

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2020] SGHC 56

Originating Summons No 1382 of 2018

Between

CBB

... Applicant

And

Law Society of Singapore

... Respondent

SUPPLEMENTARY GROUNDS OF DECISION

[Civil Procedure] — [Costs]

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CBB
v
Law Society of Singapore

[2020] SGHC 56

High Court — Originating Summons No 1382 of 2018
Aedit Abdullah J
15 July 2019, 17 February 2020

19 March 2020

Aedit Abdullah J:

Introduction

1 These are supplementary grounds of decision, giving reasons for my costs order in respect of *CBB v The Law Society of Singapore* [2019] SGHC 293 (“the main judgment”) arising from HC/OS 1382/2018 (“OS 1382”). The Applicant has appealed against part of the main judgment as well as my subsequent order that no costs are awarded. The facts, issues, holdings and findings for OS 1382 have been covered in the main judgment, and will not be repeated here.

2 The Applicant sought costs,¹ but the Respondent resisted, primarily arguing that no costs should be ordered as it performs a regulatory function.² Considering the outcome of the main judgment, the various points on which the Applicant did not succeed, as well as the public regulatory function performed by the Respondent, I did not consider it appropriate to order costs against the Respondent.

Parties' Arguments

The Applicant's Arguments

3 The Applicant sought costs of S\$30,000 with disbursements of around S\$8,000.³ It was argued that costs may be awarded in judicial review proceedings, relying on *Vellama d/o Marie Muthu v Attorney-General* [2013] 1 SLR 797 and the UK Supreme Court decision in *Regina (Hunt) v North Somerset Council* [2015] 1 WLR 3575.⁴ Even though the Respondent is a regulatory body, no statutory or regulatory authority is immune from an adverse cost order: *Ang Pek San Lawrence v Singapore Medical Council* [2015] 2 SLR 1179 (“*Ang Pek San*”).⁵

¹ Applicant's submissions dated 20th January 2020 (“Applicant's cost submissions”) at para 3

² Respondent's submissions dated 30th January 2020 (“Respondent's cost submissions”) at para 7

³ Applicant's cost submissions at para 3

⁴ Applicant's cost submissions at paras 10–11

⁵ Applicant's submission dated 17 February 2020 (“Applicant's reply cost submissions”) at para 17

4 It was held in the main judgment that the administrative decision made by the Council of the Law Society (“Council”) was irrational.⁶ The Applicant relied on this and argued that if the Council had been more prudent with their administrative decision, OS 1382 would not have been commenced.⁷

5 The Respondent’s ambiguity in its correspondence to the Applicant resulted in the Applicant having to make submission on many unnecessary issues, covering every possible permutation, when these issues could have been narrowed.⁸ Although the Applicant did not succeed on every point, the submissions had to be broad ranging because of the Respondent’s conduct.⁹ The Respondent had also objected to the rolling up of the leave and substantive stages, contrary to clear authority.¹⁰

6 The Applicant had acted with the public interest at heart, to ensure the investigation of improper conduct.¹¹ The application was pursued because of substantial lapses in the Council’s administrative decision making process, and the disregard it had for the statutory purposes of the disciplinary framework, namely, to maintain high standards and the good reputation of the legal profession.¹²

⁶ Applicant’s cost submissions at paras 12–15

⁷ Applicant’s cost submissions at paras 12–15

⁸ Applicant’s cost submissions at paras 16–25

⁹ Applicant’s cost submissions at paras 16–25

¹⁰ Applicant’s cost submissions at para 25

¹¹ Applicant’s cost submissions at paras 26–30

¹² Applicant’s cost submissions at paras 26–30

7 The Applicant argued that the Council was not performing a regulatory function in deciding not to seek leave to refer the offending conduct. Instead, such conduct had been found to be unreasonable and a breach of its statutory obligations.¹³ Further, the Respondent was not performing a public function by defending the Council's irrational decision.¹⁴ Even if it was, this was unreasonable and costs can still be ordered. The Respondent relied on *Re Shankar Alan s/o Anant Kulkarni* [2007] SLR (R) 95 and *Law Society of Singapore v Top Ten Entertainment Pte Ltd* [2011] 2 SLR 1279 ("Top Ten") to support these arguments. The Respondent also failed to give any meaningful reason for adopting the Council's decision and deciding to resist OS 1382.¹⁵ An adverse costs order should be awarded to incentivise appropriate conduct and to discourage behaviour impeding administration of justice.¹⁶ The various cases cited by the Respondent were cited out of context and did not assist it.¹⁷

The Respondent's Arguments

8 The Respondent argued that no costs order should be made against it as the Council was performing a public function, as recognised in *Top Ten*, citing *Baxendale-Walker v Law Society* [2008] 1 WLR 426 ("Baxendale-Walker").¹⁸ This was reiterated in *Ang Pek San* ([3] *supra*).¹⁹ Furthermore, the Applicant only succeeded in one of the many arguments put forward.²⁰ The conduct of the

¹³ Applicant's reply cost submissions at paras 5–11

¹⁴ Applicant's reply cost submissions at paras 5–11

¹⁵ Applicant's reply cost submissions at para 16

¹⁶ Applicant's reply cost submissions at para 21

¹⁷ Applicant's reply cost submissions at para 22

¹⁸ Respondent's cost submissions at para 8

¹⁹ Respondent's cost submissions at para 9

²⁰ Respondent's cost submissions at para 12

Respondent in the present case was not of the nature or severity to displace the default position that an entity performing a public function should not be made to pay costs.²¹

The Decision

9 I concluded that it was not appropriate to order costs against the Respondent given the outcome of OS 1382, in which a number of points went against the Applicant, and the scope of the order ultimately granted was narrower than what the Applicant sought.

