IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2018] SGHC 146

HC/Suit No 59 of 2015

Between

Noor Azlin Binte Abdul Rahman

… *Plaintiff*

And

(1) Changi General Hospital Pte Ltd
(2) Imran bin Mohamed Noor
(3) Yap Hsiang
(4) Soh Wei Wen, Jason

… *Defendants*

SUPPLEMENTARY JUDGMENT (RULING ON COSTS)

[Civil Procedure] — [Costs]

[Civil Procedure] — [Offer to Settle]

Version No 1: 27 Oct 2020 (22:40 hrs)

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Noor Azlin Bte Abdul Rahman
v
Changi General Hospital Pte Ltd and others

[2018] SGHC 146

High Court — Suit No 59 of 2015
Belinda Ang Saw Ean J
22 May 2018

21 June 2018 Judgment reserved.

Belinda Ang Saw Ean J:

1 The substantive judgment in this case can be found at [2018] SGHC 35. I found in favour of the defendants on the issue of liability for the reasons given. Despite the plaintiff's persuasions, there is no reason to refuse to determine costs before her appeal. Besides, the defendants have informed the court that they are willing to defer demanding payment or enforcement of any costs orders made against the plaintiff pending the plaintiff's appeal in CA/CA 47/2018.

2 The plaintiff argues that the costs should be awarded to the plaintiff because (a) it was established that the defendants owed a duty of care to the plaintiff and (b) breach of duty was found. The plaintiff's arguments are unmeritorious. No breach of duty was found in respect of the third and fourth defendants. Although the plaintiff has been successful in some measure in establishing duty and breach in respect of the first and second defendants, it was ultimately not causative of the plaintiff's loss. Since causation is an integral

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component of the tort of negligence, the issues that the plaintiff won against the first and second defendant cannot properly be said to be separate or distinct to qualify as a reason for depriving the defendants of costs, whether in whole or in part. It follows that there are no circumstances justifying a departure from the general rule that costs follow the event. In this case, the defendants are the successful party and the plaintiff is to pay the defendants' costs of the action.

3 I turn now to the defendants' Joint Offer to Settle filed and served on 10 January 2017 ("the OTS"). This OTS was served 7 days before the start of the trial on 17 January 2017. The plaintiff has rejected the OTS. The defendants now seek to invoke the provisions of Order 22A r 9 of the Rules of Court (Cap 322, R5, 2014 Rev Ed) to recover costs on an indemnity basis from the date of service of the OTS since the OTS was more favourable to the plaintiff than the final decision of the court dismissing the plaintiff's claim. In addition, the defendants have invited the court to fix the quantum of costs and to give an uplift of 20% on the fixed costs to deal with costs on an indemnity basis from the date of service. In contrast, the plaintiff asks for costs to be taxed. I am minded to determine costs and not send the matter for taxation. The parties have submitted submissions in relation to costs. They have also submitted their respective costs schedules.

4 The defendants argue that the OTS for a sum of $300,000 in full and final settlement of the plaintiff's claims was valid, unlike what the plaintiff argues. Order 22A r 10 provides that the ordinary cost consequences in r 9 would apply if all the defendants, who are alleged to be jointly and severally liable, make a joint offer for which they are jointly and severally liable. This was done, so the usual OTS consequences apply (*ie*, the defendants are entitled to costs on an indemnity basis from the date the offer was served).

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5 The plaintiff also argues that the OTS was ambiguous as the OTS only stated that the defendants would pay the plaintiff $300,000 as *damages and interest*, with no provision for costs. However, the defendants have rightly argued that O 22A r 9(2)(b) covers the situation where an OTS is silent on costs. Further, in relation to the plaintiff's argument as to the defendants delaying the payment of costs, O 22A r 8 states that if a party fails to comply with the terms of an accepted OTS, the other party will have recourse to the court. Thus the OTS, as a matter of form, was valid.

6 It also cannot be said that the OTS was not genuine as it did not offer a true compromise. The sum of $300,000 was reasonable and not a token discount, even though the plaintiff claimed around $6.7m in damages. One has to bear in mind that the quantum was exaggerated on the face of the pleadings. Separately, as disclosed to the trial judge dealing with the issue of costs without objection from the plaintiff, it appears that the plaintiff would be prepared to accept $1.3m as compensation.

7 The OTS was served 7 days before the start of trial and given the minimum time limit of 14 days that the offer once made will be open for acceptance, in the court's view, this offer in the present case was made quite late in the day. This lateness will have a bearing on the 20% uplift proposed by the defendants. In the court's discretion, an appropriate uplift would be 5%.

8 The hospital (the first defendant) and the three doctors (second to fourth defendants) were separately represented. Furthermore, there was no overlap between the matters relied upon in the defences. It is therefore appropriate to order two sets of costs. Accordingly, the costs determined by this court is as follows:

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Item	**1st defendant (hospital)**	**2nd to 4th defendants (doctors)**
(1) Legal costs	$320,000.00	$320,000.00
(2) 5% uplift for OTS	$16,000.00	$16,000.00
GST on (1) and (2)	$23,520.00	$23,520.00
Disbursements	$121,645.63	$68,123.31
Total	$481,165.63	$427,643.31

Belinda Ang Saw Ean
Judge

Vijay Kumar Rai (Engelin Teh Practice LLC) for the plaintiff;
Kuah Boon Theng, SC, Karen Yong and Samantha Oei (Legal Clinic LLC) for the first defendant;
Lek Siang Pheng, Vanessa Lim, Yvonne Ong and Audrey Sim (Dentons Rodyk & Davison LLP) for the second to fourth defendants.

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