Lam Hwa Engineering & Trading Pte Ltd *v* Yang Qiang
[2013] SGHC 42

Case Number	: Registrar's Appeal from Subordinate Courts No 32 of 2012
Decision Date	: 20 February 2013
Tribunal/Court	: High Court
Coram	: Lai Siu Chiu J
Counsel Name(s)	: Niru Pillai (Global Law Alliance LLC) for the Appellant; Belinder Kaur Nijar (Hoh Law Corporation) for the Respondent.
Parties	: Lam Hwa Engineering & Trading Pte Ltd — Yang Qiang

Civil Procedure – Costs

20 February 2013 Judgment reserved.

Lai Siu Chiu J:

Introduction

1 This was an appeal against the decision of the District Judge ("the DJ") in *Yang Qiang v Lam Hwa Engineering & Trading Pte Ltd* [2012] SGDC 31 ("the GD"). The sole issue which arose for my consideration in this appeal was whether the travel expenses of a successful litigant, for the purposes of trial in Singapore, are claimable as part of disbursements in a standard bill of costs.

Facts

2 Yang Qiang ("the Respondent") was a foreign Chinese worker who instituted a personal injury claim against Lam Hwa Engineering & Trading Pte Ltd ("the Appellant"). However, on the first day of the trial, the action was settled between both parties, with a final judgment dated 25 July 2011 being entered against the Appellant by consent.

3 The Respondent duly filed a bill of costs ("the Bill") on 21 October 2011 to be taxed by a Deputy Registrar of the Subordinate Courts ("the DR") on a standard basis. On 18 November 2011, the DR certified that the Bill had been taxed and that section 3 of the Bill was disallowed. Section 3 of the Bill contained the Respondent's claim for disbursements, which included:

(a) the Respondent's return air tickets to Shanghai, totalling $1,113.00; and

(b) the Respondent's expenses incurred in China to travel to and from the Pudong International Airport in Shanghai, totalling $95.00.

4 The Respondent subsequently sought a review before the DJ of the DR's decision in disallowing his travel expenses. Both parties were represented by counsel at the various proceedings below.

Decision below

5 In reversing the DR's decision (on 6 February 2012), the DJ, in the GD, held that the Respondent was entitled to recover his travel expenses within China and also his airfares to and from

Singapore for the trial (see the GD at [13]).

6 The DJ referred to the decision of the Court of Appeal in *Rajabali Jumabhoy and Others v Ameerali R Jumabhoy and Others* [1998] 2 SLR(R) 576 ("*Jumabhoy*"), which the Appellant had relied on to support its case. According to the DJ, *Jumabhoy* merely stood for the proposition that "a party to an action in court is not entitled to claim for his attendance in court" (see the GD at [16]), but did not deal with the "entirely different proposition" as to whether the *travel expenses to attend court in Singapore* should be claimable (see the GD at [17]). Since the Court of Appeal did not deal with the latter issue, the DJ rejected the Appellant's interpretation of *Jumabhoy*.

7 The DJ then held that the Appellant, being a tortfeasor, must take the consequences that flowed naturally from its negligence. One of the consequences was that the Respondent had to mount an action in Singapore, and therefore had to travel to and from Singapore. These expenses, according to the DJ, were "incurred only because the [Appellant] was liable to [the Respondent] for causing injury, in the first place" (see the GD at [20]). The DJ further elaborated that the Respondent was a foreign worker who, upon suffering the injury, was not able to continue working and therefore could not have stayed on in Singapore even if he had wanted to. The Respondent's travel expenses were therefore "reasonably incurred" pursuant to O 59 r 27(2) of the Rules of Court (Cap 322, R 5, 2006 Rev Ed) ("the Rules"), which states:

> (2) On a taxation of costs on the standard basis, there shall be allowed a reasonable amount in respect of all costs reasonably incurred…

8 In the result, the DJ allowed the Respondent's claim for travel expenses in the sum of $1,208.

The Appellant's case

9 In its submissions before this Court, the Appellant relied on O 38 r 22 and O 35 r 1 of the Rules, which state:

> **Failure to appear by both parties or one of them (O. 35, r. 1)**
>
> 1.—(1) If, when the trial of an action is called on, neither party appears, the Judge may dismiss the action or make any other order as he thinks fit.
>
> (2) If, when the trial of an action is called on, one party does not appear, the Judge may proceed with the trial of the action or any counterclaim in the absence of that party, or may without trial give judgment or dismiss the action, or make any other order as he thinks fit.
>
> …
>
> **Tender of expenses (O. 38, r. 22)**
>
> 22. A witness shall not be compelled to attend on a subpoena unless a reasonable sum to cover his expenses of going to, remaining at, and returning from, Court is extended to him.

