Goh Eileen née Chia and another *v* Goh Mei Ling Yvonne and another [2014] SGHC 141

Case Number : Suit No 732 of 2012

Decision Date : 16 July 2014

Tribunal/Court : High Court

Coram : Quentin Loh J

Counsel Name(s) : Loh Chai Chong and Suchitra Ragupathy (Rodyk & Davidson LLP) for the plaintiffs; Alfred Dodwell and Ivan Tay (Dodwell & Co LLC) for the defendants; Gregory Vijayendran and Lester Chua (Rajah & Tann LLP) for the non-parties.

Parties : Goh Eileen née Chia and another — Goh Mei Ling Yvonne and another

Civil Procedure – Costs

16 July 2014

Quentin Loh J:

Introduction

1 This is a supplemental judgement on costs for Suit No 732 of 2012 ("S 732/2012"). After the hearing which lasted about 17 days over three tranches and having considered the matter, I dismissed the Plaintiffs' claim in S 732/2012 entirely on 16 October 2013 with brief reasons ("the brief GD"). The Plaintiffs appealed and I have issued my grounds of decision dated 10 January 2014 (see *Goh Eileen née Chia and another v Goh Mei Ling Yvonne and another* [2014] SGHC 3 ("the GD")). At [75] of the GD, I indicated that I would hear the parties on the issue of costs. I directed that if the Defendants are inclined to seek an order for costs against Goh Wai Mun Eric ("Eric"), Wee Phui Leong Penelope ("Penny") and/or Goh Evan Wyming ("Evan"), they should serve a copy of the brief oral GD on them, and give them notice of the date fixed for the parties to be heard on costs.

2 On 22 April 2014, the counsel for the parties (including Eric and Penny (collectively known as the "Non-Parties")) appeared before me to submit on the issue of costs. It would appear that the Defendants had not sought to recover costs from Evan because I had earlier found that Evan was the "more passive participant" in S 732/2012 (GD at [72]). [note: 1] After deliberation, I gave my decision on costs with brief reasons on 2 June 2014. The parties have appealed against my decision and I now set out the grounds of my decision.

3 The Defendants asked for costs on indemnity basis against the Non-Parties and/or the Plaintiffs' solicitors, Rodyk & Davidson LLP. [note: 2] The Defendants also sought to recover costs from the Plaintiffs in the event that neither the Non-Parties nor the Plaintiffs' solicitors are ordered to pay costs, or are unable to bear the costs, or have defaulted on costs. [note: 3]

4 At the hearing, I was informed that the Non-Parties had offered to undertake to pay costs in favour of the Defendants if and to the extent that the 1st Plaintiff is unable to bear the costs. To date, the offer has not been accepted by the Defendants. As I explain later ([32] below), the Non-Parties' offer does not necessarily undermine the basis for ordering costs against the Non-Parties.

5 The issues before me were as follows:

(a) whether the Non-Parties and/or the Plaintiffs' solicitors and/or the Plaintiffs should be ordered to pay costs;

(b) whether costs should be ordered on an indemnity basis; and

(c) what is the quantum of costs payable.

6 Having considered the matter, I ordered that the Non-Parties pay the Defendants the sum of $164,955.78 as costs of S 732/2012 assessed on the standard basis.

Who should be liable for costs?

Whether the Non-Parties should be liable for costs?

7 In my view, the Non-Parties should be made liable for the costs as it would be just in the circumstances to do so.

8 The power of the court to make an order for costs against a non-party stems from O 59 r 2(2) of the Rules of Court (Cap 322, R 5, 2006 Rev Ed). The overarching rule that governs the exercise of the court's discretion in ordering costs against a non-party is that it must, in all circumstances of the case, be just to do so: *DB Trustees (Hong Kong) Ltd v Consult Asia Pte Ltd and another appeal* [2010] 3 SLR 542 ("*DB Trustees*") at [27], [29] and [36].

9 In deciding if the Non-Parties should be liable for costs, I took into account the following factors:

(a) a close connection between the non-party and the proceedings: *DB Trustees* at [29]–[34], citing *Dymocks Franchise System (NSW) Pty Ltd v Todd and others (Associated Industrial Finance Pty Ltd, Third Party)* [2004] 1 WLR 2807 ("*Dymocks*");

(b) a causal link between the non-party and the incurring of the costs: *DB Trustees* at [29]–[30] and [35], citing *Dymocks*;

(c) the ability of the party through whom the proceedings are brought or defended to meet any order for costs: *DB Trustees* at [42]; *Raffles Town Club Pte Ltd v Lim Eng Hock Peter and others (Tung Yu-Lien Margaret and others, third parties)* [2011] 1 SLR 582 ("*RTC*") at [28]; and

(d) the fact that due process ought to be accorded to the non-party before an order of costs is made against it: *DB Trustees* at [36] and [47].

10 All four of the factors identified above have been addressed by the parties to varying degrees. As such, I will consider each factor in turn, starting with the close connection between the non-party and the proceedings.

