

Overseas Union Insurance Ltd v Home and Overseas Insurance Co Ltd and another
application
[2002] SGHC 83

Case Number : DC Suit 51197/1999, RA 600004/2002, OM 600011/2002
Decision Date : 23 April 2002
Tribunal/Court : High Court
Coram : Tay Yong Kwang JC
Counsel Name(s) : Liew Teck Huat (Niru & Co) for the plaintiffs/respondents; P Jeya Putra (Joseph Tan Jude Benny) for the defendants/applicants
Parties : Overseas Union Insurance Ltd — Home and Overseas Insurance Co Ltd

Civil Procedure – Appeals – Leave – Plaintiffs seeking to appeal to High Court against district judge's decision relating to costs – District judge ruling leave to appeal necessary and refusing leave – Appeal by plaintiffs to High Court against district judge's ruling with alternative application for leave to appeal – Defendants applying to strike out appeal – Whether mode should be appeal or application for leave – Whether application for leave out of time – Whether leave to appeal necessary – Whether leave to appeal should be granted – s 21 Supreme Court of Judicature Act (Cap 322, 1999 Ed) – s 50 Interpretation Act (Cap 1, 1999 Ed) – O 2 r 1, O 3 r 2(5) & O 55C r 2 Rules of Court

Words and Phrases – 'Amount in dispute' – s 21 Supreme Court of Judicature Act (Cap 322, 1999 Ed)

Between

OVERSEAS UNION INSURANCE LIMITED
(REG NO. 195600074R) ... Plaintiffs

And

HOME & OVERSEAS INSURANCE COMPANY LIMITED
(REG NO. 513813) ... Defendants

ORIGINATING MOTION NO. 600011 OF 2002

**In the matter of Section 2(1) of the Supreme Court of
Judicature Act (Cap 322) and Order 55C Rule 2 of the Rules
of Court (Cap 322)**

And

**In the matter of DC Suit No. 51197 of 1999, Bill of Costs
No. 600864 of 2001, Summons in Chambers No. 600034 of
2002 in the Subordinate Courts of the Republic of Singapore
and Notice of Appeal to Judge of the High Court in Chambers
No. 600004 of 2002**

Between

HOME & OVERSEAS INSURANCE COMPANY LIMITED
(UK REG NO. 513813) ... Applicants

And

**OVERSEAS UNION INSURANCE LIMITED
(REG NO. 195600074R) ... Respondents**

Citation: DC Suit No 51197 of 1999; RAS 600004 of 2002

Jurisdiction: Singapore

**Date: 2002:04:23
2002:03:21**

Court: High Court

Coram: Tay Yong Kwang, JC

Counsel:

Liew Teck Huat (*Niru & Co*) for Plaintiffs/Respondents

P. Jeya Putra (*Joseph Tan Jude Benny*) for Defendants/Applicants

HEADNOTES

Civil Procedure – Appeal – Appeal from the Subordinate Court to the High Court on taxation of bill of costs – Application of s 21 of the Supreme Court of Judicature Act (Cap 322)

Facts

There were two matters before the court. The first was Registrar's Appeal No 600004 of 2002, which was an appeal by the plaintiffs against a decision made by a District Judge in chambers that leave to appeal was required, together with an alternative application for leave to appeal if leave was necessary. The other was Originating Motion 600011 of 2002, which was the defendant's application to strike out the said appeal. Both concerned the scope of section 21 of the Supreme Court of Judicature Act (Cap 322) ('SCJA') in appeals relating to costs.

The background to the present matters was this: pursuant to the conclusion of a trial in the Subordinate Courts, the trial judge in his capacity as a Deputy Registrar taxed the bill of costs for the trial. Consequently, after a review of the taxation, the plaintiffs applied to a District Judge in Chambers ('DJ') for a further review of the decision, which appeal was dismissed on 2 January 2002. On 8 January 2002, the plaintiffs appealed to the High Court against the latest decision dismissing their review. However, they were directed by the DJ to seek leave to appeal first as the amount of costs in dispute was less than the statutory minimum specified in s 21 of the SCJA. The plaintiffs complied and applied on 9 January 2002 for such leave. On 28 January 2002, the DJ heard the plaintiffs' application for leave to appeal. He refused the plaintiffs' leave. Arising from this, the plaintiffs filed their Registrar's Appeal on 6 February 2002 and the defendants filed their Originating Motion on 11 February 2002.

