IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[1999] SGCA 81

CA 97/1999

Between

Chin Yoke Choong Bobby
Another

… *Appellant*

And

Hong Lam Marine Pte Ltd

… *Respondent*

GROUNDS OF DECISION

Civil Procedure — Judgments and orders; Companies — Receiver and manager

Version No 1: 20 Nov 2026 (01:16 hrs)

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Chin Yoke Choong Bobby and Another v Hong Lam Marine Pte Ltd

[1999] SGCA 81

CA 97/1999
Chao Hick Tin JA; L P Thean JA; Yong Pung How CJ
15 November 1999

1 (delivering the grounds of judgment of the court): This is a case in which the respondents brought an action to recover the sums, representing costs of arbitration proceedings, that had been awarded in their favour by the arbitral tribunal. In the court below, Tay Yong Kwang JC (the `trial judge`) gave judgment in favour of the respondents. The appellants appealed against the decision. At the conclusion of the hearing, we allowed the appeal and we now give our reasons.

2 ***Background facts***

3 The respondents (plaintiffs) entered into a shipbuilding agreement with Siong Huat Shipyard Pte Ltd (`Siong Huat`) in 1993. A dispute arose between them and on 14 February 1996 Siong Huat commenced arbitration proceedings against the respondents, who then lodged a counterclaim. On 12 July 1996 Siong Huat was placed under receivership and the appellants, Bobby Chin Yoke Choong and Michael Ng Wei Teck of KPMG Peat Marwick, were appointed as the receivers and managers of Siong Huat. When the arbitration hearings commenced on 24 July 1996, counsel for Siong Huat, Mr Michael Por,

requested a three-month adjournment as the appellants required some time to consider whether or not to continue with the arbitration proceedings. The respondents objected to the request. The arbitral tribunal (the `Tribunal`) granted Mr Por time to take instructions from the appellants. The next day, on 25 July 1996, Mr Por reiterated his request for a three-month adjournment as he had no instructions from the appellants to proceed with the arbitration and they had not agreed to fund his costs for the proceedings. After being given more time to take further instructions, Mr Por informed the Tribunal that the appellants had agreed to proceed with the defence to the counterclaim. The American Home Assurance Co (`AHA`), who had a direct interest in the conduct of the defence, had agreed to indemnify the appellants for any costs incurred thereby. Mr Prem Gurbani, AHA`s solicitor, then took over the conduct of the defence from Mr Por. Mr Gurbani told the Tribunal that he had no instructions to prosecute Siong Huat`s claim. Subsequently, on 1 August 1996, Mr Por notified the Tribunal that he had been authorised to prosecute Siong Huat`s claim and he was being funded by the shareholders of Siong Huat. The proceedings with respect to Siong Huat`s claim were thus conducted by Mr Por.

4 On 15 August 1996, Mr Por applied to withdraw Siong Huat`s claim and this was allowed with costs and on the condition that no further proceedings be brought by Siong Huat against the respondents. The hearings relating to the respondents` counterclaim continued and were concluded on 30 August 1996. On 6 December 1996, a winding-up order was made against Siong Huat. The respondents then obtained leave of court to pursue the counterclaim against Siong Huat. Final submissions were made before the Tribunal on 7 January 1997. On 12 March 1997, the solicitors for the appellants wrote to the respondents` solicitors, informing them that the appellants were intending to finalize the receivership of Siong Huat and needed confirmation from the

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respondents of whether they had any claim against the appellants. The respondents` solicitors replied on 17 March 1997, saying that the Tribunal had awarded costs for the withdrawn claim against Siong Huat, that the costs were to be taxed if not agreed and that the respondents therefore had a claim against the appellants for such costs. In their response, the appellants` solicitors rejected the respondents` claim that the costs should be borne by the appellants and suggested that the respondents proceed to tax the costs to be paid by Siong Huat. On 2 April 1997, the arbitration award was published. The Tribunal decided in favour of the respondents and Siong Huat was ordered to pay some $3.87m to the respondents as well as the costs of the arbitration proceedings.

5 ***The respondents` claim***

6 On 4 September 1998, the respondents commenced the present action against the appellants to recover the costs of the arbitration proceedings that had been awarded to them. The respondents claimed the sums of $126,617.13 and $201,355.59 or alternatively damages. The first sum was the balance of the costs and expenses of the arbitration proceedings, after deducting the security deposit paid by Siong Huat. The second sum was the respondents` taxed costs and disbursements for the arbitration proceedings.

