

Samwoh Asphalt Premix Pte Ltd v Sum Cheong Piling Pte Ltd and Another
[2003] SGHC 2

Case Number : Suit 245/2001; BOC 386/2002; SIC 5567/2002
Decision Date : 14 January 2003
Tribunal/Court : High Court
Coram : Choo Han Teck JC
Counsel Name(s) : K Sureshan (David Lim & Partners) for the First Defendants; Christopher Chong (Wong Partnership) for the Second Defendants
Parties : Samwoh Asphalt Premix Pte Ltd — Sum Cheong Piling Pte Ltd; Ecics-Coface Guarantee Co

Civil Procedure – Costs – Taxation – Application for review of taxation -Legal or factual disputes not involving neutral party – Whether costs awarded to neutral party excessive

1 This was an application for a review of a taxation of costs. The first defendants called upon a performance bond given by the plaintiffs to them. The second defendants were the bondsman. The plaintiffs challenged the call and applied for an injunction to restrain the call on the ground of unconscionability. The application was dismissed but the plaintiffs succeeded on appeal to the Court of Appeal. The first defendants were ordered to pay costs of the plaintiffs as well as the second defendants.

2 The plaintiffs' costs for the first instance hearing as well as the appeal were taxed at approximately \$45,000. No dispute arose in respect of that set of costs. However, the first defendants applied before me to review the \$20,000 costs awarded to the second defendants by the Deputy Registrar.

3 Mr Sureshan for the first defendants submitted that the amount was excessive because the second defendants were not involved in the merits of the dispute between the plaintiffs and the first defendants. No specific allegation or claim was made by any party against the second defendants and they, in turn, made no allegation or claim against anyone. The only function for them was to make payment under the bond should be plaintiffs' application for an injunction against the first defendants fail. In the event, the plaintiffs succeeded and the second defendants were not required to make payment. Hence, Mr Sureshan's main argument before me was that in those circumstances, the second defendants were virtually nominal parties whose only work was to decide whether to pay on the bond when called to do so. The legal and factual disputes were between the plaintiffs and the first defendants.

4 Mr Christopher Chong appeared on behalf of the second defendants. He conceded that the second defendants eventually adopted a neutral position but, he argued, they were able to do so only after the case was properly considered and on advice by their solicitors. He submitted that counsel on behalf of the second defendants made a submission before the Court of Appeal in respect of the position of the bondsman and in particular as to how they ought to be protected. At the hearing before the Court of Appeal the second defendants filed a bundle of authorities with two cases and an extract of O 57 r 3.

5 In conclusion, Mr Chong referred to the written judgment of the Court of Appeal at page 14 where the court stated that it would allow the appeal and noted that the second defendants had substantially reimbursed the plaintiffs money paid by the latter to them consequent upon the

discharge of the interim injunction by the judge at first instance. The portion of the judgment now relied upon by Mr Chong in support is at [22]:

"We think that the parties should, as far as practicable, be placed in the same position in which they were before the injunction was discharged."

The judgment went on to declare that:

"We therefore order that [the first defendants] repay the amount of S\$500,000 to [the second defendants] forthwith and that [the second defendants] upon receipt thereof repay the amount to [the plaintiffs]. This order does not prejudice [the second defendants] in any way, as they only pass on to [the plaintiffs] the amount they received from [the first defendants]."

6 Mr Chong says that to put the second defendants "in the same position as before" must be taken to mean that the second defendants must not be in a worse position so far as costs was concerned.

7 I am of the view that the costs awarded to the second defendants were excessive and ought to be reduced. There were no grounds given below but the award may be justified if the second defendants were a "fighting party", albeit on a smaller scale than the first defendants. I do not think that this was the case because the second defendants were clearly a neutral party whose only role was to await the decision of the Court and thereafter to make payment if so required. It was of course prudent for them to consult their solicitors, but I cannot imagine that competent lawyers such as Mr Chong and his colleagues would lose sleep over the advice that they had given to the second defendants in this case. It was certainly proper for the solicitors to represent the second defendants at each stage of the proceedings but no substantial arguments need be presented in the circumstances. I note that counsel for the second defendants made a short submission before the Court of Appeal but that was really a gratuitous effort and the only point was to emphasize the arguments that the plaintiffs ought not to have joined them as a party in the first place. In retrospect, that argument now works against them. The submission there was purely for the purpose of seeking costs against the plaintiffs for the joining the second defendants unnecessarily. In my view, the second defendants would have been in no worse position in this case had they not been represented in court.

8 In cases such as this, \$20,000 in costs is too generous to the extent that it becomes unfair to the first defendants. Furthermore, neutral parties such as bondsmen and persons who take out interpleader proceedings must justify why such costs had to be incurred. In the present case I am unable to agree that the work done was sufficient to justify the costs awarded. I would reduce the award from \$20,000 to \$5,000.

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