The defendants' arguments that the Registrar's Appeal should be struck out was this: Under O 55C r 2 of the Rules of Court, leave to appeal under s 21 of the SCJA must be obtained by filing an application to the DJ within seven days of the order, and in the event that leave was refused, by filing an application with the High Court within seven days of the refusal. What the plaintiffs did was not to file an application with the High Court within seven days of the DJ's refusal, but rather to appeal against his decision, which was filed outside the seven-day requirement. The matter was therefore before the High Court through the wrong procedure and was also filed out of time.

As for the plaintiffs' arguments, they argued that they were appealing against the DJ's decision that

leave to appeal was necessary, and hence O 55C r 2 did not apply. Alternatively, the technical irregularity should be disregarded in the interests of justice as permitted by O 2 r 1.

Held

,:

(1) It was plain that in refusing leave to appeal, the DJ was proceeding on the basis that such leave was necessary. The plaintiffs could not be said to have accepted the position that leave was necessary by making the application before the DJ as they had been directed to do so. The issue was argued before him at any rate. The ruling that leave was required was not made on 8 January but on 28 January 2002. As they were appealing against the very foundation of his ruling, that is, leave was required in the first place, they could do so by way of the Registrar's Appeal. The Registrar's Appeal had to be issued within 14 days after the DJ's decision under O 55C rule 1(4). That was complied with (see ¶ 13). The alternative prayer that leave should be granted in any case ought to have proceeded as a separate application pursuant to O 55C rule 2, as the defendants contended. However, since no injustice was done on the facts and the defendants were not misled as to the nature of the application, it was appropriate that the procedural irregularity should be overlooked (see ¶ 14).

(2) As for the issue of whether Registrar's Appeal, thus treated as the plaintiffs' application for leave if it was ruled that leave was necessary, was filed within seven days of the refusal by the DJ, this issue was answered in the positive. In the present case, s 21 of the SCJA made no mention of the time period for applying for leave to the DJ or to the High Court. Following *Thomas & Betts (S E Asia) Pte Ltd v Ou Tin Joon & Anor* [1998] 1 SLR 913, since the SCJA was silent as to time, the period of time for making an application under the SCJA would be computed in accordance with the Rules of Court. The period of seven days in O 55C r 2 must therefore be reckoned in accordance with O 3 r 2(5) and not the Interpretation Act (Cap 1) (see ¶¶ 15 and 16).

(3) Leave to appeal was necessary in the present instance. Following *Augustine v Goh Siam Yong* [1992] 1 SLR 767 and *Pandian Marimuthu v Guan Leong Construction Pte Ltd* [2001] 3 SLR 400, in the case of taxation of bills of costs, as the present case related to, the 'amount in dispute' was not the substantive claim in the action. If it were so, parties would be able to appeal to the High Court against any award of a nominal amount for a particular item in a bill in any action where the 'amount in dispute' in the substantive claim was above \$50,000. This could not have been the intention of s 21 of the SCJA which conferred an unqualified right of appeal only in cases where the subject matter was worth more than the minimum amount stipulated. Taxation of costs was the 'matter' contemplated in s 21 and the 'amount in dispute' pertained to costs and this must be computed in the way directed by the Court of Appeal in *Augustine v Goh Siam Yong* (see ¶¶ 17 to 22). The amount in dispute in the present case was \$10,619.65, and that was clearly below the prescribed minimum in s 21, and hence leave to appeal was necessary in this case (see ¶ 23).

(4) However, leave to appeal was refused in the present case. In taxation of costs, the key is reasonableness in principle and in quantum. The items of costs disputed related to the 'getting up' and fees payable to the expert witness. Even

if the substantive claim was novel, it was not demonstrated how the novelty carried over to the taxation of costs incurred in defending the claim. There did not appear anything in the bill of costs which warranted the High Court's intervention in any respect (see ¶¶ 24 to 27).

