IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1996] SGHC 300

Suit 1195/1994, NM 312/1995

Between

Fuyawa Enterprise Pte Ltd

… Plaintiff

And

Lim Han Tee trading as Wifu Marketing

… Defendant

GROUNDS OF DECISION

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

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Fuyawa Enterprise Pte Ltd v Lim Han Tee trading as Wifu Marketing

[1996] SGHC 300

Suit 1195/1994, NM 312/1995
Choo Han Teck JC
06 January 1996

1 06 January 1996

2 Choo Han Teck JC

3 The Plaintiffs in this action sold and distributed certain health food products under the name of "Forever Blissful" or "YongFu" in Chinese. The action against the Defendant was based on passing off. Trial commenced on 25 September 1995 before me but was adjourned to 30 October 1995 for the parties to amend their pleadings. On the seventh day of trial, which fell on 3 November 1995, counsel for the Defendant stated that the Defendant will accept the Plaintiffs' written offer to settle which was dated 23 September 1995. The proceedings thereafter were relatively short and I recorded a consent judgment against the Defendant. The full notes of the evidence of the 3 November 1995 are as follows:

4 *"Singh: Defendant accepts offer to settle made by Plaintiffs on 23.9.95.*

5 *Chew : Apply to delete para 8(b) of Statement of Claim.*

6 *Clause 2 option not settled and may ask court to decide.*

7 *Singh : Plaintiffs are electing for account of profits*

8 *Paragraph 3 -no order as to costs*

9 *Paragraph 5 - taxed*

10 *Court : By consent*

11 *1. an injunction in terms of draft*

12 *2. Defendant do give an account of profits together with interest*

13 *3. Paragraph 8(b) of the Statement of Claim be deleted with no order as to costs*

14 *4. Counterclaim be withdrawn*

15 *5. Costs of this action and the counter-claim to plaintiff to be agreed or taxed*

16 *6. Taxation of costs to be deferred till after the inquiry on the account of profits*

17 *7. Liberty to apply*

18 *8. Inquiry to be before the Registrar*

19 *9. Costs of the application to amend the Reply and Defence to Counterclaim to Defendant in SIC 5959/95 fixed at $1,200*

20 *10. No order on costs of adjournment*

21 *11. Costs of Defendant's application under SIC 5790/95 to Plaintiffs fix at $300"*

22 Subsequently, on 4 December 1995 the Defendant asked for a clarification of my orders of 3 November 1995 on the ground that he reads order 5 "costs of this action and the counter-claim to Plaintiff to be agreed or taxed" to mean costs as at 23 September 1995 when the offer to settle was dated. His contention was that paragraph 5 of the letter of offer stated that,

23 "the Defendant will bear taxed costs of the Plaintiffs' claim and the Defendant's counterclaim which the Plaintiffs are entitled to of this matter to-date" (my emphasis).

24 Hence, he claims that the order for costs should be for costs up to 23 September 1995. I ruled that my order was for costs up to 3 November 1995. Mr Singh for the Defendant as well as Miss Chew for the Plaintiffs made various minor objections and offered suggestions to some of the orders made, and, in the circumstances, it was not reasonable to assume that costs would be fixed as at 23 September 1995 especially when the Defendant gave up the fight midway through the Plaintiffs' case after his counsel failed to break a crucial independent witness. It will be noted that paragraph 5 of the Plaintiffs' letter of offer stated that costs be taxed, but the order I made on 3 November 1995 was for costs to be agreed or taxed. Furthermore, my further order that taxation be deferred till

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after the inquiry on the account of profits would be otiose and unnecessary if costs should be determined as at 23 September 1995.

25 The Defendant applied by Notice of Motion No. 312 of 1995 for leave to appeal against my orders of 3 November 1995. I heard the application which raised no new grounds or issues. Mr Choong for the Defendant say that his application is made under s 34(2)(b) of the Supreme Court of Judicature Act because the Defendant disagrees with the order of costs.

26 It may be unfortunate that the Plaintiffs' offer of settlement did not say costs as at the date of acceptance, but in the scheme of things under O 22A of the Rules of Supreme Court, a party must accept the offer in the prescribed form. The acceptance by the Defendant in this case was not in the prescribed form. Had he done so he would have been obliged to set out the terms in consecutively numbered paragraphs and the acceptance would be dated the 3 November 1995. The phrase "to-date" in paragraph 5 of the Plaintiffs' offer must be read to mean the date of acceptance and not the date in which the offer was dated as the offeree's acceptance must necessarily mirror this term and the date of the acceptance must be 3 November 1995 and not 23 September 1995. As it turned out, on 3 November 1995 the Defendant's acceptance was not before me although it is not disputed that it was served on the Plaintiffs on that day. I proceeded to record the consent orders after hearing counsel and read out the same to the parties thereafter. In any event, had counsel raised the question of costs of the trial at that stage I would have awarded costs of the trial to the Plaintiffs. I do not think that there is any merit in the Defendant's application under the Notice of Motion and dismissed it with costs fixed at $200. I dismissed the application on two counts. First, that the matter being a consent order is not subject to appeal. Secondly, on the application itself, as it relates entirely on the

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question of costs, there was nothing in Mr Choong's argument which persuades me that this matter ought to go any further. His argument is a purely technical one, and as I have stated above, neither justice nor the technicalities were in his client's favour.

Choo Han Teck JC

Chew Kherk Ying, Yee Kwok Hon (Bih Li & Lee) and Steven Loke (Loke & Seah) for the plaintiffs
Dedar Singh Gill and Richard Choong (Drew & Napier) for the defendant

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