10 The Appellant's primary submission was that while a witness should be paid reasonable costs for his court attendance (based on O 38 r 22 of the Rules), a litigant is not entitled to the same. The Appellant submitted that if a *litigant* does not attend court, his action (or defence) risks being dismissed entirely pursuant to O 35 r 1 of the Rules. Since the travel expenses of the Respondent were incurred simply to meet his *obligations* to be in court for the trial, the Appellant submitted that

such expenses should not be recoverable.

11 According to the Appellant, the DJ erred in his interpretation of *Jumabhoy* because there is no difference in principle for a litigant between the opportunity costs of attending court and the costs of travelling to court. The Appellant's understanding of *Jumabhoy* is as follows: since the opportunity costs of a litigant's court attendance are not recoverable, it follows that the travel expenses by a litigant to attend court should not be recoverable as well.

12 The Appellant also relied on various cases from other Commonwealth jurisdictions, which will be dealt with in detail below.

The Respondent's case

13 The submissions of the Respondent, on the other hand, were grounded on the general notion that all reasonable disbursements incurred by a successful party should be recoverable. The Respondent submitted that if travel expenses are not allowed to be recovered, this would cause grave injustice as it would mean that poor, foreign plaintiffs (who have no choice but to commence legal proceedings in Singapore) would not be able to afford the travel expenses to pursue their claim.

14 In response to the Appellant's reliance on the Rules to draw a distinction between a litigant and a witness, the Respondent submitted that O 38 r 22 is "not a proposition for drawing a distinction between a [litigant] and a witness". According to the Respondent, O 38 r 22 merely provides for the recovery of a witness's expenses, but does not state that a litigant to an action cannot claim the same as part of reasonable disbursements. The Respondent also claimed that "[i]n practice, parties have always been able to claim travel expenses as reasonable disbursements".

The decision of this Court

15 Having reviewed the arguments and the authorities cited by the parties, I hold that the Respondent is not prohibited from claiming his travel expenses as part of "costs reasonably incurred" under O 59 r 27(2) of the Rules. It is important to note that the word "costs" in O 59 includes "disbursements" (see O 59 r 1(1)) and disbursements are required to be set out in a bill of costs as per O 59 r 24(1)(c) of the Rules.

16 I have come to this view having considered the legal position on the issue (as framed above at [1]) in Singapore and also in other Commonwealth jurisdictions, as I shall now explain.

The legal position in Singapore

17 While recognizing that there is no direct authority on this point, the Appellant sought to convince this Court that the law in Singapore prohibits the Respondent from recovering his travel expenses on two grounds:

(a) first, that O 38 r 22 and O 35 r 1 of the Rules should be read as allowing only a witness, *but not a litigant*, to recover travel expenses to court; and

(b) second, that such a result necessarily flows from the decision of the Court of Appeal in *Jumabhoy*.

18 I disagree with the Appellant on both grounds for the following reasons.

19 Firstly, contrary to the Appellant's submission, O 35 r 1 of the Rules does not make it

mandatory for a litigant to attend court *in person* because he could always instruct counsel to appear on his behalf. This is clearly stated in *Singapore Civil Procedure 2013* (G P Selvam gen ed) (Sweet & Maxwell Asia, 2013) at para 35/1/2:

> At the hearing of an action, the defendant is allowed to either appear in person or by counsel. Only if both the defendant and counsel are absent may a default judgment be entered against the defendant. Similarly, *if the plaintiff is absent but his counsel is present when an action is called on for hearing, the court cannot just dismiss the action but must allow the plaintiff's counsel to present his case and call witnesses* if he has any in support.
>
> [emphasis added]

The premise of the Appellant's submission – that O 35 r 1 obliges the Respondent to travel to and appear in court – must therefore be qualified. More importantly, it does not follow logically that just because O 35 r 1 compels a litigant-in-person to appear in court, his travel expenses are therefore non-recoverable.

