SBS Transit Ltd (formerly known as Singapore Bus Service Ltd) v Teo Chye Seng Douglas [2005] SGHC 15

Case Number : DA 17/2004

Decision Date : 26 January 2005

Tribunal/Court : High Court

Coram : Woo Bih Li J

Counsel Name(s) : Willy Tay (Ari Goh and Partners) for appellant; Anuradha Tiwary (Pillai and Pillai) for respondent

Parties : SBS Transit Ltd (formerly known as Singapore Bus Service Ltd) — Teo Chye Seng Douglas

Civil Procedure – Costs – Whether respondent's behaviour in not accepting offer to settle affects costs awarded

Civil Procedure – Costs – Whether appellant's less-than-clear offer to settle affects costs awarded

26 January 2005

Woo Bih Li J:

Background

1 The plaintiff, Teo Chye Seng Douglas ("Teo"), was driving a motor car which collided with a motor bus of the defendant, SBS Transit Ltd (formerly known as Singapore Bus Service Limited), on 18 August 2001. I will refer to the defendant as "SBS". Both vehicles suffered damage. Teo also suffered injury.

2 On 4 December 2001, Teo's solicitors, M/s Pillai & Pillai ("Pillai"), wrote to SBS to ask if SBS would settle Teo's property claim, including rental charges, loss of use and document fees, amounting in aggregate to $18,335.31, and costs of $500. A breakdown of the $18,335.31 was provided in Pillai's letter.

3 On 24 December 2001, SBS replied to offer to settle the claim "at a global sum of $12,113.72 … in full and final settlement of all claims pertaining to the above accident".

4 On 2 May 2002, Pillai wrote to SBS to ask for a breakdown of its global offer.

5 No breakdown was provided by SBS. Instead, it replied on 3 May 2002 to ask Pillai to quantify the injury claim, if any, so that SBS could make an offer on that claim as well.

6 On 10 July 2002, Pillai wrote to SBS on Teo's injury claim. Pillai claimed general and special damages aggregating $10,516, the public trustee's administration fee of $500 and costs of $1,000. A breakdown of the claim for general and special damages was provided in Pillai's letter.

7 A holding letter was sent by SBS to Pillai on 11 July 2002. On 26 July 2002, SBS replied to offer $3,615 in full and final settlement of Teo's injury claim.

8 There was further correspondence but the matter remained unresolved when a Writ of Summons was issued for Teo on 11 September 2002.

9 On 23 October 2002, SBS filed its Defence and Counterclaim. On the same day, SBS filed and served an Offer to Settle ("OTS"). The material terms of the OTS were:

> The Defendants offer to settle these proceedings on the following terms:
>
> 1. Subject to the terms below, the Defendants to pay the Plaintiff a global sum of $15,728.72 (as per offers dated 24 December 2001 and 26 July 2002 from the defendants to the plaintiff's solicitors) as full and final settlement of the Plaintiff's claim.
>
> 2. The Defendants expressly provide on the question of the Plaintiff's entitlement to costs and interest – that both matters are to be reserved to the Court for determination.

10 On the day of the trial fixed on 10 February 2004, the parties reached a settlement of both Teo's claim and SBS's counterclaim with costs to be determined by the court. Teo's claim was settled at the sum of $15,728.72 mentioned in the OTS. SBS's counterclaim was settled at $6,000. After hearing arguments on costs, the trial judge awarded Teo $6,000 costs for his claim and awarded SBS $2,500 costs for its counterclaim. Both parties were also awarded reasonable disbursements. I would add that the $6,000 costs awarded to Teo were at the higher end of a certain range of costs provided in Part IV of O 59 of the Rules of Court (Cap 322, R 5, 2004 Ed).

11 SBS was dissatisfied with the costs order in favour of Teo. It applied for and eventually obtained leave to appeal on the costs order. The appeal was heard by me. I varied the costs order below which was in favour of Teo in that I ordered the parties to pay their own costs in respect of Teo's claims. I also ordered Teo to pay the costs of the applications for leave to appeal and the substantive appeal. I now set out my reasons.

Reasons

12 It was not disputed that the awarding of costs is in the discretion of any trial judge. However, as I shall elaborate below, I was of the view that the discretion was exercised wrongly.