11 According to the Court of Appeal in *DB Trustees*, there are various ways to demonstrate that there is a close connection between the non-party and the proceedings in question (at [34]). Much depends on the facts. Specifically, the Court of Appeal considered that it would be sufficient if "the non-party either funds or controls legal proceedings with the intention of ultimately deriving a benefit from them" (at [30]). In this regard, the Court of Appeal clarified that funding and control need not

be conjunctive (at [30]). It is also apparent that the intention behind the funding or control is relevant. The non-party must have intended to derive a benefit from funding or controlling the proceedings. It would not suffice if the funding was out of purely altruistic reasons, *eg*, out of the natural affection of a disinterested relative (see *Murphy v Young & Co's Brewery plc* [1997] 1 WLR 1591 at 1603–1604, cited in *Dymocks* at [34]). I should add that the "benefit" which the non-party might intend to derive from the proceedings can be in the form of getting the fruits of the litigation (at [31], citing *Dymocks*) or avoiding the adverse consequences of litigation, *eg*, an adverse costs order (at [32], citing *Karting Club of Singapore v Mak David and others (Wee Soon Kim Anthony, intervener)* [1992] 1 SLR(R) 786 at [9]).

12 The Defendants contend that the Non-Parties have a close connection to the proceedings because they have not only funded but also controlled the proceedings. [note: 4] The Defendants further assert that the Non-Parties were the true litigants in S 732/2012 and that the 1st Plaintiff was merely a "pawn". [note: 5] The Defendants also argue that Eric, as one of the Non-Parties, would benefit from the proceedings if the Plaintiffs succeeded. [note: 6] On the other hand, the Non-Parties argue that there is "no credible evidence" to show that the Non-Parties had controlled or funded the proceedings with the intention of deriving a benefit from it. [note: 7]

13 I find that, in the present case, the Non-Parties have a close connection to the proceedings because they have not only funded but also controlled the proceedings. Based on the factual findings in S 732/2012, the logical inference is that the Non-Parties had funded and controlled the proceedings with the intention of ultimately deriving a benefit from it. The pertinent findings of fact are as follows:

(a) the Plaintiffs had not signed any warrant to act; the terms of the warrant to act, which was signed by Eric on 26 January 2012, made it "very clear" that he was the client (GD at [4] and [70]);

(b) the Non-Parties displayed an unusually high level of interest and involvement in the proceedings (GD at [62], [65]–[66] and [68]);

(c) the proceedings were brought "for the benefit and at the behest of Eric and Evan", and the Non-Parties and to a considerably lesser extent, Evan, were the "main driving forces" behind the proceedings (GD at [46]–[47], [51] and [60]);

(d) the Non-Parties paid the deposit and the legal fees for the proceedings (GD at [69]–[70]); and

(e) Eric and Evan stood to gain from the proceedings (GD at [36]).

14 The Non-Parties argue that there is no credible evidence to conclude that there is a close connection between the Non-Parties and the proceedings. I do not agree with the Non-Parties.

15 First, the Non-Parties argue that they had not funded the proceedings as the 1st Plaintiff was supposed to repay them later. [note: 8] I do not agree for two reasons:

(a) The definition of "funding", for the purpose of establishing close connection, is sufficiently wide to encompass loans. For instance, the non-party in *Dymocks* funded the litigation by providing loans (see *Dymocks* at [3]–[6]). This was acknowledged in *DB Trustees* (at [31]). Thus, this argument is of no weight and fails.

(b) In any event, the fact that the 1st Plaintiff is neither aware nor concerned about the legal fees incurred for the litigation suggests that she would not be the one ultimately paying for it. The Non-Parties say that it would be unusual for a person of the 1st Plaintiff's age to "have the finer details of finances at the fingertips", especially when Eric and Evan were managing the 1st Plaintiff's finances. [note: 9] Even if I accept this, it would not have explained why the 1st Plaintiff knows *nothing* about the legal fees. The 1st Plaintiff admits that she had never asked how much the legal fees were and does not know how much had been incurred so far (GD at [69]). While the 1st Plaintiff is not impecunious, I do not think that she would have been comfortable incurring legal fees personally without regard for whether she could have afforded it. Indeed, there is some evidence to suggest that the 1st Plaintiff could not afford a lawyer back in 2013 (GD at [69]). In light of the above, I cannot accept the bare assertion that there is some form of arrangement between the 1st Plaintiff and the Non-Parties for the repayment of the legal fees. It necessarily follows that the Non-Parties would, in all likelihood, have been the ones who were actually paying for the legal fees.

16 Secondly, the Non-Parties contend that there is no credible evidence to say that they had controlled the proceedings. [note: 10] This argument consists of several limbs and I will explore them in turn.

17 The Non-Parties argue that the Plaintiffs were advised and represented by solicitors acting on their behalf even though there was no warrant to act signed by the Plaintiffs because the lead counsel for the Plaintiffs confirmed that they took instructions directly from the Plaintiffs, and the 1st Plaintiff had referred to the Plaintiffs' solicitors as her lawyers (as opposed to the Non-Parties' lawyers). [note: 11] I find this explanation incredible. The Plaintiffs' solicitors must have known that it was necessary for them to obtain a warrant to act from the Plaintiffs, and that would have been evidence that they were authorised to act on behalf of the Plaintiffs (see O 64 r 7). It was never done.

