IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2019] SGHC 234

Suit No 867 of 2015

Between

Ng Kian Huan, Edmund

… Plaintiff

And

(1) Suying Metropolitan Studio Pte Ltd
(2) Suying Design Pte Ltd
(3) Tan Teow Feng Patty

… Defendants

And

(1) Tan Teow Feng Patty
(2) Suying Metropolitan Studio Pte Ltd

… Plaintiffs in Counterclaim

And

(1) Ng Kian Huan, Edmund
(2) Metropolitan Office Experimental Pte Ltd
(3) Chong Chin Fong

… Defendants in Counterclaim

SUPPLEMENTAL GROUNDS OF DECISION

[Civil Procedure] — [Costs]

Ng Kian Huan Edmund
v
Suying Metropolitan Studio Pte Ltd and others

[2019] SGHC 234

High Court — Suit No 867 of 2015
Chua Lee Ming J
5 August 2019

30 September 2019

Chua Lee Ming J:

1 These supplemental grounds of decision deal with the costs orders that I made after I had delivered my judgment in this case. The full facts are set out in the judgment delivered on 5 March 2019: *Ng Kian Huan Edmund v Suying Metropolitan Pte Ltd* [2019] SGHC 56 ("the Judgment").

2 Briefly, in 2012, the plaintiff, Mr Ng Kian Huan, Edmund ("Edmund"), was running an architectural firm, Metropolitan Office Experimental ("MOX"), while the 3rd defendant, Ms Tan Teow Feng Patty ("Patty") ran an interior design company, Suying Design Pte Ltd ("SDPL"), the 2nd defendant. Edmund, Patty and two others agreed to join forces and formed a new company, Suying Metropolitan Studio Pte Ltd ("SMSPL"), the 1st defendant. The agreement was made orally ("the Oral Agreement") and, not surprisingly, its terms were disputed.

3 In these proceedings, Edmund's main claim was for minority oppression under s 216 of the Companies Act (Cap 50, 2006 Rev Ed) against Patty in connection with the affairs of SMSPL. Some of the grounds relied upon in the oppression claim involved certain payments made by SMSPL to SDPL and Patty, as well as certain payments that were payable by SDPL to SMSPL. As part of his claim, Edmund sought orders requiring SDPL and Patty to pay these sums of money to SMSPL.

4 Edmund also sought certain orders against SMSPL in relation to his salary, director's fees and dividends.

5 SMSPL made numerous counterclaims:

(a) Counterclaims against Edmund for repayment of director's fees and dividends received by Edmund, breaches of director's duties in connection with numerous projects, breaches of confidentiality, negligence in connection with several projects, payment of monies received by Edmund, repayment of Edmund's vehicle allowance, and advances to Edmund.

(b) Counterclaims against MOX for reimbursement for the use of SMSPL's resources.

(c) A counterclaim against Edmund and MOX in respect of certain expenses charged to SMSPL.

(d) A counterclaim against Edmund and his wife, Ms Chong Chin Fong ("Jazz") for an indemnity.

(e) A counterclaim against Jazz for services rendered.

6 Initially, Patty's counterclaim was for an order to authorise proceedings in SMSPL's name or on behalf of it, against Edmund. After Patty filed her defence and counterclaim, SMSPL amended its defence to include its counterclaim against Edmund. Patty's counterclaim was therefore moot save that Patty counterclaimed for the costs of having had to raise her counterclaim.

7 In the Judgment,

(a) I accepted Edmund's version of the terms of the Oral Agreement (the Judgment at [76]).

(b) I found in favour of Edmund on his oppression claim and ordered that SMSPL be wound up (the Judgment at [203]–[218]).

(c) I directed SMSPL's accounts for 2012 and 2013 to be adjusted to give effect to my findings on certain issues that affected the accounts (the Judgment at [364]).

(d) I found that Patty had breached the terms of the Oral Agreement by wrongfully refusing or failing to cause SDPL to pay $1,320,586.67, $1,545,904 and $36,272.89 to SMSPL (the Judgment at [203(h)]–[203(i)]). Accordingly, I ordered Patty to procure SDPL to do so (the Judgment at [225]).

(e) I ordered Patty to pay SMSPL a total of $711,276 comprising:

(i) $672,000 that Patty had wrongfully caused SMSPL to pay to her (the Judgment at [232]); and

(ii) $39,276 that had been wrongly accrued to Patty's director's account in SMSPL (the Judgment at [241]).