20 Secondly, O 38 r 22 of the Rules is a provision which stipulates the rights of a witness *vis-à-vis the litigant who subpoenas him or her to attend court*. It is part of O 38 of the Rules, which deals with how evidence is to be led in court in general. I therefore agree with the Respondent that O 38 r 22 is not a provision stipulating who amongst the parties in a courtroom are entitled to claim disbursements. The litigant who subpoenas the witness would be *obliged*, under O 38 r 22, to compensate the witness's travel expenses; but the issue of whether the said litigant is entitled to then claim for and recover such expenses in a standard bill of costs is an entirely separate matter not governed by O 38 r 22 of the Rules.

21 Thirdly, I disagree with the Appellant's interpretation of *Jumabhoy*. In *Jumabhoy*, the Court of Appeal held (at [5]) that the fourth respondent, who was not represented by counsel in the appeal, could not claim for the costs for attendance:

> Although SIS was not represented by counsel before us at the hearing, it is a party to the appeal, and it has through its solicitors at the material time filed its case. It should be entitled to the costs of the appeal, although it should not be entitled to any costs for attendance before us. We therefore order the appellants to pay to SIS the costs of the appeal, and direct that on taxation of costs there should be allowed only the costs relating to the issue of constructive trust and that no costs should be allowed for attendance before us.

22 While the Court of Appeal did not provide further elaboration, the position taken in *Jumabhoy* at [5] can be explained by the undisputed, general rule that only a solicitor is entitled to claim for his *professional costs* for time spent in attending court proceedings (see *The London Scottish Benefit Society v Chorley, Crawford and Chester* (1884) 13 QBD 872 ("*Chorley*")). The Court in *Jumabhoy* was not confronted with the issue of disbursements, let alone the even more specific issue of whether a litigant is entitled to claim his travel expenses as part of disbursements, as the DJ rightly observed.

23 More importantly, I am not persuaded by the Appellant's attempt to lump a litigant's claim for "costs for attendance in court" and that for "travel expenses" in the same category. This is because, strictly speaking, the former is not even a *disbursement* to begin with. The High Court in *Ong Jane Rebecca v Lim Lie Hoa and others* [2008] 3 SLR(R) 189 ("*Ong Jane Rebecca*") at [11] has helpfully clarified that disbursements refer to "expenses actually incurred and paid out". The costs of attendance of a litigant who is not a solicitor are a measure of the litigant's *opportunity costs* for the

time spent attending court. Such costs of attendance are therefore not "disbursements", unlike travel expenses; and, thus, the fact that a claim for "costs for attendance" is generally not allowed (for litigants who are not solicitors) does not dictate the same result for *all* claims for "travel expenses", as will be further elaborated below.

24 Interestingly, the issue in *Ong Jane Rebecca* was whether the costs of air travel (to and from Singapore) of the plaintiff should be recoverable as disbursements for the purposes of taxation. While the High Court eventually disallowed the plaintiff's claim, it held so on the basis that the travel expenses were not shown to have been "incurred and paid out" by the plaintiff (*Ong Jane Rebecca* at [7]). It therefore appears clear to me that the High Court in *Ong Jane Rebecca* had reasoned with the understanding that the plaintiff's claim for travel expenses was *in principle* a valid one, provided that she could furnish proof that they were indeed expenses "incurred and paid out" by her.

25 For the above reasons, I am of the view that there is no *general prohibition* in the law in Singapore that prevents a litigant's travel expenses from being recovered as one of the various items of "costs reasonably incurred" under O 59 r 27(2) of the Rules. However, this merely begs the question of whether travel expenses for *all purposes* by a litigant are recoverable. To address this question, I find it helpful to turn to foreign case law for assistance, some of which were helpfully brought to my attention by the Appellant.