13 The trial judge was of the view that the two earlier letters of offer from SBS dated 24 December 2001 and 26 July 2002 were confusing and vague. The first offer offered to settled all claims whilst the second offer was specifically for Teo's injury claim. She also found SBS's behaviour to be unreasonable as it had refused to give a breakdown of its first offer and had failed to disclose its counterclaim.

14 I was of the view that although the first offer gave the impression that it was to settle all claims, the second offer, which was confined specifically to Teo's injury claim, would have shown that the first offer was in fact for the damage to Teo's vehicle. In any event, if Pillai were still in doubt, this point could have been easily clarified.

15 As for SBS's omission to give a breakdown of its first offer, the complaint of Teo's counsel, Ms Tiwary, before me, was not that she did not know the breakdown as such but that she did not know whether SBS's offer included costs or not.

16 As for the omission by SBS to mention the counterclaim in either of the two letters of offer, I was of the view that that omission should not deny SBS the benefit of offers made before the filing of the Writ, if the offers were clear and fair in respect of Teo's claims.

17 In any event, in the appeal before me, counsel for SBS, Mr Tay, was not relying on those two letters of offer but on the OTS.

18 In her Grounds of Decision, the trial judge asked the question whether the OTS was inclusive of costs. She said that from para 2 thereof, costs were reserved to the court's determination which might mean that Teo might not be entitled to costs at all. She was also of the view that there was no mention of SBS' counterclaim in the OTS and it was not reasonable to expect Teo to accept the OTS when issues of his costs for his claims and the substantive counterclaim were still outstanding. The trial judge also said it would not be just and equitable to allow SBS to make a piecemeal offer without disclosing its counterclaim. She was of the view that Teo had acted reasonably at all times while SBS had behaved unreasonably.

19 With respect, I was of the view that the trial judge was unduly influenced by her perception of SBS's conduct prior to the issue of the Writ, including SBS's omission to mention the counterclaim then and SBS's omission to make an offer in the OTS *vis-à-vis* its counterclaim.

20 The OTS had made it clear that SBS would leave the question of costs to be determined by the court. While this might mean that Teo would get nothing for costs, it was important to bear in mind that Teo, in fact, eventually agreed to the court determining the issue of costs. The terms which Teo had agreed to for his claims on the day of trial were $15,728.72 with costs to be determined by the court. Those were the same terms provided in the OTS, leaving aside interest which was not in issue.

21 I now come to the point made by the trial judge about SBS's counterclaim. I was of the view that SBS was not legally obliged to mention its counterclaim before the Writ was filed although, to avoid any misunderstanding, the counterclaim should have been mentioned. In any event, SBS's Defence and Counterclaim were filed on the same day as that of the OTS. Presumably both SBS's pleadings and the OTS were served on Pillai at or about the same time. There was no complaint by Pillai that by then they were still unaware of the counterclaim.

22 The trial judge did not seem to think that the OTS was ambiguous about SBS's counterclaim. She concluded that the OTS excluded the counterclaim but, as I have mentioned, she was also of the view that it would not be reasonable to expect Teo to accept the OTS when there was no offer made by SBS on its counterclaim. I was of the view that the trial judge had also erred on this point. There is nothing in O 22A of the Rules of Court which requires an offer to settle a plaintiff's claim to include an offer to settle a defendant's counterclaim. Indeed, O 22A r 1 states that a party may serve an offer to settle "any one or more of the claims in the proceedings". That is the legal position. While it would be more conducive to a settlement if a comprehensive offer had been made regarding all claims and counterclaims, that is a different point.

23 Ms Tiwary sought to explain the late settlement on the basis that the OTS was not clear. Her first argument was that it was not clear from the OTS whether it included SBS's counterclaim. Her second argument was that it was not clear from the OTS whether both pre-writ and post-writ costs were to be determined by the court. Ms Tiwary stressed that para 1 of the OTS had referred to the two earlier offers from SBS made before the issuance of the Writ where no costs had been mentioned. Those arguments are different from the reasons of the trial judge who did not consider the OTS to be vague in its meaning, although the trial judge did consider SBS's two earlier offers to be vague.