(f) I ordered SDPL to pay SMSPL a total amount of $1,286,383.47 comprising:

(i) $872,864 which Patty had wrongfully caused SMSPL to pay to SDPL (the Judgment at [220]);

(ii) $1,388 which SDPL admitted had been paid to it by SMSPL by mistake (the Judgment at [226]);

(iii) $48,333.72 which SDPL admitted it had wrongly billed SMSPL for and had been paid (the Judgment at [227]);

(iv) $169,507.67 being SDPL's income tax and GST liabilities which SMSPL had paid on behalf of SDPL (the Judgment at [229]); and

(v) $194,290.08 which was due from SDPL to SMSPL and which Patty had wrongfully caused SMSPL to write off (the Judgment at [230]).

(g) I ordered SMSPL to pay Edmund a total amount of $269,063.45 comprising:

(i) $4,063.45 being his outstanding salary (the Judgment at [248(a)]); and

(ii) $265,000 being his director's fees for 2013 (the Judgment at [248(c)]).

(h) I declared that a sum of $200,000 paid to Edmund in 2013 was paid to him as director's fees for 2012 (the Judgment at [248(b)]).

(i) I ordered Edmund to pay SMSPL a total amount of $234,750 comprising:

(i) $225,750 being total damages for Edmund's breaches of duties and/or negligence in respect of four projects under SMSPL (the Judgment at [272], [281], [287] and [325]);

(ii) $3,000 being total nominal damages for Edmund's breaches of duties in respect of three projects under SMSPL (the Judgment at [266], [267] and [283]);

(iii) $1,000 being nominal damages for Edmund's technical breach of his confidentiality obligations (the Judgment at [297]); and

(iv) $5,000 being personal expenses that Edmund had charged to SMSPL (the Judgment at [356]).

(j) I found Edmund liable to indemnify SMSPL for the fees for one project to the extent that the fees were not recoverable from the client otherwise than due to SMSPL's own omission or fault (the Judgment at [269]).

(k) I found Edmund was liable to account to SMSPL for the profits made by him in respect of another project (the Judgment at [276]).

(l) I dismissed all the other claims and counterclaims.

8 Edmund, Patty and SDPL have filed appeals against the Judgment.

9 I heard the parties on 5 August 2019 on the question of costs and made several orders. Patty and SDPL have obtained leave to appeal against the costs

orders made against them and amended their respective notices of appeal to include their appeals against the costs orders.

Costs between Edmund and Patty

10 Patty submitted that Edmund should pay costs or part of her costs because he had raised a substantial number of improper and unreasonable issues. I disagreed.

11 The Court should order costs to follow the event except when it appears to the Court that in the circumstances of the case some other order should be made as to the whole or any part of the costs: O 59 r 3(2) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed). Absent special circumstances, therefore, a successful party is entitled to costs.

12 Edmund succeeded in his oppression claim. He succeeded in proving his version of the terms of the Oral Agreement. The dispute over the terms of the Oral Agreement was a major issue at the trial. Resolution of this dispute also had a bearing on whether certain payments and transactions were wrongful. Further, Edmund substantially succeeded in proving his allegations against Patty in respect of her conduct of the affairs of SMSPL. It was clear that however one analysed the case, Edmund was the successful party in the oppression claim.

13 Edmund also succeeded in most of his claims against Patty for payments to be made by Patty to SMSPL and for Patty to procure SDPL to make payments to SMSPL. Finally, Patty failed in her counterclaim against Edmund.

14 Patty submitted that Edmund unreasonably complicated the proceedings by amending his claim to include unmeritorious claims. Edmund did not

succeed in proving all his claims. The reasons are set out in the Judgment. It should also be noted that some of Edmund's claims were made in the alternative. They became irrelevant when I accepted Edmund's version of the Oral Agreement. Clearly, Edmund was entitled to make these allegations in the alternative. In my view, Edmund had not acted unreasonably in making the allegations that he did; neither did these allegations unreasonably complicate the proceedings.

15 Patty also submitted that Edmund "multiplied the costs and complexity of the trial" by including all the disclosed documents in his bundles of documents. Whilst this was not desirable, in my view, it did not make the trial more complex. I agreed with Edmund that this issue concerned disbursements, which I directed to be decided by me if parties could not agree on the same.

16 In my view, Patty's submission that Edmund should pay costs or part of her costs, was wholly unmeritorious and unreasonable.

17 I assessed the total costs at $500,000 to be apportioned among the parties. Edmund's oppression claim against Patty took centre stage in the trial. A good number of the factual issues in Edmund's claims against SDPL and SMSPL, and in the counterclaims by SMSPL, overlapped with the factual issues in the oppression claim.