18 This was not a case of inadvertence or mistake. In fact, the Plaintiffs' solicitors had obtained a warrant to act from Eric instead. If it was true that the Plaintiffs' solicitors had always, in their minds, been sure that they were acting *solely* on behalf of the Plaintiffs, then I do not understand how they could have been satisfied with the warrant to act from Eric. More importantly, the very fact that Eric had signed the warrant to act and received advice in relation to it would constitute "weighty evidence of Eric's links" to the proceedings (GD at [70]), regardless of whether the Plaintiffs' solicitors were in fact authorised to act on behalf of the Plaintiffs or not. The Non-Parties suggest that Eric was merely the "initial contact point" but this is inconsistent with his unusually high level of interest and involvement throughout the entire proceedings (GD at [62], [65]–[66] and [68]).

19 The Non-Parties further contend that even if the Plaintiffs were pressured into commencing S 732/2012 (which the Non-Parties deny), the Plaintiffs remained in control of the proceedings, [note: 12] and that they were merely assisting the Plaintiffs in the proceedings in light of her age. [note: 13] I do not think that this is consistent with the evidence. Indeed, Eric had admitted during trial that the 2nd Plaintiff was "in bed most of the time" and had not given instructions to the Plaintiffs' solicitors. [note: 14] The evidence also suggests that the 1st Plaintiff was also not in control of the proceedings. In fact, it became apparent during the trial that the 1st Plaintiff was not even familiar with the key documents in the proceedings, including her own affidavit. [note: 15] When the lack of involvement and familiarity displayed by the Plaintiffs is viewed together with the unusually high level of interest and involvement by the Non-Parties and the warrant to act signed by Eric, it would appear that the Non-Parties were the ones in control of the proceedings.

20 Thirdly, the Non-Parties argue that there is no evidence that they acted with an intention of deriving a benefit from the proceedings. [note: 16] The Non-Parties say that the reliefs sought in S 732/2012 were for the Plaintiffs' own benefit, even though a benefit could "potentially accrue" to Eric and Evan if the transfer was invalidated. [note: 17] While superficially attractive, I find that the argument is, with respect, fundamentally flawed. In my view, there is no need for a non-party to benefit *directly* from the proceedings; it is sufficient if they acted with the "intention of ultimately deriving a benefit" (see *DB Trustees* at [30]). It does not matter whether he eventually benefits from the proceedings. As I have found earlier, the proceedings appear to have been commenced "for the benefit of and at the behest of Eric and Evan" (GD at [46]). This is clear from the circumstances, and in particular, the sequence of events leading up to the action (GD at [34]–[38]). Eric's wife, Penny, who is legally trained, also played an active role supporting her husband in this litigation. She sought the services from Rodyk & Davidson LLP, and she was the one who prepared Post-it Notes on documents she had organized to help Eric with his cross-examination, and these were documents that she had gathered from elsewhere as they were clearly were not copied from the Agreed Bundles. Furthermore, I do not think that much weight should be accorded to Eric's self-serving evidence that he has "nothing to gain" from the proceedings and that he was "not really interested" in the Clementi flat. [note: 18]

21 Accordingly, I find that the Non-Parties had funded and controlled the proceedings in S 732/2012 with the intention of ultimately deriving a benefit from it.

22 Next, I will consider the causal link between the non-party and the incurring of the costs. This factor is a question of causation, *ie*, whether the costs would have been incurred *but for* the involvement of the non-party: *DB Trustees* at [35]. It may be established "by the very same facts which go toward the establishment of the first factor, *ie*, a close connection between the non-party and the proceedings": *DB Trustees* at [35].

23 In this case, it is clear that the causal link between the Non-Parties and the incurring of the costs is established. As I have pointed out earlier, the Non-Parties were the ones who funded and controlled the entire proceedings ([13]–[20] above). The Plaintiffs could not and, in all likelihood, would not have commenced the action otherwise. They neither had the financial resources (at least not immediately) nor the reason to do so (GD at [17], [60]––[71]). As such, there is no reason to belabor the point.

24 I now turn to the ability of the party through whom the proceedings are brought or defended to meet any order for costs. In this case, it would be the Plaintiffs' ability to pay for costs.