Case(s) referred to

Thomas & Betts (S E Asia) Pte Ltd v Ou Tin Joon & Anor [1998] 1 SLR 913 (folld);
Anthony s/o Savarimiuthu v Soh Chuan Tin [1989] SLR 607 (refd);
Augustine v Goh Siam Yong [1992] 1 SLR 767 (folld);
Abdul Rahman bin Shariff v Abdul Salim bin Syed [1999] 4 SLR 716 (folld);
Pandian Marimuthu v Guan Leong Construction Pte Ltd [2001] 3 SLR 400 (refd);
Goh Kim Heong and 4 Ors v AT & J Company Pte Ltd [2001] 4 SLR 262 (refd);

Legislation referred to

Interpretation Act (Cap 1) s 50
Supreme Court of Judicature Act (Cap) s 21, s 34(1)(c);
Rules of Court Ords 1 r 3, 3 r 2(5), 55C r 2, 56 r 2, 59 r 27

Judgment

GROUND OF DECISION

1 Two matters were ordered to be heard together before me. The first was the Plaintiffs' Registrar's Appeal No. 600004 of 2002 ("the RA") which was an appeal against a decision made by a District Judge in chambers that leave to appeal was required, together with an alternative application for leave to appeal if leave was necessary. The other application was the Defendants' Originating Motion No. 600011 of 2002 ("the OM") to strike out the said appeal. Both concerned the scope of section 21 of the Supreme Court of Judicature Act ("SCJA") in appeals relating to costs. Section 21 reads:

"21(1) Subject to the provisions of this Act or any other written law, an appeal shall lie to the High Court from a decision of a District Court or Magistrate's Court in any suit or action for the recovery of immovable property or in any civil cause or matter where the amount in dispute or the value of the subject-matter exceeds \$50,000 or such other amount as may be specified by an order made under subsection (3) or with the leave of a District Court, a Magistrate's Court or the High Court if under that amount."

2 The RA was an appeal against Ng Peng Hong DJ's decision:

"1. finding that leave was necessary to appeal against the award on costs made by the learned District Judge (sitting as Deputy Registrar) Zainol Abideen, and affirmed by the learned District Judge Ng Peng Hong on 28.1.02; and

2. refusing to grant leave to appeal against the award on costs made by the District Judge (sitting as Deputy Registrar) Zainol Abideen, and affirmed by the learned District Judge Ng Peng Hong on 28.1.02;

and accordingly that the appeal be allowed with costs here and below."

3 The OM, filed by the Defendants as Applicants, with the Plaintiffs as Respondents, sought the following orders:

- "1. The Notice of Appeal to Judge of the High Court in Chambers No. 600004 of 2002 filed by the Respondents on 6th February 2002 be struck out;
2. The costs of and incidental to this application be fixed and paid by the Respondents to the Applicants forthwith; and
3. Such further order or relief that this Honourable Court deems fit."

FACTUAL BACKGROUND

4 The District Court suit was tried before Zainol Abideen DJ and dismissed at the conclusion of the four-day trial, with costs to be taxed if not agreed. The claim was for US\$74,773 (or almost S\$140,000). The Plaintiffs appealed.

5 Subsequently, the Defendants drew up their bill of costs for the trial. This was taxed by the trial judge in his capacity as a Deputy Registrar ("the DR") of the Subordinate Courts. The Defendants claimed \$45,000 in Section 1 of the bill, \$1,000 in Section 2 and \$53,886.35 as disbursements in Section 3. At taxation, the DR allowed \$39,000, \$700 and \$53,586.35 respectively. At the review, the DR reduced the \$700 in Section 2 to \$500 and ordered the rest of the taxed amounts to stand.

6 The Plaintiffs applied to a District Judge in Chambers to review the DR's decision pursuant to the then Order 59 rule 36. On 2 January 2002, Ng Peng Hong DJ ("the DJ") heard and dismissed the application with costs fixed at \$800.

7 On 8 January 2002, the Plaintiffs appealed to the High Court against the DJ's decision by filing a Notice of Appeal pursuant to Order 55C of the Rules of Court. However, they were directed by the DJ to seek leave to appeal first as the amount of costs in dispute was less than the statutory minimum specified in section 21 SCJA. The Plaintiffs complied and applied on 9 January 2002 by way of summons in chambers for such leave.