18 In the circumstances, I ordered Patty to pay Edmund the sum of $400,000, being:

(a) the costs of Edmund's oppression action and his claims against Patty; and

(b) the costs of Patty's counterclaim.

Costs between Edmund and SMSPL

19 Edmund largely succeeded in his claims against SMSPL. SMSPL made numerous counterclaims against Edmund but succeeded in only some of them. As mentioned earlier, nominal damages were awarded in respect of some of the counterclaims by SMSPL. For purposes of costs orders, I did not regard SMSPL as having been successful in respect of claims where only nominal damages were awarded: *Mahtani and others v Kiaw Aik Hang Land Pte Ltd* [1994] 2 SLR(R) 996 at [57].

20 In my view, the appropriate order was for Edmund and SMSPL to bear their own respective costs in respect of their claims against each other and I so ordered.

Costs between Edmund and SDPL

21 SDPL submitted that Edmund ought to pay costs and pointed out that the quantum that the Court ordered SDPL to pay to SMSPL was just 10% of what Edmund had claimed. This was too simplistic an approach. The claims against SDPL are dealt with in the Judgment at [220]–[231]. In my view, overall, Edmund was the successful party.

22 However, Edmund did not succeed in all his claims. In my view, the appropriate order was for SDPL to pay two-thirds of the costs to Edmund. The claims against SDPL overlapped with claims in the oppression action and the dispute over the terms of the Oral Agreement. I fixed the costs at $60,000 on a full liability basis, and thus ordered SDPL to pay Edmund $40,000.

Costs between SMSPL and MOX/Jazz

23 SMSPL failed in its counterclaim against MOX (the Judgment at [343]). MOX was therefore entitled to costs which I fixed at $25,000. SMSPL also failed in its counterclaims against Jazz. I fixed the costs in Jazz's favour at $15,000. Edmund submitted that these costs should be borne by Patty because Patty was the person behind SMSPL's counterclaims. I agreed.

24 In *DB Trustees (Hong Kong) Ltd v Consult Asia Pte Ltd* [2010] 3 SLR 542 ("*DB Trustees*"), the Court of Appeal summarised the relevant principles as follows (at [36]):

> (a) costs orders may be made against non-parties where it is just to do so in all the circumstances of the case; and
>
> (b) in assessing whether it would be just to do so, a variety of factors may be relevant but ordinarily, considerable weight would be placed on the presence of two factors, *viz*, a close connection between the non-party and the proceedings and a causal link between the non-party and the incurring of costs.

25 Examples of a close connection between the non-party and the proceedings include where the non-party either funds or controls the legal proceedings with the intention of ultimately deriving a benefit from them, or where the non-party was responsible for initiating an unwarranted application: *DB Trustees* at [30] and [33].

26 In the present case, Patty was not a party to SMSPL's counterclaims against MOX and Jazz. However, it was clear that Patty was the one who caused SMSPL to pursue these counterclaims and that she both funded and controlled

the same. In my view, Patty's objective was to throw as many counterclaims at Edmund, MOX or Jazz, as she could come up with, regardless of whether there was a sound basis.

27 The twin requirements of a close connection and a causal link were clearly satisfied. I therefore ordered Patty to bear the costs payable by SMSPL to MOX and Jazz.

Conclusion

28 As between Edmund and Patty, I ordered Patty to pay Edmund the sum of $400,000, being:

(a) the costs of Edmund's oppression action and his claims against Patty; and

(b) the costs of Patty's counterclaim.

29 As between Edmund and SMSPL, they were to bear their own respective costs in respect of their claims against each other.

30 As between Edmund and SDPL, I ordered SDPL to pay Edmund costs fixed at $40,000.

31 As between SMSPL and MOX, I ordered Patty to bear the costs payable to MOX, fixed at $25,000.

32 As between SMSPL and Jazz, I ordered Patty to bear the costs payable to Jazz, fixed at $15,000.

33 I directed that Edmund's, Jazz's and MOX's disbursements were to be fixed by me if not agreed between the parties.

Chua Lee Ming
Judge

Tan Chee Meng SC, Paul Loy Chi Syann and Hui Janie Anne
(WongPartnership LLP) for the plaintiff by original action
and first, second, and third defendants in counterclaim;
Chua Sui Tong (Rev Law LLC)
for the first defendant by original action
and second plaintiff in counterclaim;
Lee Bik Wei (Allen & Gledhill LLP) for the second defendant;
Tan Huiru Sally and Vanessa Chiam Hui Ting (Drew & Napier LLC)
for the third defendant and first plaintiff in counterclaim.