IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1994] SGHC 185

S2289/1990

Between

Shanghai Chong Kee Furniture
& Construction Pte Ltd

… Plaintiff

And

Intraco Limited

… Defendant

GROUNDS OF DECISION

Version No 1: 29 Oct 2026 (23:45 hrs)

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Shanghai Chong Kee Furniture & Construction Pte Ltd v Intraco Limited

[1994] SGHC 185

S2289/1990
Lai Siu Chiu J
18 July 1994

1 **Judgment:**

2 Coram: Lai Siu Chiu J

3 SUPPLEMENTAL JUDGMENT

4 Pursuant to the liberty to apply provision in my Judgment dated 31 May 1994, the defendants applied to finalise the figures for two items of claim allowed to the plaintiffs, namely additional labour for the Chinese New Year period and overtime, and to hear further arguments on costs; I acceded to the request. Counsel further pointed out that there had been an error in my computation of the judgment sum due to the plaintiffs as I had awarded the plaintiffs twice for variation claim no 9 which figure at p 63 of my Judgment was also incorrect. Taking into account the aforesaid two items of claim which I allowed and which had since been quantified by the quantity surveyors in the amounts of $4,339.98 and $28,165.99 respectively for labour and overtime, the judgment sum awarded to the plaintiffs is now $151,305 made up as follows:

5 1. Judgment sum $177,159.29 2. Less variation claim no 9 58,360.26 Balance 118,799.03 3. Add: (i) labour charges 4,339.98 (ii) overtime 28,165.99 Total $151,305.00

6 together with interest at 6% per annum from the date of the writ (12 December 1990).

7 I next turn to the question of costs. Counsel for the defendants submitted that the court had allowed the counterclaim in full in the amount of $290,470.97 which sum wholly extinguished the plaintiffs' judgment sum. Further the defendants had pleaded the counterclaim as a set-off (see para 8 of the Further Re-amended Defence and Counterclaim filed 18 May 1994); therefore the defendants having succeeded on the claim and the counterclaim, the costs of the claim should be awarded to them and not to the plaintiffs (see Pinsler on Civil Procedure pp 167-169, 748-749, 775-776 and Alltrans Express Ltd v CVA Holdings Ltd < 1984 > 1 AER 686).

8 Counsel for the plaintiffs countered her opponent's arguments with the submission that costs are very much in the discretion of the court and the order I had made should stand. She pointed out that when trial commenced it was on the basis that both liability and quantum were disputed. It was very much later that the defendants conceded to certain items in the plaintiffs' claim and agreed that quantum of the claim should be determined by the quantity surveyors appointed by the parties. The plaintiffs had also taken out an O 14 application which was unsuccessful; the facts here differed very much from those in Alltrans. Counsel referred to Chan Sek Keong J's decision in The Karting Club of Singapore v David Mak & Ors < 1992 > 2 SLR 483 to support the principle that a court's discretion in regard to costs is completely unfettered provided it is

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exercised judicially. She drew my attention to certain findings which I had made in my judgment regarding the defendants' conduct in particular where I said at p 64 letter C that the defendants had dragged their feet in not completing and finalising the costs of, rectification in the interval since the 3 stations were completed. As the defendants' conduct had caused the trial to be prolonged unnecessarily she argued that the court should apply O 59 r 7 of the RSC and the defendants should be disallowed costs on the main claim.

9 The reply from counsel for the defendants was that the question of his clients' conduct should be confined to the trial. He said at the end of the day the question before the court is 'who is the successful party' and the answer must be in the affirmative in the defendants' favour.

10 There is some merit in the arguments put forward by counsel for the plaintiffs on the defendants' conduct. As stated in my Judgment (at p 11) it was only at the third hearing in September 1993 that the defendants conceded certain variation orders claimed by the plaintiffs; the final hearing concluded in November 1993. Had the defendants made the concessions at the O 14 stage, the plaintiffs would have succeeded in obtaining judgment on part of their claim leaving the disputed balance to go for trial. Certainly on the O 14 application therefore, I am of the view that the plaintiffs are entitled to their costs.

11 I am aware that the result of my Judgment is that the plaintiffs are obliged to pay to the defendants on the counterclaim net of the amount payable to the plaintiffs on the main claim the sum of $139,165.97. Does this as contended by counsel for the defendants, disentitle the plaintiffs to their costs as the successful party in the main action? To answer the question, one has to

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look at the principles that guide courts in the award of costs and in particular in what circumstances the principle of 'costs follow the event' is displaced.

12 The principle for depriving a successful party of his costs where he presents a false case or false evidence or acts oppressively in the action (Baylis Baxter Ltd v Sabath < 1958 > 1 WLR 529) does not apply to the plaintiffs. Granted that the plaintiffs' case could have been conducted with greater expediency but if there is to be any criticism it would be levelled against the defendants who maintained what can only be described as an intransigent altitude in initially denying both liability and quantum for the plaintiffs' claim. I have in my Judgment (p 56) ruled that the plaintiffs' contract with the defendants was not a 'back to back' contract with that between the defendants and the main contractor (RSEA); therefore it was unreasonable to expect the plaintiffs to wait for payment until after the defendants had put forward and had been paid, the plaintiffs' claims by RSEA. The plaintiffs may well have withdrawn or otherwise settled their claim for the disputed balance had the defendants accepted the variation claims which they eventually conceded during the various stages of the trial.

13 This is therefore not a simple straightforward case where the question 'who was the successful party' will provide a sufficient answer to 'what was the event?' for the purpose of following it in respect of costs under O 59 r 3(2) of the RSC which states:

14 If the Court, in the exercise of its discretion sees fits to make an order as to the costs of or incidental to any proceedings, the Court shall, subject to this Order, order the costs to follow the event, except when it appears to the Court

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that in the circumstances of the case some other order should be made as to the whole or any part of the costs.

15 A court is entitled to take into consideration the conduct of the parties before and during the action (Dann v Curzon (1910) 27 TLR 163) and facts connected with or leading up to the litigation (Donald Campbell & Co Ltd v Pollak (1927) AC 732). On the other hand it is not a proper exercise of judicial discretion to deprive the successful plaintiffs in this case of their costs as counsel for the defendants sought to do (Ottway v Jones < 1955 > 1 WLR 706). However where, as in this case, both parties can be considered to be partly successful and partly unsuccessful because of the claim and cross-claim and the counterclaim amounts to a set-off of the plaintiffs' claim, the court should deal with the claim and cross-claim as one in relation to costs (Baylis Baxter Ltd v Sabath (supra).

16 Accordingly the order for costs which I made in my Judgment is varied as follows:

17 a. the plaintiffs shall have the costs of their O 14 application; b. there shall be one set of costs for the claim and cross- claim and the plaintiffs shall pay to the defendants half the costs (including disbursements) of the counterclaim.

Lai Siu Chiu J

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Peggy Yee & Thean Chow Leong (Tang & Tan) for the plaintiffs
Charles Lin Ming Khin (Donaldson & Burkinshaw) for the defendants

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