Ng Chong Ping *v* Ng Chih-Ming Daren and others (Richwood Design Pte Ltd, third party; ; Archideas Design Inc, fourth party)
[2015] SGHC 75

Case Number	: Suit No 997 of 2013 (Registrar's Appeal No 48 of 2015)
Decision Date	: 20 March 2015
Tribunal/Court	: High Court
Coram	: Choo Han Teck J
Counsel Name(s)	: Chelliah Ravindran and Chain Xiao Wei Edmund (Chelliah & Kiang LLC) for the plaintiff; Shahira Binte Mohd Anuar (Tan Kok Quan Partnership) for the first and second defendants; Ng Khai Lee Ivan (Infinitus Law Corporation) for the third defendant and third party; Lee Wei Qi (RHTLaw Taylor Wessing LLP) for the fourth party.
Parties	: Ng Chong Ping — Ng Chih-Ming Daren and others (Richwood Design Pte Ltd, third party — Archideas Design Inc, fourth party)

Civil Procedure – Costs – Principles

20 March 2015

Choo Han Teck J:

1 The plaintiff is a gardener and landscape designer employed by Teo Landscape and Maintenance ("the Company"). The first and second defendants ("the defendants") are owners of the property at 382A Lorong Chuan ("the Property"). On 14 January 2012, the defendants engaged the services of the Company to carry out gardening and landscape maintenance services on the Property. The plaintiff was deployed by the Company on that day to work on the Property and was permitted by the defendants to enter the said Property. The plaintiff was carrying out weeding works along the front boundary wall of the Property when the boundary wall suddenly collapsed on him. The plaintiff was pinned to the ground under the weight of the collapsed wall till he was rescued by his co-worker and some neighbours. He suffered severe injuries to his spinal cord and lower limbs.

2 The plaintiff brought proceedings against the defendants as owners of the Property for failing to take reasonable care in ensuring that the boundary wall was safe, and that the plaintiff would be reasonably safe in carrying out his services on the Property. The plaintiff claimed for damages for personal injuries, loss, and expenses suffered as a result of the collapse of the boundary wall. The defendants were the immediate and obvious tortfeasor for the plaintiff to sue.

3 The defendants then alleged that it was Richwood Design Pte Ltd, the main contractors previously engaged to carry out renovation works on the Property, who was responsible for the collapse of the boundary wall. The renovation works carried out by Richwood Design Pte Ltd allegedly included alteration works to the front boundary wall of the Property. The defendants claimed against Richwood Design Pte Ltd and sought to enjoin them as third party to the proceedings.

4 Richwood Design Pte Ltd ("the third party"), in turn, then brought a claim against Archideas Design Inc ("the fourth party") as designers of the front boundary wall of the Property, alleging that it was the fourth party who had assessed the condition of the wall, and instructed the third party to replace the existing "fair faced bricks" with "vertical mild steel fencing". As such, the third party

alleged that it was the fourth party who was responsible for the collapse of the wall.

5 The plaintiff then applied in Summons No 262 of 2015 ("the amendment application") for leave to amend his Writ of Summons and pleadings so as to join the third party as third defendant to the proceedings. The plaintiff also proposed to amend his pleadings to include additional particulars of the defendants' negligence which had surfaced in the course of events. Following the filing of the amendment application, the parties attended a pre-trial conference ("PTC") on 20 January 2015 in which the costs of that PTC were reserved to the learned Assistant Registrar ("the learned AR") hearing the amendment application. On 30 January 2015, at the hearing of the amendment application, counsel for the third party, Mr Ng, took the opportunity to submit that there was considerable delay on the part of the plaintiff in failing to bring proceedings against the third party at the outset. He prayed for a consequent cost order against the plaintiff. The learned AR granted an order in terms for the application for leave to amend, but also made the following cost orders:

(a) Costs of $2,500 (all-in) are to be paid by the plaintiff to the third party being the costs of the application.

(b) Costs of $800 (all-in) are to be paid by the plaintiff to the fourth party being the costs of the application.

(c) Costs of $500 are to be paid by the plaintiff to the third party being the costs of the pre-trial conference of 20 January 2015.

(d) Costs of $1,856.80 are to be paid by the plaintiff to the third party being cost thrown away in the fourth party proceedings.

6 The plaintiff then appealed against the decision of the learned AR below in Registrar's Appeal No 48 of 2015 ("HC/RA 48/2015"). The parties appeared before me on 13 March 2015. I allowed the appeal and varied the orders below to costs in the cause. I gave no order on costs of appeal. I now set out the reasons for my decision.

7 Any party may apply to amend his pleadings at any stage before judgment. If the amendment is allowed, costs may be awarded against him if the amendment had caused delay or substantial work for the opposing parties was incurred. But the order on costs is discretionary and if the court is of the view that in the overall circumstances of the case the party should not be penalised by costs it may make no order as to costs, which will in most instances mean that each party pays his own costs. Alternatively, the court may also order that the costs of the amendment be costs in the cause, or for costs to be reserved to the trial judge.

8 In cases where the interlocutory matter runs its course in the action, the fairest order on costs would be to order that the costs be costs in the cause.

9 In the present case, the plaintiff had insufficient grounds or knowledge as to the involvement of the third and fourth parties to join them in the action initially. Given the action and demeanour of the defendants in placing the blame on the third party (and thereafter the third party placing the blame on the fourth party), the plaintiff is entitled to join either or both of them as defendants.

10 It is the prerogative of the plaintiff to join either or both as defendants and he cannot be compelled to do so, but he must accept the consequences should the trial judge find that the defendants are not liable and that liability falls on either or both the third and fourth parties.

11 When a plaintiff applies to join a third or fourth party as a defendant, and the application is allowed, the order for costs should ordinarily be costs in the cause since the court had found it reasonable to allow the joinder. That order would mean that if the plaintiff succeeds against the third party at trial, the third party has to pay costs to the plaintiff, including the costs of the application for joining him as a defendant. Conversely, the plaintiff will pay those costs should he fail in the claim against the third party at trial. Costs can be ordered against a party specifically at interlocutory proceedings in some circumstances. For example, where the delay was deliberate, or where the opposing parties would have incurred costs unnecessarily – such as having to reply to a second amendment which could and ought to have been made at the time of the first amendment but was not.

12 In the present case, the only submission by counsel for the third party in respect of costs was that the plaintiff took too long to apply. That alone is not a sufficient reason to order costs against the plaintiff. Further, no prejudice has been shown to the third party that the resulting injustice cannot be made good by an order for costs in the cause. Ordering costs against the plaintiff in the present circumstances will result in greater injustice should the trial judge find against the third party.