8 On 28 January 2002, the DJ heard the Plaintiffs' application for leave to appeal. He refused the Plaintiffs such leave. From this, the Plaintiffs filed the RA on 6 February 2002 and the Defendants filed the OM on 11 February 2002.

THE ARGUMENTS IN THE HIGH COURT

9 In the OM, the Defendants argued that the RA should be struck out. This was because Order 55C rule 2 provides that leave to appeal under section 21 SCJA must be obtained by filing an application to the DJ within seven days of the order and, in the event leave is refused by the DJ, by filing an application to the High Court within seven days of the refusal. The Plaintiffs sought only leave to appeal in their application before the DJ, thereby acknowledging that such leave was required in the circumstances. The DJ made no finding that leave was required as that was not the subject matter before him. However, the Defendants accepted that the issue whether leave to appeal was required was argued before the DJ. Accordingly, the Plaintiffs ought not to have appealed but should have applied to the High Court for leave to appeal. This should be by way of Originating Summons within seven days from 28 January 2002 when the DJ refused them leave, that is, by 4 February 2002.

Instead, the application was filed by way of the RA and only on 6 February 2002. The matter was therefore before the High Court through the wrong procedure and was also filed out of time. Reliance was placed on section 50 Interpretation Act and **Thomas & Betts (S E Asia) Pte Ltd v Ou Tin Joon & Anor [1998] 1 SLR 913**. It was therefore submitted that the High Court had no jurisdiction to hear the RA.

10 The Plaintiffs contended that the DJ's decision had two aspects, both of which they disagreed with. They therefore appealed against both parts of the decision by way of the RA. The Plaintiffs contended that leave was not required as the "amount in dispute" relating to the substantive claim in the District Court action was more than \$50,000. This was canvassed before the DJ who disagreed with them and they could therefore appeal against such a finding.

11 The Plaintiffs also argued that their application to the High Court for leave was filed within seven days of 28 January 2002 if time was reckoned in accordance with Order 3 rule 2 (5), as it rightly should be. The RA was also an application within the meaning of Order 55C rule 2 and if it was held not to be, such technical irregularity should be disregarded in the interests of justice as permitted by Order 2 rule 1. In the circumstances of the case, leave ought to have been given anyway if such leave was necessary.

12 The Plaintiffs relied on **Anthony s/o Savarimiuthu v Soh Chuan Tin [1989] SLR 607**, **Augustine v Goh Siam Yong [1992] 1 SLR 767** and **Abdul Rahman bin Shariff v Abdul Salim bin Syed [1999] 4 SLR 716**.

THE DECISION OF THE COURT

Should the mode be an OS or an RA ?

13 It was plain that in refusing leave to appeal, the DJ was proceeding on the basis that such leave was necessary. The Plaintiffs could not be said to have accepted the position that leave was necessary by making the application before the DJ as they had been directed to do so. The issue was argued before him at any rate. The ruling that leave was required was not made on 8 January but on 28 January 2002. As they were appealing against the very foundation of his ruling, that is, leave was required in the first place, they could do so by way of the RA. The RA had to be issued within 14 days after the DJ's decision [Order 55C rule 1(4)]. That was complied with.

14 The alternative prayer before me that leave should be granted in any case ought to have proceeded as a separate application pursuant to Order 55C rule 2, as the Defendants contended. However, since no injustice was done on the facts and the Defendants were not misled as to the nature of the application, I thought it appropriate that the procedural irregularity should be overlooked.

Was the application out of time ?

15 The next issue was whether the RA, thus treated as the Plaintiffs' application for leave if it was ruled that leave was necessary, was filed within seven days of the refusal by the DJ. In the **Thomas & Betts** case, the Court of Appeal held that the seven-day period for applying for further arguments under section 34(1)(c) SCJA must be computed according to section 50 (d) Interpretation Act which provides that "when any act or proceeding is directed or allowed to be done or taken within any time not exceeding 6 days, excluded days shall not be reckoned in the computation of the time". This was

notwithstanding the fact that the then Order 56 rule 2, which also prescribed the period of seven days for making the application for further arguments under section 34(1)(c) SCJA, if reckoned in accordance with Order 3 rule 2(5) which provides that "where, apart from this paragraph, the period in question, being a period of 7 days or less, would include a Saturday, Sunday or public holiday, that day shall be excluded", would give a different result. The Court of Appeal held that Order 56 rule 2 had to be read subject to the SCJA.

