IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2023] SGHC 291

Suit No 833 of 2020
Summonses Nos 2331 and 2424 of 2023

Between

(1) Arokiasamy Steven Joseph
Administrator of Estate of Salvin Foster Steven, the deceased
(2) Tan Kin Tee

… *Plaintiffs*

And

(1) Lee Boon Chuan Nelson
(2) Gomathinayagam Kandasami
(3) Institute of Mental Health

… *Defendants*

JUDGMENT

[Civil Procedure – Costs – Principles – Quantum of costs to be awarded to successful litigant-in-person]

Version No 1: 13 Oct 2023 (16:47 hrs)

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Arokiasamy Steven Joseph (administrator of the estate of Salvin Foster Steven, deceased) and another
v
Lee Boon Chuan Nelson and others and other matters

[2023] SGHC 291

General Division of the High Court — Suit No 833 of 2023 and Summonses Nos 2331 and 2424 of 2023
Choo Han Teck J
4 October 2023

13 October 2023 Judgment reserved.

Choo Han Teck J:

1 This action and the two summonses have been dealt with in my judgment of 25 August 2023, *Arokiasamy Steven Joseph (administrator of the estate of Salvin Foster Steven, deceased) and another v Lee Boon Chuan Nelson and others and other matters* [2023] SGHC 230. The present matter concerns the question of costs arising from the two summonses brought by Arbiters Inc Law Corporation ("Arbiters") that were dismissed, of which I had ordered Arbiters to pay costs to the plaintiffs and the 1st and 3rd defendants, and if the parties are unable to agree, I will fix the costs. They were unable to agree as to the amount, and Mr Vijay Kumar Rai ("Mr Rai") of Arbiters now submits that the plaintiffs, as well as the 1st and 3rd defendants should be held liable for costs to Arbiters for the summonses. The orders made were clear and unambiguous, Arbiters is to pay costs to the plaintiffs and the 1st and

3rd defendants. The only outstanding issue to resolve is the quantum of the costs to be paid.

2 Contrary to the submissions of Mr Rai, none of the other parties can be held liable for either of the summonses. Both were filed by Arbiters. Even Mr Anil Balchandani ("Mr Balchandani"), who was acting for the 2nd plaintiff, stayed discreetly uninvolved in the summonses, and merely wrote a letter to express his support for Mr Rai.

3 Mr Rai filed SUM 2331 asking for various orders, essentially to ensure that the settlement money paid by the 1st and 3rd defendants to the plaintiffs are secured until Arbiters are paid their fees. The flaw in that application was that it was filed after the plaintiffs had discharged Arbiters and Red Lion Circle Advocates & Solicitors ("Red Lion Circle") (solicitors for the 1st and 2nd plaintiffs respectively). That meant that Arbiters had no authority to make the applications. In any event, the correct procedure was (for Arbiters and Red Lion Circle) to apply for leave of court for the solicitors to be discharged, but that was not done.

4 After Mr Rai became aware of the problem of his lack of authority, he filed SUM 2424 in an attempt to rectify it. That summons was an application to have Arbiters joined as a party to the action in this suit (Suit 833 of 2020), and thereafter, continue with his application under SUM 2331. For the reasons given in my judgment of 25 August, I dismissed both summonses, with costs to be fixed by me should the parties be unable to agree costs among themselves. They could not agree among themselves. All parties therefore filed their written submissions on costs.

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5 The plaintiffs, now litigants-in-person, are asking Arbiters to pay them costs of $4,000 in total for the two summonses. Donaldson & Burkinshaw, the solicitors for the 1st defendant are asking for costs of $13,000 in total plus $142.83 in disbursements. Legal Clinic LLC, the solicitors for the 3rd defendant are asking for costs of $16,000 all in. Arbiters reject the claims by the other parties, and submits instead, that the plaintiffs should each pay $4,000 to Arbiters for SUM 2331 ($8,000 in total), and the plaintiffs and the 1st and 3rd defendants should each pay $2,000 to Arbiters ($8,000 in total) for SUM 2424. Alternatively, Mr Rai submits that the costs of Arbiters to the 1st and 3rd defendants, if any, should be borne by the plaintiffs. Mr Rai submits that in the event costs are not awarded to Arbiters, then no costs should be awarded to the plaintiffs, and a nominal sum of $250 each (all in) should be awarded to the 1st and 3rd defendants.