7 The respondents` contention was that the appellants, in their capacity as receivers and managers of Siong Huat, were personally liable for the costs of the arbitration proceedings that were awarded against the company. The respondents relied on the conduct of the appellants in the arbitration proceedings and argued that, although the claim and counterclaim were both instituted prior to the appointment of the appellants as receivers and managers, the appellants in authorising the continuation of the claim and defence of the counterclaim had therefore adopted the proceedings.

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8 The respondents based their claim on the application of s 218(1) of the Companies Act (Cap 50). They contended that the costs of the arbitration proceedings were debts incurred by the appellants in the course of their receivership that fell within the scope of s 218(1), thereby rendering the appellants personally liable for such costs. They further contended that the proper course that the appellants should have taken was to apply to the court for directions pursuant to s 218(3), Companies Act.

9 In the alternative, it was contended that, even if s 218(1) of the Companies Act did not apply, the law recognised that a receiver and manager can be made personally liable for costs of legal proceedings which he has adopted and maintained in the name of the company. In this respect, the respondents relied on the cases of **Bacal Contracting Ltd v Modern Engineering (Bristol) Ltd** [1980] 2 All ER 655 and **Anderson v Hyde** [1996] 2 BCLC 144.

10 ***The defence***

11 The appellants first contended that, as receivers and managers, they were agents of Siong Huat and were personally liable only in limited circumstances, all of which did not apply in the present case. As agents, they could not be made liable for debts which were incurred by the principal, Siong Huat. Furthermore, the appellants were never parties to the arbitration proceedings and the costs awarded were against Siong Huat alone and not against them as well. The appellants submitted that s 218(1), Companies Act, did not apply here as the costs of the arbitration proceedings were not debts incurred` by them. Next, the appellants maintained that they had agreed to the continuation of the claim, which was later withdrawn, and the defence, only on the basis that they would not be personally liable for the costs of the proceedings. The appellants had an

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understanding with the directors and shareholders of Siong Huat as well as AHA, which had an interest in defending the counterclaim on behalf of Siong Huat, that they, and not the appellants, would be funding the costs of the proceedings.

12 In the event that they were found liable for the costs, the appellants contended that the liability should not extend to the costs of the entire arbitration proceedings but should be limited to the period during which the appellants were the receivers and managers of Siong Huat.

13 ***The decision below***

14 The trial judge allowed the claim made by the respondents as he was of the view that `there does not appear to be any good reason to distinguish such arbitration/litigation costs from the "debts" that fall within the ambit of s 218(1), Companies Act.` In his opinion, the appellants had clearly adopted the arbitration by authorizing the solicitors to continue acting for Siong Huat. The trial judge held that the fact that the appellants could have directed the conduct of the claim and defence but chose not to do so, did not entitle them to now allege that they took no part in the proceedings. Therefore, by virtue of the section, the appellants were to be personally liable for the costs of the arbitration. The trial judge expressed the view that the indemnities provided by AHA and the shareholders of Siong Huat did not exonerate the appellants but merely gave them someone else to turn to if the arbitration proceedings failed.

15 As for the contention that the appellants were merely acting as agents of Siong Huat, this was dismissed by the trial judge as he found that the appellants had failed to adduce any evidence to support such a contention.

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16 The trial judge further held that the appellants` liability should be for the costs of the entire arbitration proceedings. This was because when they authorized the continuance of the claim and the defence they had effectively adopted the whole of the proceedings from the time of inception and should be liable for all costs incurred since the commencement of the arbitration proceedings. Furthermore, since the liquidators did not elect to take over the proceedings and the appellants did not seek to curtail them or apply to court for directions, the appellants would also be liable for the costs incurred after the winding-up order was made against Siong Huat.

17 ***The appeal***

18 Before us, both parties reiterated their arguments used in the court below. With respect to their `agency` claim, the appellants sought to substantiate this argument by requesting the leave of the court to adduce the deed of debenture under which they were appointed receivers and managers. The appellants were seeking to rely on this instrument to prove the agency relationship which the trial judge had found unproven. At the start of the hearing, we decided that no additional evidence should be adduced and as such, this argument was consequently abandoned by the appellants.