16 The Interpretation Act applies for the interpretation of the Rules of Court by virtue of Order 1 rule 3. Section 50 of the Interpretation Act applies in computing time for the purposes of any written law (which includes subsidiary legislation such as the Rules of Court) "unless the contrary intention appears". In the present case, section 21 SCJA makes no mention of the time period for applying for leave to the DJ or to the High Court. It was accepted by the Court of Appeal in **Thomas & Betts** that if the SCJA is silent as to time, the period of time for making an application under the SCJA would be computed in accordance with the Rules of Court. The period of seven days in Order 55C rule 2 must therefore be reckoned in accordance with Order 3 rule 2(5) and not the Interpretation Act. 28 January 2002 was a Monday. If we exclude Saturday, 2 February 2002 and Sunday, 3 February 2002 in the computation, seven days from 28 January 2002 would end on Wednesday, 6 February 2002, which was when the RA was filed. The RA, serving as an application to the High Court for leave, was thus filed within the stipulated period of time.

Was leave to appeal required ?

17 Was leave to appeal necessary on the facts of this case? The total amount allowed in the bill of costs was some \$93,000, excluding the court fees. According to the Defendants' solicitor who filed an affidavit here, the amounts of costs in dispute were (the Plaintiffs are the Respondents mentioned below):

"(a) Section 1 of the bill of costs :-

The Respondents submitted the sum of \$33,750 (\$7,500 X 4.5 days). The amount allowed was \$39,000. Therefore, the amount in dispute is \$5,250 (\$39,000 - \$33,750).

(b) Section 2 of the bill of costs :-

Item 270 (Expert's fees): The Respondents submitted that the sum of \$4,433.41 (25% of \$17,733.63) should be taxed off.

Item 278 : Amount in dispute is \$936.24.

Therefore, the total amount in dispute is \$10,619.65 (\$5,250 + \$4,433.41 + \$936.24)."

The reference to "Section 2 of the bill of costs" should actually be to "Section 3".

18 The starting point is **Augustine v Goh Siam Yong**. There the Court of Appeal held that where a party seeks to appeal to the High Court against a reduction in the amount of damages assessed, the "amount in dispute" for the purpose of section 21 SCJA is the difference between the original and the reduced assessments. In that case, a Deputy Registrar of the Subordinate Courts assessed damages at \$4,780.89 but that was reduced by a District Judge to \$1,177.50. The difference of \$3603.39 was

held to be the "amount in dispute" and since it was obviously more than the then prescribed amount of \$2,000 in section 21 SCJA, it was held that the Plaintiff there was entitled to appeal without leave. It appears that "amount in dispute" was viewed as synonymous with the "value of the subject matter" in section 21.

19 The above decision was applied by me in **Abdul Rahman's** case where I held that the "amount in dispute or the value of the subject matter" in section 21 did not encompass the non-contractual interest and costs elements of a claim for a contractual amount or for damages.

20 In **Pandian Marimuthu v Guan Leong Construction Pte Ltd [2001] 3 SLR 400**, G P Selvam J held that the "amount in dispute" in section 21 referred to the amount of the substantive claim (the "cause or matter") and not to the amount of \$5,000 ordered as security for costs. Since the substantive claim there clearly exceeded \$50,000, it was held that leave to appeal against the order for security for costs was not required.

21 In the case of taxation of bills of costs, the "amount in dispute" is not the substantive claim in the action, in this case, US\$74,773. If it were so, parties would be able to appeal to the High Court against an award of say \$300 costs for a particular item in a bill in any action where the "amount in dispute" in the substantive claim is above \$50,000. This could not have been the intention of section 21 which confers an unqualified right of appeal only in cases where the subject matter is worth more than the minimum amount stipulated. Taxation of costs is the "matter" contemplated in section 21 and the "amount in dispute" pertains to costs and this must be computed in the way directed by the Court of Appeal in **Augustine's** case. It is therefore not the total amount allowed in the bill of costs that constitutes the "amount in dispute" in taxation proceedings but the amount calculated in the way that the Defendants' solicitor has done above.