The legal position in England

26 In both its written and oral submissions, the Appellant relied heavily on the English case of *Chorley* (*supra*, [22]). The issue before the English Court of Appeal was whether the successful litigants-in-person, who happened to be solicitors, were entitled to professional costs and expenses as if they had engaged a solicitor. In reaching his decision, Bowen LJ stated the following (at 876-877):

> There is a passage in Lord Coke's Commentary, 2 Inst. 288, which it is worth while to examine, as it affords a key to the true view of the law of costs. That passage is as follows: "Here is express mention made but of the costs of his writ, *but it extendeth to all the legal cost of the suit, but not to the costs and expenses of his travel and loss of time*, and therefore 'costages' cometh of the verb 'conster,' and that again of the verb 'constare,' for these 'costages' must 'constare' to the court to be legal costs and expenses." What does Lord Coke mean by these words? His meaning seems to be that only legal costs which the Court can measure are to be allowed, and that such legal costs are to be treated as expenses necessarily arising from the litigation and necessarily caused by the course which it takes.
>
> [emphasis added]

27 Even though the issue of travel expenses was not present in *Chorley* at all, the Appellant highlighted the quote from Lord Coke (emphasized above) to argue that the travel expenses of a litigant, as with his "loss of time" in court, are not recoverable. In my respectful view, it is not clear whether Lord Coke had indeed envisaged that travel expenses for *all purposes* incurred by a litigant are not recoverable. Nevertheless, what is important is whether the jurisprudence in England has since proceeded or developed on the basis that travel expenses for *all purposes* incurred by a litigant should not be recoverable. While the Appellant would wish to submit it is so, the subsequent English cases below would suggest otherwise.

28 In *Harbin v Gordon* [1914] 2 KB 577 ("*Harbin v Gordon*"), a plaintiff who lived in Florence recovered judgment in an action in England. Upon taxation of the plaintiff's costs as between party

and party, the Taxing Master fixed a certain sum as proper to be allowed *in respect of the plaintiff's travelling and hotel expenses*, with the condition that the plaintiff's solicitors produced either a voucher acknowledging the receipt by the plaintiff from his solicitors of the said sum or a letter from the plaintiff intimating that he had knowledge of the amount as allowed. The English Court of Appeal upheld the Taxing Master's decision, and Buckley LJ so held (at 586):

> The plaintiff, as a party litigant, was not entitled to any allowance, *but as a witness he was entitled to an allowance like any other witness, and none the less because he was also a party litigant*. If he had not been a party litigant, but an ordinary witness, the taxing Master would have been entitled to require evidence that the amount had been paid before he included it in his allocatur for recovery from the defendant. The whole question is whether, when he is a party litigant, the taxing Master is not also entitled to be satisfied that the amount has been paid or that the plaintiff knows that it is going to be recovered for him from the defendant. In my opinion he is so entitled.
>
> [emphasis added]

29 The proposition that a litigant was "not entitled to any allowance, but *as a witness he was entitled to an allowance like any other witness, and none the less because he was also a party litigant*" [emphasis added] contradicts the Appellant's case that *all* travel expenses incurred by a litigant are not recoverable. It is clear after *Harbin v Gordon* that while some travel expenses incurred by a litigant (*ie*, to instruct counsel, to attend a watching brief in court) are not recoverable, travel expenses incurred *for the purposes of attending court as a witness* should be recoverable. This proposition of Buckley LJ has since been cited and applied in England in *Gibbs v Gibbs* [1952] P 332 ("*Gibbs*") and *Ammar v Ammar* [1954] P 468 ("*Ammar*"), and also in Australia in *Rowan v Cornwall (No 6)* [2002] SASC 234 ("*Rowan v Cornwall*").

30 In *Ammar*, the wife filed a petition for divorce against the husband and alleged cruelty. The husband was resident in Cyprus and also qualified as a legally assisted person. An application was made by summons on his behalf for his evidence to be taken in Cyprus before a special examiner, but the wife objected to it and various points or questions of general interest were raised before Sachs J. The first point which Sachs J had to deal with (at 470) was "*whether the expenses of the husband attending court in such a case are allowable on a taxation under the Third Schedule to the Act of 1949* [*viz*, the Legal Aid and Advice Act 1949 (c 51) (UK)]" [emphasis added]. He then continued (likewise at 470):

> [This] point was considered in *Gibbs v Gibbs* where Havers J, following *Harbin v Gordon* ruled that *such expenses are normally allowable as costs on such a taxation*. With that ruling I respectfully agree. I adopt it as my own and propose to proceed upon the footing that it is right.
>
> *In the present case the husband is clearly a vital witness*. The only unusual aspect of the matter is that he lives in Cyprus. *On the facts of this case that aspect in no way alters the position that his presence in court is vital*.
>
> [emphasis added]

31 From the above cases, it seems to me that in England, a litigant will be entitled to recover travel expenses which are *necessarily* incurred for the purposes of *attending court as a witness*. I now turn to consider whether this proposition has similarly been articulated in Australia and Canada as well.