19 ***Section 218(1), Companies Act (Cap 50)***

20 The next submission made by the appellants was that the trial judge erred in his interpretation of s 218(1), Companies Act, when he held that an adverse party`s costs in arbitration/litigation could fall within the ambit of the section. Section 218(1) reads as follows:

> *Any receiver or other authorised person entering into possession of any assets of a company for the purpose of enforcing any charge shall, notwithstanding any agreement to the contrary, but*

> *without prejudice to his rights against the company or any other person, be liable for debts incurred by him in the course of the receivership or possession for services rendered, goods purchased or property hired, leased, used or occupied.*

21 A receiver and manager will invariably incur certain debts in the course of performing his duties. Generally, however, a receiver and manager will not be personally liable for the debts properly incurred in the name of the company and within the scope of his authority. The purpose of s 218(1) of the Companies Act in imposing such statutory liability is to overcome any problems of abuse of position by receivers and managers to the detriment of the company or other innocent third parties. This section applies `notwithstanding any agreement to the contrary` and therefore it is no defence to a receiver and manager to say that the relevant debt is being indemnified by the company or other persons. The receiver and manager will remain primarily liable for such debts even though he may have recourse ultimately against the parties indemnifying him.

22 Before a receiver and manager can be made personally liable pursuant to s 218(1), it must be shown that the debt in question is one which falls within the scope of the section, that is, it is a debt `incurred by [the receiver] in the course of the receivership or possession for services rendered, goods purchased or property hired, leased, used or occupied`. On the present facts, the only suitable category that may possibly apply to the circumstances would be debts incurred `for services rendered`. It was pointed out by the trial judge, and conceded by the appellants, that this category would clearly cover solicitor-client costs, and costs incurred by receivers and managers in instructing solicitors to act for them. In the trial judge`s view, it followed that, should receivers and managers instruct solicitors to engage in arbitration or litigation, then evidently there would be a risk of incurring party-and-party costs if their claim or defence should fail. The trial judge then concluded that such party-and-

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party costs incurred in arbitration or litigation could also fall within the ambit of s 218(1).

23 With respect, we found this reasoning difficult to follow. Whilst debts incurred for `services rendered` would clearly encompass solicitor-client costs, we failed to see how a plain and literal reading of the phrase could extend the section to include costs awarded in favour of an adverse party in an arbitration or litigation. The scope of the phrase `services rendered` in s 218(1), Companies Act, has yet to be interpreted in any local case. However, it was useful to refer to the constructions adopted by the Australian courts with respect to their equivalent provisions of our s 218(1). This was especially since our provisions were largely adopted from the Australian legislation and therefore their authorities could be regarded as being highly persuasive.

24 Equivalent sections to our s 218(1) of the Companies Act, are found in Australia`s s 324(1), Companies Act 1981, and s 419(1), Corporations Law, which provides:

> *A receiver, or any other authorised person, who, whether as agent for the corporation concerned or not, enters into possession or assumes control of any property of a corporation for the purpose of enforcing any charge is, notwithstanding any agreement to the contrary, but without prejudice to his rights against the corporation or any other person, liable for debts incurred by him in the course of the receivership, possession or control* ***for services rendered****, goods purchased or property hired, leased, used or occupied. [Emphasis added.]*

25 In **Associated Newspapers Ltd v Grinston** [1949] 66 WN (NSW) 211, it was alleged that the receivers and managers of a company were personally liable upon printing contracts which the company had entered into prior to their appointment. Remarking on a section equivalent to s 324(1) and s 419(1), Street J held:

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> *None of ... [the words of the section] ... are very apt in the circumstances of the present case.* ***`Services rendered` rather suggests the ordinary master and servant account for work done where a claim is made by the servant****. One construction of the section might limit those words to the obligation to pay something in the nature of wages and salary to a staff employed by the receiver after his appointment and in the course of his receivership. [Emphasis added.]*

26 The reading of `services rendered` was somewhat restricted in the above case to a situation between an employer and employee and it has been suggested that liability for `services rendered` should extend to services rendered to receivers and managers by agents and independent contractors as well, see James O`Donovan`s ***Company Receivers and Managers*** (2nd Ed) at para.11.340n3. In the case of **Re WorkCover Queensland** [1998] 16 ACLC 999, which dealt with an equivalent section applicable to a company administrator, it was observed by Muir J:

> *The meaning of `services rendered`, grouped as it is with other general dealings of a commercial nature encompasses, at least,* ***work done for the company which could be regarded as the `rendering of a service`*** *in the ordinary sense of that expression. [Emphasis added.]*

27 Thus, even with a widened reading of the phrase `services rendered`, the ordinary sense of the expression still clearly would not include costs incurred in the course of legal proceedings. Such costs could hardly be considered as debts due for work done for the company or the receivers and managers. Indeed, this was the view expressed by the court in **Griffith Producers Co-operative Co Ltd v Mr Juicy Pty Ltd & Ors** [1985] 3 ACLC 582 where the Australian s 324(1), Companies Code, was sought to be applied. The court held that the section did not include a liability arising out of a judicial order for the payment of costs. It further cited and agreed with the comment made in James O`Donovan`s ***Company Receivers and Managers*** where the learned author noted that a receiver will not be liable under the Australian s 324(1), Companies

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Act, and s 419(1), Corporations Law, for costs awarded against the company even if the receiver was the one who initiated the proceedings. The author`s opinion was that such costs are not `debts` incurred by a receiver and manager within those sections: see James O`Donovan`s ***Company Receivers and Managers*** (2nd Ed) at para.11.360n18.