22 It was argued by the Plaintiffs here that the paying party at the taxation proceedings was not obliged to state precisely how much the appropriate award of costs ought to be ; it was sufficient, they contended, that the paying party disputed the bill. It could not be said therefore that the "amount in dispute" here was less than \$50,000. I would respectfully disagree with that contention. A paying party at taxation is required to state its objection to any item of costs in principle or in quantum or both. The Registrar conducting taxation proceedings would invariably, and should continue to, ask the parties what they submit the amounts objected to ought to be. If a range rather than a specific figure is suggested, the "amount in dispute" would be reckoned on the basis of the smaller difference between what is submitted and what is awarded. For instance, a receiving party indicates \$80,000 as the amount of costs he should receive in section 1 of the bill of costs and the paying party submits the costs should be no more than \$25,000 to \$30,000. If the Registrar allows the amount at \$70,000, the "amount in dispute" where the paying party is concerned is \$40,000.

23 Following from the above, the "amount in dispute" here was \$10,619.65. That was clearly below the prescribed minimum in section 21 SCJA and leave to appeal was therefore necessary in this case.

Should leave to appeal be granted ?

24 In **Abdul Rahman's** case, I summarized the principles on granting leave to appeal in the following way:

"31. In my opinion, leave of court to appeal may be granted where the applicant is able :

(1) to demonstrate a *prima facie* case of error of law that has a bearing on the decision of the trial court;

(2) to show that there is a question of law decided for the first time or a question of law of importance upon which a decision of a higher tribunal would be to the public advantage;

(3) to show a question of law on which there is a conflict of judicial authority and a pronouncement from a higher court in the judicial hierarchy is desirable.

Leave of court should not be granted when there are mere questions of fact to be considered."

25 Kan Ting Chiu J in ***Goh Kim Heong and 4 others v AT & J Company Pte Ltd*** [2001] 4 SLR 262, after referring to the above quoted passage, said:

"31. I suggest that the value of the proposed appeal and the costs and time burdens the appeal would place on the parties and the appellate court should also be taken into account."

26 The Plaintiffs' affidavit filed in the proceedings below stated that leave should be granted for the following reasons:

"(a) This case is in respect of a reinsurance dispute which, for the first time in Singapore, has proceeded all the way to trial. There are no cases in which the costs on such an action have been determined or dealt with by the Court before. This case will therefore provide a precedent and guideline to future cases on the issue of costs for such cases/disputes.

(b) There is also an important issue in relation to how and to what extent expert witnesses' remuneration and expenses ought to be paid. This is again a novel issue in Singapore."

Before me, counsel for the Plaintiffs indicated that if I should decide that leave to appeal was required, he would not really pursue the argument that leave ought to have been granted by the DJ.

27 In taxation of costs, the key is reasonableness in principle and in quantum [see Order 59 rule 27]. The items of costs disputed related to the "getting up" and fees payable to the expert witness. Even if the substantive claim was novel, it was not demonstrated to me how the novelty carried over to the taxation of costs incurred in defending the claim. There did not appear anything in the bill of costs which warranted the High Court's intervention in any respect. Accordingly, I refused the Plaintiffs leave to appeal.

THE ORDERS

28 For the reasons above, I dismissed the OM as well as the RA. Since there was a legal issue worthy of clarification by the High Court in this matter, I made no order as to costs in respect of both applications. Any costs ordered in one would have been set off against those ordered in the other in

any event.

29 I note that with effect from 15 April 2002, the procedure for a review of taxation by the Registrar no longer exists [see the current Order 59 rules 34 and 35 introduced by S 150 of 2002]. A dissatisfied party after taxation now proceeds to apply to a High Court Judge (for High Court matters) or a DJ (for Subordinate Courts matters) to review the taxation.

30 If an amendment to section 21 SCJA should be contemplated in the future, it might be useful to consider whether or not we should introduce the qualifications in section 34 SCJA (regulating appeals from the High Court to the Court of Appeal) to section 21 SCJA. Insofar as the facts here are concerned, the provision of particular relevance is section 34(2)(b) which stipulates that no appeal shall be brought to the Court of Appeal where the only issue in the appeal relates to costs, except with the leave of the Court of Appeal or a Judge of the High Court.

Sgd:

TAY YONG KWANG
JUDICIAL COMMISSIONER

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