The legal position in Australia

The legal position in Australia

32 In *Cachia v Hanes* (1994) 179 CLR 403 ("*Cachia*"), the issue before the High Court of Australia ("HCA") was whether the claims of the appellant, a litigant-in-person, for (a) compensation for the loss of his time spent in the preparation and conduct of his case and (b) travel expenses associated with the preparation and conduct of his case should be allowed. The majority in the HCA dismissed the appellant's claims and held (at 410-411):

> To use the Rules to compensate a litigant in person for time lost would cut across their clear intent. Costs, within the meaning of the Rules, are reimbursement for work done or expenses incurred by a practitioner or practitioner's employee. Compensation for the loss of time of a litigant in person cannot be said to constitute costs within the meaning of the Rules.
>
> This is hardly surprising. It has not been doubted since 1278, when the *Statute of Gloucester* introduced the notion of costs to the common law, that costs are awarded by way of indemnity (or, more accurately, partial indemnity) for professional legal costs actually incurred in the conduct of litigation. They were never intended to be comprehensive compensation for any loss suffered by a litigant. As Coke observed of the *Statute of Gloucester*, the costs which might be awarded to a litigant extended to the legal costs of the suit, "but not to the costs and expences of his travell and losse of time".

33 These two paragraphs were, once again, cited by the Appellant to suggest that a litigant's time and travel expenses are "unrecoverable in principle". However, this ignores the fact that the travel expenses that were disallowed in *Cachia* were "associated with the preparation and conduct of the appellant's case". The distinction between travel expenses incurred *for preparation work or for the hearing of judgment* as opposed to those incurred *as a witness* was recognized by the HCA in *Cachia* just a few pages later (at 417):

> … Of course, a litigant who qualifies as a witness is entitled to the ordinary witness's fees.
>
> The disbursements claimed by the appellant and disallowed upon taxation were, on the one hand, travelling expenses in addition to a witness's fee for preparation and, on the other hand, *travelling expenses to hear judgment*. *Either the appellant was entitled to the witness's fee or he was not; he was not entitled to travelling expenses in addition to or in lieu of the fee*. And since the appellant was not entitled to any recompense for his appearance in court to hear judgment, it was, we think, within the discretion of the Taxing Master to disallow any travelling expenses as an out-of-pocket expense incurred for that purpose. They were not an out-of-pocket expense which would have been recoverable by him or his solicitor in this case had he been legally represented.
>
> [emphasis added]

34 This passage reinforces my understanding that a litigant should not be deprived of the reimbursements he would receive as a witness simply because he also happens to be a litigant in the matter. In fact, adopting the reasoning of the HCA, the appellant in *Cachia* would have been entitled to travel expenses *as a witness* so long as these expenses fell within the ambit of a "witness's fee". This understanding was reiterated less than a decade after *Cachia* in *CGU Workers Compensation (Vic) Ltd v Rees* [2003] VSCA 18 ("*Rees*"), where the Court of Appeal of the Supreme Court of Victoria held (at [12]):

> In my opinion, the defendant succeeds in its contention. *A party's actual travel expenses, save in the capacity of a witness, are not claimable as party and party costs*. That is all the more so

with a party's notional travel expenses. The reason is that the "costs" provided for in the Rules … are confined to money paid or liabilities incurred for professional legal services. They are reimbursement for work done or expenses incurred by a practitioner or a practitioner's employee. They are awarded by way of partial indemnity for professional legal costs actually incurred in the conduct of litigation and were never intended to be comprehensive compensation for any loss suffered by a litigant, including loss suffered in preparation of a case. All this is explained in the majority judgment in [*Cachia*] esp. at 409, 410 and 414. Although that case concerned the claim of a litigant in person, their Honours made it clear that the principles summarised above applied to a represented litigant such as the plaintiff here…Specifically, in [*Cachia*] the majority justices held that *out of pocket travel expenses associated with the preparation of the case of a litigant, whether legally represented or unrepresented, were not allowable as party and party costs*. Sholl, J. had earlier held of *a represented party that she was not entitled to her traveling* [*sic*] *expenses except in the capacity of a witness, actual or potential*: *Russo v Russo* [1953] V.L.R.57 at 67. Indeed, more than three centuries before that, Sir Edward Coke had stated that the costs that might be awarded to a litigant did not extend "to the costs and expences of his travell and losse of time".

