecessary).

13 Second, the discount was also to reflect the court's disapproval of the plaintiff's repeated (and futile) arguments in court and in his final submissions that no interest was payable on the first defendant's loan to Riverwealth despite the CA judgment holding to the contrary.

14 As counsel for the plaintiff made the concession, the first defendant is allowed a further deduction of \$5,000 (plus disbursements on a reimbursement basis) for preparing the five affidavits in [11] relating to formal proof of numerous documents which were rendered otiose when counsel for the plaintiff decided the deponents need not be called.

15 The first defendant's contention that he is entitled to costs of the assessment flies in the face of the standard rule that costs follow the event. It bears remembering that the assessment hearing was necessitated by the CA judgment directing that an inquiry be held to determine the plaintiff's 25% share of the profit made by Riverwealth from the sale of the Properties. A number of items claimed by the first defendant as deductibles from the gross sale proceeds were disallowed including the substantial legal fees charged by Rajah & Tann LLP. (The court however had also acknowledged that it was the plaintiff's conduct that caused the fees to be incurred).

16 It would have been a different consideration altogether had the assessment hearing resulted in the first defendant succeeding in all the deductions he claimed in his AEIC as that meant the entire assessment hearing was unnecessary and the plaintiff should be penalised in costs for the wastage in time and costs. However, that was not the case here.

17 Consequently, in the exercise of the court's discretion under O 59 r 3(2) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("the Rules") this court awards to the plaintiff for the assessment hearing 65% of costs on a standard basis less \$5,000 (plus disbursements on a reimbursement basis incurred by the first defendant) to be taxed unless otherwise agreed.

18 The plaintiff is awarded judgment for the sum of \$794,569.87 in [9]. Pursuant to the CA judgment, the plaintiff is entitled to interest on the said sum at 5.33% per annum from the date of the writ (16 March 2010) to the date of the CA judgment (22 July 2013). Pursuant to O 42 r 12 of the Rules, the plaintiff is awarded further interest at 5.33% per annum from the date of this judgment until payment of the said sum.

19 For purposes of appeal under O 57 r 4(c) of the Rules, time runs from the date of this Supplemental Judgment.

Lai Siu Chiu
Senior Judge

Srinivasan s/o V Namasivayam and Nur Liyana Bte Mohamed
Sinwan (Heng, Leong and Srinivasan LLC) for the plaintiff and third
defendant;
Chew Mei Lin Lynette and Lu Huiru Grace (Morgan Lewis Stamford
LLC) for the first and second defendants.