25 As I understand it, the Non-Parties appear to be saying that the Plaintiffs are "not without assets" as the 1st Plaintiff has a share in the Clementi flat. [note: 19] In this regard, the Non-Parties highlighted that the unsuccessful parties in *Dymocks* and *DB Trustees* were both insolvent and unable to pay the costs orders made against them (see *Dymocks* at [1]; *DB Trustees* at [42]). [note: 20] The Defendants, on the other hand, say that it would be unfair for the Plaintiffs to bear the costs in light of the circumstances. [note: 21] In response, the Non-Parties say that the welfare of the 1st Plaintiff should not affect whether it would be just to order costs against the Non-Parties, and that in any event, the expenses of the 1st Plaintiff was found to be shared between the four children. [note: 22]

26 I agree with the Non-Parties that the Plaintiffs are not insolvent and would technically appear to be able to satisfy an order for costs if it was made against them, but such an order would deplete the modest nest-egg. Even though there would not be any "injustice to the receiving parties" (see

RTC at [28]), in this case the Defendants, this must be taken in the proper context. The purpose of the inquiry is to ascertain if it is just in the circumstances to make the non-party bear the costs ([8] above). Even if the party through whom the proceedings were brought or defended is able to pay, it does not necessarily mean that it would not be just to make a costs order against the non-party. This is particularly true if the party through whom the proceedings were brought or defended was not a corporate entity but an elderly and vulnerable individual that was used by the non-party as a pawn in the litigation. To my mind, it would be most unjust to allow the Non-Parties to say that the Plaintiffs should bear the costs as they are not insolvent, after having used them as pawns in the proceedings. Accordingly, I would give little weight to the fact that the Plaintiffs are not insolvent and would appear to be able to satisfy the costs order made against them (albeit not without undue hardship).

27 The last point relates to whether the Non-Parties have been accorded with due process before an order of costs is made against them.

28 The Non-Parties submit that they have not been warned at the earliest opportunity of the possibility of an adverse costs order being sought against them. [note: 23] For this, they rely solely on the English Court of Appeal decision of *Symphony Group Plc v Hodgson* [1994] QB 179 ("*Symphony*"). The Defendants contend that the Non-Parties have been accorded the due process as required by *DB Trustees*. [note: 24] Further, the Defendants argue that there is no requirement to join the Non-Parties and in any event, the Non-Parties could have joined themselves as parties to the proceedings. [note: 25] The Defendants further say that the Non-Parties were essentially the "true litigants" and were "not detached" from the proceedings. [note: 26]

29 As the law stands, there is no specific requirement mandating that the non-party must be given prior warning before an order for costs can be made against the non-party. On the contrary, the Court of Appeal in *DB Trustees* considered the issue (including the position taken in *Symphony*) and came to the conclusion that the requirement for prior warning "cannot be an unbending proposition" in light of the broad discretion of the court to decide on costs (at [47]). The Court of Appeal went on to state that (at [47]):

> Of course, we recognise that, in certain instances, the non-party may be prejudiced by not having been warned. Even so, the lack of a warning ought to be properly assessed and balanced against other factors in the exercise of the court's discretion to order costs. Furthermore, this disadvantage can be ameliorated, if not eliminated, by ensuring that there is due process accorded to the non-party before any order is made, In short, there is no indispensable rule of practice that a non-party must be given prior warning before an adverse order for costs is made. What is *essential* is that the non-party must be *accorded due process* and his or her *views adequately considered* before such an order is made. [emphasis in original]

30 In the present case, the Non-Parties have been accorded with due process and their views have been adequately considered before the order for costs is made. Quite ironically, it is precisely because the Non-Parties have been accorded due process and given a fair chance to have their views considered that they can now submit before me that they should not be made to pay costs because, *inter alia*, they have not been given prior warning. In fact, the Non-Parties admit that they have been put on notice since 3 July 2013, [note: 27] which was even before the proceedings in S 732/2012 ended. This case is no different from *DB Trustees*, where the Court of Appeal held that due process was accorded as the non-party was "allowed … to make submissions on cost" and had known that the issue of costs by non-party was "always on the cards" (at [48]). I see no reason to

decide otherwise.

31 Accordingly, I am of the view that in all the circumstances of this case, it would be just to make an order of costs against the Non-Parties.

32 At this juncture, it would be apposite for me to address why the Non-Parties' offer to undertake to pay costs does not undermine the basis for an order of costs against the Non-Parties. The Non-Parties' undertaking was conditional upon the 1st Plaintiff's inability to bear the costs. The Non-Parties have therefore only dealt with one of the factors that the court may consider in deciding if it is just to order costs against a non-party. As I have pointed out earlier (at [26]), little weight should be placed on the fact that the Plaintiffs are not insolvent and might be able to pay for costs. The Non-Parties' undertaking, when framed as conditional, would not make a difference to the decision to order costs against them. I have no doubt that as Eric and Evan manage the Plaintiff's monies, they would simply deduct the costs from those funds under their control and deplete the same to the detriment of the 1st Plaintiff.

33 Having dealt with the issue of costs against the Non-Parties, the next issue is whether the Plaintiffs' solicitors should be personally liable for the costs.

Whether the Plaintiffs' solicitors should be personally liable for costs?

34 Apart from asking for costs from the Non-Parties, the Defendants are also submitting that the Plaintiffs' solicitors should be personally liable for costs. I do not agree that the Plaintiffs' solicitors ought to be personally liable for costs.