28 Based on the above cited authorities and a plain reading of the section, we were of the opinion that s 218(1) of the Companies Act is confined to situations where a third party has supplied goods or services and has provided a direct benefit to the company and as such the receiver should be personally liable for the debts incurred. Accordingly, the trial judge erred in holding that the appellants were liable for the costs by virtue of s 218(1).

29 ***Alternative cause of action?***

30 Having dismissed the respondents` cause of action under s 218(1) of the Companies Act, we next turned to examine their alternative argument that receivers may nonetheless, in certain circumstances, be made personally liable for costs of legal proceedings which they had adopted and conducted in the name of the company. In support of their contentions, the respondents had cited the cases of **Bacal Contracting Ltd v Modern Engineering (Bristol) Ltd** [1980] 2 All ER 655 and **Anderson v Hyde** [1996] 2 BCLC 144.

31 After perusing the two cases as well as other relevant case law in which a non-party receiver was ordered to pay the costs of the proceedings, we observed that, in all of the cases, the courts were able to make such an order by resorting to the jurisdiction conferred upon them by the equivalent provisions of our O 59 r 2(2) of the Rules of Court. Order 59 r 2(2) provides as follows:

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> *Subject to the express provisions of any written law and of these Rules,* ***the costs of and incidental to proceedings in the Supreme Court or the Subordinate Courts****, including the administration of estates and trusts, shall be in the discretion of the Court, and* ***the Court shall have full power to determine by whom and to what extent the costs are to be paid****. [Emphasis added.]*

32 Order 59 r 2(2) confers upon the court a wide discretion to make orders with respect to costs of court proceedings. The equivalent English provision, in their O 62 r 2(4), has been construed to allow the court to make orders of costs even against a non-party to the proceedings, including a receiver. In **Aiden Shipping Ltd v Interbulk Ltd** [1986] AC 965, the House of Lords was faced with the question of construing the English O 62 r 2(4) and s 51(1) of the Supreme Court Act 1981. The relevant provisions state:

> *O 62 r 2(4)*
>
> *The powers and discretion of the court as to costs under section 51 of the [Supreme Court Act 1981] (which provides that the costs of and incidental to proceedings in the Supreme Court shall be in the discretion of the court and that the court shall have full power to determine by whom and to what extent the costs are to be paid) ... shall be exercised subject to and in accordance with this Order.*
>
> *S 51(1)*
>
> *Subject to the provisions of this or any other Act and to rules of court, the costs of and incidental to all proceedings in the civil division of the Court of Appeal and in the High Court, including the administration of estates and trusts, shall be in the discretion of the court, and the court shall have full power to determine by whom and to what extent the costs are to be paid.*

33 The court there held that s 51(1) was concerned with the jurisdiction of the court to make orders as to costs. It further held that s 51(1) was expressed in wide terms and there was no basis for imputing a limitation that costs may only be ordered to be paid by persons who were parties to the relevant proceedings. An order for costs to be paid by a non-party to the proceedings was therefore allowed. Although there is no Singapore equivalent of the English s 51(1),

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Supreme Court Act 1981, in our Supreme Court of Judicature Act (Cap 322), the same principle can nevertheless be applied to the similarly worded O 59 r 2(2): see ***The Supreme Court Practice 1999*** Vol 1 para.62/2/7 at p 1116.

34 While we were prepared to recognize that under O 59 r 2(2) the court had the jurisdiction and discretion to order, in circumstances where it was just to do so, a non-party such as a receiver to be personally liable for costs of court proceedings, we did not think that such a jurisdiction existed in the instant case. The respondents` alternative argument was fundamentally flawed in two ways. First, O 59 r 2(2) does not create an independent cause of action under which a party may bring an action to sue for costs of earlier proceedings that had been awarded in its favour. An order for costs is a consequential order that follows the principal decision reached by the court with regard to the issues of the case. This is easily illustrated by the general rule that `costs follows the event`: see O 59 r 3(2). A consequential order such as an order for costs must therefore be sought within the same or related proceedings under which the order would arise. A party who does not seek a specific order for costs in the relevant proceedings cannot later start a fresh action to recover costs of the earlier proceedings from the person or entity sought to be made liable for such costs.