24 Ms Tiwary said that she had sought clarification from SBS's solicitors. It was after SBS had

clarified that the OTS did not include its counterclaim and all costs would be left to be determined by the court that Teo then agreed to the terms I have mentioned to settle his claims. However, Mr Tay pointed out that the clarification was sought only just before the trial date and not when the OTS was served.

25 I was of the view that the opening clause of the OTS should have referred specifically and solely to Teo's claims and not to "these proceedings" which was less clear. However, the question whether SBS's counterclaim was included in the OTS turned out to be immaterial to Teo. As events demonstrated, Teo was prepared to accept the $15,728.72 even though it did not include a settlement of SBS's counterclaim. If the OTS had impliedly meant that SBS would discontinue its counterclaim, this would mean that Teo would be in a more advantageous position if he were to accept the OTS as it would mean that he would receive $15,728.72 for his claims without having to pay anything for SBS's counterclaim, aside from the question of costs. If the OTS did not include SBS's counterclaim, as was the case, Teo was in any event still prepared to accept the $15,728.72 for his claims, as I have mentioned.

26 As for the alleged ambiguity about pre-writ and post-writ costs, I was of the view that while para 1 of the OTS did refer to the two earlier offers from SBS, para 2 of the OTS was clear that costs were to be determined by the court. That meaning was also clear to the trial judge, although she did not think the OTS was reasonable. There was no distinction in the OTS between pre-writ and post-writ costs. Indeed, it seemed from the notes of arguments before the trial judge and her Grounds of Decision that this alleged ambiguity was not mentioned by Ms Tiwary. The ambiguity mentioned by Ms Tiwary to the trial judge on costs was whether costs generally were included.

27 Furthermore, if Ms Tiwary really had any doubt about the OTS, whether in relation to SBS's counterclaim or to costs, she could and should have sought clarification much earlier rather than later and the OTS should have been accepted well before the trial date.

28 In my view, Ms Tiwary's reason for not accepting the OTS for Teo on the trial date was because she realised that the OTS should have been accepted earlier and she wanted to avoid the consequences of the OTS. Hence, the parties came to an agreement on the same terms as the OTS but without Teo accepting the OTS. I am reinforced in my view of Ms Tiwary's reason by her submissions before me in which she stressed that O 22A r 9 of the Rules of Court should not apply because Teo did not accept the OTS. That submission was clearly wrong as O 22A r 9 does make provisions for costs where an offer to settle is not accepted. In my view, Teo could not escape the consequences of the OTS by the manoeuvre which Ms Tiwary had engaged in.

29 Accordingly, I was of the view that Teo had not acted reasonably after the OTS was served. As I have said, if there was any genuine doubt about the terms of the OTS, clarification should have been sought much earlier, and the OTS should have been accepted then. Instead, Teo agreed to a settlement on the same terms as the OTS some 15 or 16 months later on the day of the trial. Therefore, the OTS should not be disregarded. However, bearing in mind that the OTS should have been more clearly drafted as mentioned in [25] above, I was of the view that a fair order would be for each party to bear his/its own costs in respect of Teo's claims rather than to order costs on a standard basis, to be paid by SBS up to the date of service of the OTS, and costs thereafter to be paid by Teo on an indemnity basis. Such an order was advocated by Mr Tay but I decided against it. It would have meant that Teo would have ended up paying more costs to SBS than SBS to Teo for Teo's claims.

30 In the circumstances, I varied the trial judge's order on costs as indicated above.

31 I also add that quite often, offers to settle omit to mention a counterclaim. I encourage every person who is drafting such an offer to go through the pleadings carefully to ensure that the offer clearly specifies all claims, including counterclaims, that are meant to be included. For example, if a counterclaim is to be discontinued as part of an offer to settle made in respect of all claims by a plaintiff, this should be stated clearly and not left to implication. If the offer to settle is made in respect of various claims, the offer must make it clear whether it may be accepted in part or not. Issues of interest and costs should also be stated clearly in the offer to settle although O 22A r 9(2) of the Rules of Court does make provision for the situation where an offer to settle does not provide for costs.

Costs order below varied.

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