35 The power of the court to make a solicitor personally liable for costs is derived from O 59 r 8 of the Rules of Court. In particular, the relevant part of the rule states:

> **Personal liability of solicitor for costs (O. 59, r. 8)**
>
> **8.**—(1) Subject to this Rule, where it appears to the Court that costs have been incurred unreasonably or improperly in any proceedings or have been wasted by failure to conduct proceedings with reasonable competence and expedition, the Court may make against any solicitor whom it considers to be responsible (whether personally or through an employee or agent) an order —
>
> (*a*) disallowing the costs as between the solicitor and his client; and
>
> (*b*) directing the solicitor to repay to his client costs which the client has been ordered to pay to other parties to the proceedings; or
>
> (*c*) directing the solicitor personally to indemnify such other parties against costs payable by them.
>
> ...

36 The scope of this jurisdiction was comprehensively considered by the English Court of Appeal in *Ridehalgh v Horsefield and another* [1994] Ch 205 ("*Ridehalgh*") which dealt with a similar provision under English procedural law. Sir Thomas Bingham MR (as he then was), delivering the judgment of the court, laid down the three-stage test as follows (at 231):

(1) Has the legal representative of whom complaint is made acted improperly, unreasonably or negligently? (2) If so, did such conduct cause the applicant to incur unnecessary costs? (3) If so, is it in all the circumstances just to order the legal representative to compensate the applicant for the whole or any part of the relevant costs?

The three-stage test has been endorsed by the Court of Appeal (see *Ho Kon Kim v Lim Gek Kim Betsy and others and another appeal* [2001] 3 SLR(R) 220 at [58]).

37 The rationale for O 59 r 8(1), as the Court of Appeal explained, is based essentially on the consideration that the "litigant should not be financially prejudiced by the unjustifiable conduct of litigation by his opponent or his opponent's solicitor": *Tan King Hiang v United Engineers (Singapore) Pte Ltd* [2005] 3 SLR(R) 529 ("*Tan King Hiang*") at [15]. A similar point is made in *Singapore Court Practice 2009* (Jeffrey Pinsler SC gen ed) (LexisNexis, 2009) at para 59/8/7. However, the court should bear in mind the potential chilling effect of making solicitors personally liable for costs. In *Tan King Hiang*, the Court of Appeal noted that:

> ... it must be borne in mind that, in making a show cause order of this nature, the court also has to balance two important public interests. In *Ridehalgh*'s case ([71] *supra*), Sir Thomas Bingham MR phrased it in this manner at 226:
>
> > *One [public interest] is that lawyers should not be deterred from pursuing their clients' interest by fear of incurring a personal liability to their clients' opponents*; that they should not be penalised by orders to pay costs without a fair opportunity to defend themselves; that wasted costs orders should not become a back-door means of recovering costs not otherwise recoverable against a legally-aided or impoverished litigant; and that the remedy should not grow unchecked to become more damaging than the disease. The other public interest ... is that litigants should not be financially prejudiced by the unjustifiable conduct of litigation by their or their opponents' lawyers. The reconciliation of these public interests is our task in these appeals. Full weight must be given to the first of these public interests, but the wasted costs jurisdiction must not be emasculated.
>
> [emphasis added]

38 With these principles in mind, I will proceed to examine the facts of the present case. The Defendants' argument is basically two-fold: first, the Plaintiffs' solicitors had proceeded without authority of the Plaintiffs and in doing so, assisted in the abuse of process perpetrated by the Non-Parties, [note: 28] and second, the conduct of the Plaintiffs' solicitors in the proceedings caused the Defendants to incur unnecessary costs. [note: 29] As for the Plaintiffs' solicitors, they take the position that 1st Plaintiff's evidence in court dispels the allegations by the Defendants that the Plaintiffs are not the "true litigants" and did not give instructions to the Plaintiffs' solicitors. [note: 30] The Plaintiffs' solicitors also dispute the assertion that their conduct in the proceedings had led to unnecessary costs by the Defendants. [note: 31]

39 As stated earlier ([34] above), I do not think that this is an appropriate case to hold the Plaintiffs' solicitors personally liable for costs under O 59 r 8. Even if the Plaintiffs' solicitors might have acted improperly and/or negligently (in the *Ridehalgh* sense), a finding which I must emphasize I *do not* make as there is clearly insufficient evidence before me to make any such finding, I do not think that the Defendants have established that the Plaintiffs' solicitors have caused them to incur unnecessary costs. The Defendants have not shown that any of the allegations had caused them to incur unnecessary costs. There was neither evidence nor submissions to indicate how the Defendants

had incurred unnecessary costs as a result of the conduct of the Plaintiffs' solicitors (or the extent thereof). I note the possibility that the Defendants might be saying that the costs of the entire proceedings were caused by the conduct of the Plaintiffs' solicitors but I do not think this is made out in the present case. In relation to the failure to obtain the warrant to act from the Plaintiffs, it is clear to me that the proceedings would have continued even if the Plaintiffs' solicitors had asked for the warrant to act from the Plaintiffs because it is likely that the Non-Parties would have been able to get the Plaintiffs (at least the 1st Plaintiff) to sign it. As I have found earlier, the 1st Plaintiff is nothing but a pawn in the litigation (GD at [47]). If the Non-Parties were able to compel the 1st Plaintiff to sign affidavits and testify in court, I do not see why it would not be possible for them to get her to sign the warrant to act. As for the other allegations made against the Plaintiffs' solicitors, [note: 32] they relate to the conduct of the Plaintiffs' solicitor in the proceedings and not whether the action would have been brought in the first place. Hence, the evidence to support the grave and serious order making the Plaintiffs' solicitors personally liable for costs under O 59 r 8 is clearly lacking.