6 I will deal with the solicitors' submissions first as they are more straightforward. The fact that both summonses filed by Arbiters could not be graced by even an iota of merit and thus failed utterly means that the parties who were compelled to attend court by reason of being served, must be entitled to costs. By the same token, Arbiters are not entitled to costs against any party.

7 Although Mr Rai attempted to make a case out of SUM 2331 on the basis of an equitable lien for costs, Arbiters was found wanting on the equity scale. Not only was there no basis to withhold the full compensation from the plaintiffs, the estimated total fees Mr Rai is claiming seems excessive in the circumstances. The two summonses were heard in just about two hours in total. The issues were not complicated, and thus I am of the view that costs to the 1st defendant fixed at $8,000 (inclusive of disbursements) and paid by Arbiters would be fair. Since the main thrust of the submissions in both applications were advanced by Miss Kuah Boon Theng SC ("Ms Kuah") for the 3rd defendant, I

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order costs to the 3rd defendant in the sum of $10,000 (all in) to be paid by Arbiters. The costs awarded to the 1st defendant and 3rd defendant are within the costs guidelines for summonses.

8 The claim for costs by the plaintiffs is less straightforward. Traditionally costs were not given to litigants-in-person because such costs are party-and-party costs and awarded to help a litigant defray his solicitor-and-client costs. In modern times, the Rules of Court allow costs to be awarded even to litigants-in-person. In the rare cases where such costs had been awarded, they are much lower than what would have been awarded as party-and-party costs where the litigant is represented by solicitors or counsel.

9 The Civil Procedure Rules in the UK capped costs to litigants-in-person to two thirds of what would have been ordered had the litigant been represented by a lawyer. This appears to have been the formula adopted by the High Court in *Mah Kiat Seng v Attorney-General and others* [2023] SGHC 52 at [7]-[9]. I have no disagreement with the decision of Jeyaretnam J in that case, save to say that it is not appropriate to lay down strict formulae for costs for litigants-in-person for reasons that I shall now elaborate.

10 Unlike the Civil Procedure Rules in the UK which provide for capped costs to litigants-in-person, our Rules of Court 2014 (O 59 r 18A) and Rules of Court 2021 (O 21 r 7) do not provide for any cap on quantum. As such, I am of the view that the two thirds cap found in the UK Civil Procedure Rules is, at best, a useful guide. The quantum of costs is always discretionary (as opposed to the principles regarding when costs may be awarded). That is because costs are fact sensitive, and every case is different. When litigants appear in person, matters can get even more complicated because an anxious litigant may labour excessively, often misguiding himself for lack of knowledge of the law. In other

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cases, the litigant may indeed have knowledge of the law and labour as hard with better results. Conversely, a litigant-in-person may outperform counsel in the case, making it appear manifestly unjust that he should be limited to two thirds of what the fumbling counsel gets.

11 The point therefore, is that costs of a litigant-in-person should not be taxed separately, but fixed by the trial judge because he is the person who knows the facts and merits required to adjust the discretionary quantification of costs to a litigant-in-person. That court will be guided by the fact that money is rarely adequate compensation even in successful litigation. Neither are costs meant as a punishment to the party who has failed.

12 In this case, the issues in the two summonses were legal issues that, bereft of counsel, the two plaintiffs were unable to help themselves, let alone help the court. They were more concerned about the fees that Arbiters and Red Lion Circle claimed against them. But that is another matter, for another proceeding. The two plaintiffs were nonetheless compelled to attend court for two or three occasions regarding the summonses. They produced evidence on affidavit that assisted the court. Both of them are not employed so there is no loss of income to claim as disbursements. In the circumstances, I am of the view that a sum of $500 to each of them to be paid by Arbiters would be a fair amount and I so order.

- Sgd -
Choo Han Teck J
Judge of the High Court

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First Plaintiff in-person
Second Plaintiff in-person
Jansen Aw, Samuel Lim Jie Bin and Thanjit Kaur Sekhon (Donaldson & Burkinshaw LLP) for First Defendant
Kuah Boon Theng SC, Felicia Chain and Shenna Tjoa (Legal Clinic LLC) for Third Defendant
Vijay Kumar Rai, Joavan Christopher Pereira and Jasleen Kaur (Arbiters Inc Law Corporation) formerly for First Plaintiff
Anil Narain Balchandani (Red Lion Circle) formerly for Second Plaintiff.

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