[emphasis added]

35 I should point out, however, that the exact *purposes* of the travel expenses incurred which are recoverable in Australia are not entirely free from doubt. In *Willing v Hollobone* (1972) 3 SASR 532 ("*Hollobone*"), the Supreme Court of South Australia ("SCSA") held (at 534) that:

It might be sufficient to say that the applicant, as a party appearing in person who is not a legal practitioner, is not legally entitled to any costs, however complete his victory, except his out-of-pocket expenses including, besides any actual disbursements by him, *his travelling expenses to get to and from the court on the occasion of any necessary appearances before the court* and the cost of sustenance if he is forced to stay away from home to attend the court, and also some allowance for the time actually occupied in appearing before the court while it is sitting…

[emphasis added]

36 The SCSA further added in *Rowan v Cornwall* at [15] that:

For the reasons expressed in *Rowan v Cornwall* (No 5) [2002] SASC 160, the plaintiff was forced to reside in Melbourne. She has had to incur considerable expense in travelling to and from Melbourne during the trial and at other stages before and after the trial. She had claimed the cost of airfares as damages. In *Rowan v Cornwall (No 5)* I held that she was entitled to be reimbursed for that cost, not as damages but as the costs of the action. Some defendants submitted that the plaintiff was not entitled to be reimbursed for any costs incurred by reason of the fact that she had come to Adelaide from another State. I disagree. In the particular circumstances of this case, the plaintiff has had no alternative but to incur these airfares and other costs because she resides in Melbourne. If she is not entitled to be reimbursed for them as costs, she is entitled to recover them as damages. In other words, the conduct of the defendants who failed has caused the plaintiff to change her place of residence to Victoria. Those defendants cannot, therefore, now assert that she is not entitled to recover costs incurred by reason of the fact that she had to prosecute this action in South Australia. *Those defendants are, therefore, liable to reimburse her for all costs reasonably incurred in coming to Adelaide to prosecute this action, either as costs or as damages. I think the proper basis is as costs*. As was noted in *Cachia v Hanes* (1994) 179 CLR 403 at 414, an award of costs is intended to reimburse the litigant for costs actually incurred. The cost of airfares is a cost incurred in the

conduct of this litigation: see also *Harbin v Gordon* [1914] 2 KB 577. To the extent that the plaintiff may have incurred costs in obtaining accommodation in Adelaide, she is entitled to be reimbursed for that also.

[emphasis added]

37 In my view, these two decisions by the SCSA could be interpreted as adopting an *even wider position* than that expressed in *Cachia* and *Rees*, given that it is not clear from *Hollobone* and *Rowan v Cornwall* whether the travel expenses incurred were solely for the purposes of the litigant *attending court as a witness*. Nevertheless, it suffices to note that all four Australian decisions would not support the Appellant's case in the present factual matrix (*ie*, where the Respondent had incurred travel expenses for the purposes of attending court as a witness). The proposition which I have extracted from the English case law (see above at [31]) can thus be similarly found in the Australian jurisprudence as well.

The legal position in Canada

38 The two Canadian cases which the Appellant relied on were *Dilcon Constructors Ltd v ANC Developments Inc* (1996) 42 Alta LR (3d) 132 ("*Dilcon Constructors*") and *Beloit Canada Ltd v Valmet-Dominion Inc* (1991) 39 CPR (3d) 90 ("*Beloit Canada*"). These two Canadian decisions are similar and unique in that the successful plaintiffs claiming travel expenses were *corporations* rather than individuals.