40 For the above reasons, I do not think that this is an appropriate case to hold the Plaintiffs' solicitors personally liable for costs under O 59 r 8.

Whether the Plaintiffs should be liable for costs?

41 As I have earlier pointed out, the Defendants are only seeking to recover costs from the Plaintiffs in the event that neither the Non-Parties nor the Plaintiff's solicitors are ordered to pay costs, or are unable to bear the costs, or have defaulted on costs. [note: 33]

42 Since I have found that the Non-Parties are liable for costs, it follows that I do not have to make an order for costs against the Plaintiffs. In any event, I do not consider that the Plaintiffs should be liable for costs in light of the facts ([26] above). Having dealt with the first issue, I will now address the second issue.

Whether costs should be ordered on an indemnity basis?

43 The Defendants submit that because of the exceptional circumstances of the present case, costs should be ordered on an indemnity basis. [note: 34] The Plaintiffs and Non-Parties disagree. [note: 35]

44 The power of the court to order costs on an indemnity basis can be found in O 59 r 27(1) of the Rules of Court, which reads:

> **27.**—(1) Subject to the other provisions of these Rules, the amount of costs which any party shall be entitled to recover is the amount allowed after taxation on the standard basis where —
>
> (*a*) an order is made that the costs of one party to proceedings be paid by another party to those proceedings;
>
> (*b*) an order is made for the payment of costs out of any fund; or
>
> (*c*) no order for costs is required,
>
> *unless it appears to the Court to be appropriate to order costs to be taxed on the indemnity basis*.

[emphasis added]

45 It is trite law that costs would be ordered on an indemnity basis only if there are exceptional circumstances: *RTC* at [29]. What, then, constitutes exceptional circumstances? In this respect, case law provides guidance.

46 In *RTC*, Chan Seng Onn J helpfully gave two examples where costs on an indemnity basis might be warranted (at [30]):

(a) *Goodwood Recoveries Ltd v Breen; Breen v Slater* [2006] 1 WLR 2723 ("*Breen*"), where there was dishonesty, impropriety and exceptional conduct on the part of a non-party (*ie*, the director of the plaintiff company); and

(b) *DB Trustees*, where the non-party (*ie*, the sole director of the plaintiff company) had, among other things, "plainly abused the judicial process".

47 Chan J also considered two cases where costs on an indemnity basis were sought but not awarded, namely (at [31]):

(a) *Heng Holdings SEA (Pte) Ltd v Tomongo Shipping Co Ltd* [1997] 2 SLR(R) 813, where there was material non-disclosure of facts; and

(b) *Ng Eng Ghee v Mamata Kapildev Dave* [2009] 4 SLR(R) 155, where there were allegations that the party had suppressed information and conducted strata titles board proceedings in an unjustifiably adversarial manner.

48 Having done so, Chan J went on to assess the facts in the case before him and held that the matters alleged "did not evince such a degree of dishonesty, impropriety or abuse of judicial process to warrant a departure from the usual basis of costs" (at [32]). For completeness, I should add that in *RTC*, the plaintiff was alleged to have engaged in speculative litigation and not acted *bona fide* because, among other things, they relied on inadmissible documents and attempted to embarrass the defendant by including criminal allegations in the statement of claim (at [32]). Even so, Chan J did not think that it was sufficient to warrant costs on an indemnity basis. At this juncture, it is apposite to recall the observation by Vinodh Coomaraswamy J in *Tan Chin Yew Joseph v Saxo Capital Markets Pte Ltd* [2013] SGHC 274 that "[t]he burden on a party who seeks an order for indemnity costs as a matter of discretion is therefore a high one" (at [97]).

49 I should point out that, like in the present case, the court in *RTC* (as well as *Breen* and *DB Trustees*) was faced with the issue of whether costs on an indemnity basis should be ordered against a non-party.

50 Having considered the matter, I do not think that this case is sufficiently exceptional to warrant an order of costs on indemnity basis. At the heart of this case is a family dispute where the siblings are fighting over their parents' Clementi flat. Like most family disputes, emotions ran deep and tempers flared; various allegations, valid or otherwise, were made both in and out of court. Bearing in mind the unique circumstances of the case, I would not order costs on an indemnity basis.

51 This leaves me with the issue of quantum.

What is the quantum of costs payable?

52 The Defendants argue that they should be entitled to costs of $445,185.78, which can be broken down as follows: [note: 36]

(a) $387,730.00 for legal work;

(b) $10,000.00 for work done in respect of their submissions and reply submissions on costs; and

(c) $47,455.78 for disbursements.