10 The parties disputed the applicability of *Top Ten* and the *Baxendale-Walker* principle to the present case, namely, that regulatory bodies should generally not be subject to adverse cost orders when performing public functions.²² However, regardless of whether I apply the general approach to costs or the *Baxendale-Walker* principle as synthesised by *Ang Pek San*, in the end, the same result is reached.

The general approach to costs

11 The general principle is that costs follow the event: O 59 R 3(2) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed).

12 However, in OS 1382, the event was not substantively against the Respondent or in favour of the Applicant. Instead, the main judgment merely granted an order to quash the Council's decision not to apply for leave, and also

²¹ Respondent's cost submissions at para 26

²² Applicant's reply cost submissions at para 22; Respondent's cost submissions at paras 8–9

an order for the Council to perform its duty. I did not order the Council to seek leave of court to refer the complaint to the Chairman of the Inquiry Panel. Hence, the result of the main judgment was for the complaint to be properly considered by the Council.

13 Next, the Applicant had made several failed arguments relating to whether the complaint ran up against the limitation period specified under the Legal Profession Act (Cap 161, 2009 Rev Ed) (see main judgment at [42]–[62]), and relating to illegality and procedural impropriety in the Council's decision (main judgment at [76], [90]). The Applicant argued that he could not be faulted for canvassing all relevant arguments as new points would generally not be allowed on appeal, citing *Yong Kheng Leong and another v Panweld Trading Pte Ltd and another* [2013] 1 SLR 173.²³ That may be so, but it does not follow that an award for costs should be given if most of those points fail at first instance.

14 Given the limited scope of the order granted, and the lack of success on the other points, especially the limitation point which took up a substantial portion of the arguments, in my view, the fairest order was to leave parties to bear their own costs.

The Baxendale-Walker principle

15 The guidance and synthesis given by the High Court in *Ang Pek San* ([3] *supra*) was useful and relevant as it considered and incorporated the principle in *Baxendale-Walker* ([8] *supra*) that regulatory bodies should generally not be subject to adverse cost orders when performing public functions. The Applicant

²³ Applicant's reply cost submissions at para 30

argued that *Baxendale-Walker* was not applicable to judicial reviews, and was only pertinent to disciplinary challenges. I was not convinced that this would be so. It may be a matter of happenstance whether the challenge is made by judicial review or made under the relevant statute. In either situation, the challenge relates to the procedure or outcome of disciplinary proceedings carried out by the relevant body.

16 Nevertheless, I do accept that there may be judicial review cases in which costs may be ordered against a regulatory body. This requires consideration of various factors, as was laid down in *Ang Pek San*. There, the court analysed the significant precedents and found at [55] that:

... [The] cases set out the following points in particular:

- (a) The ultimate objective of the court is to render a costs order that is just and reasonable.
- (b) The “event” is one of the factors that may be taken into account but it is not the only one.
- (c) Similarly, the regulatory function of the entity in question is also only one of the factors that may be taken into account although it will often be an important and sometimes even an overriding one.
- (d) The degree of weight to be placed upon the fact that the respondent has a regulatory function will depend on various factors. In particular, the court will consider whether the decision to bring the charges was made honestly, reasonably and *on grounds that reasonably appeared to be sound* in the exercise of its public duty.
- (e) The court will also consider the financial prejudice to the doctor.
- (f) Finally, the court will also consider “any other relevant fact or circumstances”.

This framework must be applied holistically and with due regard to the interests of both parties.

[Emphasis in original]

The court also considered that there was no need to make out egregious conduct amounting to bad faith or gross dereliction for costs to be awarded.

17 That synthesis is applicable to the present case, with minor modifications, beyond the specific statutory and regulatory context in *Ang Pek San*. Applying a similar approach here would be justified since it is necessary to consider various factors such as the regulatory function of the Respondent, the prejudice or financial burden borne by the Applicant, as well as the outcome of the proceedings. Applying these factors, I find that no costs order should be made, for the same reasons as set out in the general approach above.

18 While I had found that the Respondent had committed *Wednesbury* irrationality or unreasonableness, this was not a finding that its conduct fell so short that costs should be ordered; *Wednesbury* unreasonableness is simply taking into account matters which should not have been taken into account, or failing to take into account matters which were relevant. It does not by itself impute abuse or contumeliousness. I noted the caution, as highlighted in *Ang Pek San*, that the standard of conduct need not be so poor as to amount to egregiousness. However, in the present case, *Wednesbury* irrationality or unreasonableness in itself is not conduct that requires a cost order to be made.

Overall assessment

19 For these reasons, applying either or both the general approach and the synthesis in *Ang Pek San*, I concluded that no cost order should be made here.

Aedit Abdullah
Judge

Sarjit Singh Gill SC, Jamal Siddique Peer, Leong Woon Ho and Suah Boon Choong (Shook Lin & Bok LLP) for the applicant;
Tan Wee Kheng Kenneth Michael SC (Kenneth Tan Partnership) for
the respondent.