39 In *Dilcon Constructors*, one of the issues the court had to decide in relation to costs was whether the travel and living expenses of one Mr Osborn, the vice-president of the plaintiff, were recoverable. Mr Osborn had attended throughout the duration of the trial at counsel's request. The court held at [16]:

Any party who attends a trial is likely to suffer some expense, whether living and travel expenses if from out of town, or loss of income or earnings. Mr. Osborn as Vice President of Dilcon is in the same position as any individual party to an action. Similar personal or internal costs are incurred by parties from the start of litigation and not merely for attendances at trial. These kinds of costs are incurred in instructing counsel, gathering documents, attending at Examinations for Discovery and briefing for trial. Party and party costs are not intended to compensate a successful party for its own personal or internal costs for attending to the litigation.

40 In my view, the holding above in *Dilcon Constructors* does not advance the Appellant's case, for the simple reason that Mr Osborn was not a witness, and appeared to have attended the trial merely for the purposes of holding a watching brief.

41 Similarly, in *Beloit Canada*, the Federal Court of Appeal of Canada ("FCA") had to decide whether to allow "the living and travelling expenses of Mr. D.J. Veneman, [an in-house] counsel [of the successful plaintiff] for his attendance in Toronto to instruct counsel and assist in the preparation of the appeals" (at [1]). Unsurprisingly, the FCA held that it was (at [5]):

… aware of no authority for the proposition that a party and party award of costs embraces the travelling and living expenses of the successful party *in instructing counsel and attending the hearing*, however necessarily they may have been incurred. Those expenses should not be allowed.

[emphasis added]

42 Once again, the travel expenses involved in *Beloit Canada* were *not incurred* for the purposes of a litigant (or its representative) appearing as a witness at trial. They were therefore held to be not recoverable by the FCA.

43 As an illuminating contrast, *Bayliner Marine Corp v Doral Boats Ltd* (1987) 15 CPR (3d) 201 ("*Bayliner Marine*") shows that the proposition which I have identified above (at [31]) can be applied, and was in fact applied, even in a case where the successful litigant was a corporation. In *Bayliner Marine*, the FCA held (at [16]):

> Although the witness Hanna was president of defendant, the separate corporate personality permits him to be taxed as a witness including his travel expenses for examination for discovery and trial, but not for any attendance for the purposes of giving instructions to counsel.

44 In the same manner, an assessment office of the Federal Court of Canada in *Halford v Seed Hawk Inc* (2006) 69 CPR (4th) drew a principled distinction between *Beloit Canada* and *Bayliner Marine* on the basis that, in Canada, "travel disbursements are recoverable for a party as witness at his own discovery and to testify at trial [as in *Bayliner Marine*], but not to attend to give instructions [as in *Beloit Canada*]" (at [147]). The same assessment officer re-affirmed the existence of this distinction in the more recent case of *Pizzaro v Canada (Attorney General)* (2010) FC 718 at [6].

45 For the above reasons, I am of the view that the legal position in Canada, similar to that in England and Australia, supports the proposition that a litigant is entitled to recover travel expenses which are *necessarily* incurred for the purposes of *attending court as a witness*.

Application of the law to the facts

46 Since the Respondent had sued the Appellant on a personal injury claim, the Respondent would clearly have been a necessary witness should the matter have proceeded to trial. I therefore hold that the Respondent is entitled to claim his travel expenses as disbursements under O 59 r 24(1)(c) and that the sum of $1,208 is recoverable under O 59 r 27(2) of the Rules.

47 Since neither the common law nor the Rules have made it clear that travel expenses incurred by a litigant for *all* purposes are not recoverable as disbursements, I am convinced that this decision is the just and fair outcome on the facts. As the DJ has taken pains to point out (see above at [7]), the Respondent was forced to leave Singapore because he was injured and could no longer work. His sole reason for incurring the travel expenses was to attend the trial of the action as a key witness. Denying such plaintiffs their right to recover their travel expenses (which could be a very significant amount to some of them) might very well be tantamount to denying many of them – however strong their substantive cases are – access to justice.

Conclusion

48 For the foregoing reasons, I dismiss the appeal and hold that the Respondent is entitled to recover his travel expenses reasonably incurred under O 59 r 27(2) of the Rules.

49 The Respondent shall have the costs of this appeal to be taxed on a standard basis unless otherwise agreed.