53 The Plaintiffs, on the other hand, submit that the costs should not exceed $60,000.00. [note: 37] The Non-Parties have not submitted on the issue of quantum and when asked at the hearing, the counsel for the Non-Parties confirmed that they would not be submitting on the issue. However, I would assume that they would align themselves with the Plaintiffs' position.

54 In deciding the quantum of costs payable, I took into account the following considerations (bearing in mind para 1(2) of the Appendix 1 to O 59 of the Rules of Court):

(a) the hearing was originally scheduled to be heard over 6 days (including 2 days for submissions); [note: 38]

(b) the hearing lasted, in terms of time taken, for about 10 full days (by the Plaintiffs' calculation) to 13.5 full days (by the Defendants' calculation), [note: 39] and the counsel for the Defendants, Mr Alfred Dodwell, was sick on one of the days;

(c) the time and labour expended by the Defendants' counsel; [note: 40]

(d) this was not a complex case, despite the numerous allegations against the Defendants and there are no difficult or novel points of law;

(e) the essential disputed facts are neither complex nor over a long period of time;

(f) this is not a case where there are voluminous bundles of documents that had to be perused or prepared;

(g) the urgency of the matter (if any) was not such that it led to an increase in the stress levels and workload of the Defendants' counsel;

(h) the proceedings had been unnecessarily prolonged by counsel;

(i) the difficulties faced by counsel during cross-examination, *eg*, the age of the 1st Plaintiff and the evasiveness of Eric on the stand (GD at [63]); and

(j) the Clementi flat, which is the subject-matter of S 732/2012, is worth only about $700,000 (GD at [1]).

55 At this juncture, I should examine in some detail the main contention of the Plaintiffs with regard to the quantum of costs. In essence, the Plaintiffs submit that the proceedings had been unnecessarily prolonged by the Defendants because they were not prepared for trial, [note: 41] called

irrelevant witnesses, [note: 42] and asked irrelevant questions during cross-examinations. [note: 43] According to the Plaintiffs, the matter should have taken no more than four days as scheduled (since two days were originally reserved for submissions). [note: 44] It follows, the Plaintiffs say, that the costs awarded should be reduced accordingly.

56 I do not agree with the Plaintiffs' suggestion that the evidence of Lucy Theodas, Dr Lim Yun Chin and Prof Tan Yew Lee Kevin were irrelevant. As I have found earlier, the evidence given by all three witnesses provided the backdrop, explained the relationships within the Goh family, and the 1st Plaintiff's motivation for being involved in S 732/2012 (GD at [31]–[33], [39], [43]–[44], [46]–[48], [52], [57]–[58]). In this regard, they certainly fall within the definition of relevant facts under the Evidence Act (Cap 97, 1997 Rev Ed).

57 However, I do agree that the Defendants' counsel had unnecessarily prolonged the proceedings. For a start, I note that the Plaintiffs' counsel had stayed close to their estimate whereas the Defendants' counsel took longer than expected. I am aware that there were several half days throughout the 17-day hearing such that, at the end of the day, the hearing lasted for only about 10 full days (by the Plaintiffs' calculation) to 13.5 full days (by the Defendants' calculation). [note: 45] I also acknowledge that the counsel for the Defendants, Mr Dodwell, was sick on one of the days and I do not blame him for that. I further take into account the fact that Eric had been evasive on the stand (GD at [63]). Even so, they do not adequately explain for the total amount of time taken by the Defendants. I notice that the Defendants' counsel had expected to finish the cross-examination of the 1st Plaintiff by the morning of the third day of trial, [note: 46] but as it turns out, the 1st Plaintiff was kept on the witness stand for another 5 days (albeit only for several hours in the morning each day). [note: 47] While I appreciate that the 1st Plaintiff is very old, I am of the view that the Defendants' counsel could have been much more efficient. I also note that, to a large extent, the same criticism can be made of the Plaintiffs' counsel, and particularly in relation to her cross-examination of Prof Kevin Tan and Lucy Theodas. [note: 48] I should also note that many of the applications which took place during the trial, including the leave to call further witnesses and leave to dispense with AEIC for certain witnesses, could have been avoided in the first place.

58 Further, I agree with the Plaintiffs that, having found that the proceedings had been unnecessary prolonged by the Defendants' counsel and his manner of cross-examination, the appropriate response would be to award the Defendants only a proportion of their costs. I find support for this approach in not only O 59 r 2(2) of the Rules of Court but also various case authorities, including:

(a) *Bank of China v First National Bank of Boston* [1992] 1 SLR(R) 72 at [34], where the Court of Appeal allowed only costs for one day attendance even though the hearing took two days because it was, among other things, "unnecessarily prolonged by the lengthy and elaborate submissions";

(b) *Maratz Ltd v New India Assurance Co Ltd* [1998] 2 SLR(R) 134 at [33], where Warren Khoo J allowed only half the costs because the defendants had "unnecessarily prolonged the proceedings"; and

(c) *Anne Joseph Aaron (m w) and others v Cheong Yip Seng and others* [1995] SGHC 131, where Lai Siu Chiu J deducted 2 days of attendance in court out of the 5 days of cross-examination because the counsel had unnecessarily prolonged the proceedings by taking the witnesses "through the special report sentence by sentence".

As such, I award costs on the basis of a 9-day trial and taking into consideration all the facts and circumstances of this case, I allow costs at $126,000.

59 I now deal with disbursements. At the hearing, the Plaintiffs' counsel confirmed that they are only challenging the Defendant's claim for food and lodging between January and August 2013 which was $16,000. Specifically, they contend that the Defendants did not have to stay in Singapore for the entire proceedings but only when they were giving evidence. In the present case, I disallow the Defendants' claims of $8,000 each for food and lodging ($1,000 per month for each Defendant), as they were not able to substantiate the same. Hence, I would only allow the disbursements of $31,455.78.

60 Accordingly, the costs payable would be as follows:

(a) $126,000 for legal work;

(b) $7,500.00 for work done in respect of their submissions and reply submissions on the application for and taxation of costs; and

(c) $31,455.78 for disbursements.

61 In total, the Defendants would get the sum of $164,955.78 as costs for S 732/2012.

Conclusion

62 For the above reasons, I order that the Non-Parties pay the Defendants $164,955.78 as costs of S 732/2012 assessed on the standard basis. There will be neither an order of costs against the Plaintiffs nor against their solicitors personally.

[note: 1] Defendants' submissions on costs at para 12.

[note: 2] Defendants' submissions on costs at paras 2–3.

[note: 3] Defendants' submissions on costs at para 4.

[note: 4] Defendants' submissions on costs at para 40.

[note: 5] Defendants' submissions on costs at para 40.

[note: 6] Defendants' submissions on costs at para 40.

[note: 7] Non-Parties' submissions on costs at paras 44–70.

[note: 8] Non-Parties' submissions on costs at paras 45–50.

[note: 9] Non-Parties' submissions on costs at para 49.

[note: 10] Non-Parties' submissions on costs at paras 51–57.

[note: 11] Non-Parties' submissions on costs at paras 39–42; 51–53.

[note: 12] Non-Parties' submissions on costs at para 55.

[note: 13] Non-Parties' submissions on costs at para 56.

[note: 14] Notes of Evidence, 6 August 2013, page 73 lines 13–18.

[note: 15] See, *eg*, Notes of Evidence, 26 April 2013, page 18 line 12 – page 29 line 30.

[note: 16] Non-Parties' submissions on costs at paras 58–64.

[note: 17] Non-Parties' submissions on costs at paras 37–38.

[note: 18] Notes of Evidence, 5 August 2013, page 51 lines 13–29.

[note: 19] Non-Parties' submissions on costs at para 74.

[note: 20] Non-Parties' reply submissions at para 26.

[note: 21] Defendants' submissions on costs at paras 46–48.

[note: 22] Non-Parties' reply submissions at paras 29.

[note: 23] Non-Parties' submissions on costs at paras 75–79.

[note: 24] Defendants' reply submissions at paras 90–93.

[note: 25] Defendants' reply submissions at paras 94–95.

[note: 26] Defendants' reply submissions at para 96.

[note: 27] Non-Parties' submissions on costs at para 77; Defendants' reply submissions at para 95.

[note: 28] Defendants' submissions on costs at paras 60–71.

[note: 29] Defendants' submissions on costs at paras 72–88.

[note: 30] Plaintiffs' solicitors' submissions on costs at paras 3–50 and 76–81.

[note: 31] Plaintiffs' solicitors' submissions on costs at paras 51–68.

[note: 32] Defendants' submissions on costs at paras 73 – 88.

[note: 33] Defendants' submissions on costs at para 4.

[note: 34] Defendants' submissions on costs at paras 92–111; Defendants' reply submissions at paras

97–102.

[note: 35] Non-Parties' reply submissions at paras 31–48.

[note: 36] Defendants' reply submissions at para 98.

[note: 37] Plaintiffs' further submissions on costs at para 19.

[note: 38] Plaintiffs' Lead Counsel Statement dated 19 April 2013 and Defendants' Lead Counsel Statement dated 22 April 2013.

[note: 39] Plaintiffs' submissions on costs at Annex A; Defendants' Bundle of Documents at Tab B.

[note: 40] Defendants' Bundle of Documents at Tab D.

[note: 41] Plaintiffs' submissions on costs at paras 7–14.

[note: 42] Plaintiffs' submissions on costs at paras 3–6.

[note: 43] Plaintiffs' submissions on costs at para 15.

[note: 44] Plaintiffs' submissions on costs at paras 17, 33, 39–40.

[note: 45] Plaintiffs' submissions on costs at Annex A; Defendants' Bundle of Documents at Tab B.

[note: 46] Notes of Evidence, 29 April 2013, page 83 lines 26–29.

[note: 47] Plaintiffs' submissions on costs at Annex A.

[note: 48] Notes of Evidence, 7 August 2013, page 152 lines 15–23; page 155 lines 14–19; pages 162 lines 2–3 and GD at [48].