35 The second flaw in the respondents` reasoning was that a careful reading of O 59 r 2(2) would reveal that the provision is confined to `costs of and incidental to proceedings in the Supreme Court or the Subordinate Courts`. It therefore does not apply to costs of non-court proceedings, such as arbitration proceedings. Order 59 r 2(2) therefore does not confer upon the courts the power to order costs of arbitration proceedings, as it may for court proceedings. It should be pointed out that the scope of O 59 r 2(2) is not expanded by O 59 r 2(1) to assist the respondents` claim in any way. Order 59 r 2(1) only applies where the costs of the arbitration proceedings are taxable in the High Court and,

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in the present case, the costs were taxed by the presiding arbitrator and not by the High Court. Furthermore, r 2(1) only seeks to apply the Order to have effect in relation to proceedings for taxation of those costs, which was not the case here.

36 It was pertinent to note that the arbitration clause in the shipbuilding agreement between the respondents and Siong Huat provided that the arbitration thereunder `shall be in accordance with the Arbitration Act (Cap 10) as amended from time to time and the award of the Board of Arbitrators shall be final and binding upon both parties`. Counsel for the appellants had rightly pointed out that a provision equivalent to that of O 59 r 2(2) can be found in the Arbitration Act (Cap 10) (the `AA`), which confers on arbitrators a similar wide discretion with respect to an award of costs. Section 6 of the AA states that the provisions found in the First Schedule of the Act shall be implied into an arbitration agreement, unless the parties have expressly provided otherwise. Provision 7 of the First Schedule states that `the costs of the reference and award shall be in the discretion of the arbitrators or umpire, who may direct to and by whom and in what manner those costs or any part thereof shall be paid`.

37 It was evident that the wide discretion in relation to an order for costs of arbitration proceedings has been reserved for the arbitrators and no similar discretion has been given to the courts. At this juncture, we would highlight certain facts which we found to be relevant. Prior to the publication of the award, a winding-up order had already been made against the company, Siong Huat. It was therefore apparent then to the respondents that should it be successful in its counterclaim in the arbitration, it would most probably face considerable difficulty in recovering any costs from Siong Huat that may be ordered in its favour. In fact, this must have been the reason for the 17 March 1997 letter sent by the respondents` solicitors to the appellants` solicitors, stating that they had

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a claim against the appellants for the costs relating to Siong Huat`s withdrawn claim in the arbitration proceedings. If the arbitral tribunal had also been aware of the fact of Siong Huat`s liquidation, which the respondents should have emphasized, then this should have been a factor it would have taken into account when making its award as to costs. Yet, the facts showed that the award for costs was made only against Siong Huat alone, without any liability being attached to the appellants.

38 If the respondents had chosen to appeal to the High Court to request for a variation of the award, such that the appellants were also named as a party liable to pay the costs of the arbitration proceedings, the court would then be seised with the power to order the appellants, a non-party to the proceedings, to assume personal liability for such costs. The acquiring of such power is however limited to these circumstances, whereby, due to the process of appeal, the Court would be similarly vested with the powers and jurisdiction that the arbitrators had possessed.

39 In our view, the proper forum from which the respondents should have sought to obtain an order for costs against the appellants should be the arbitral tribunal. Hence, the procedure that should have been adopted was to apply to the tribunal, either prior to or after the making of the award, to request for the appellants to be included as a party liable for the payment of costs. If the tribunal was not willing to make such an order, the next step the respondents should have taken was to appeal to the High Court, in the same proceedings, to vary the terms of the award in relation to costs of the arbitration and not to commence a fresh action against the appellants.

40 In the result, we found that there was no established cause of action under which the respondents` claim could succeed against the appellants. The

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conclusion reached on the above issue was sufficient to dispose of this appeal and as such there was no necessity to go on to consider the extensive submissions that were canvassed by the parties on the question of how the court should exercise a discretion with respect to costs of legal proceedings. The issue of the extent of the appellants` liability was also thereby rendered otiose. On the facts, the respondents having adopted the incorrect procedure must fail in their claim. The appeal was therefore allowed.

41 **Outcome:**

42 Appeal allowed.

Chao Hick Tin JA
L P Thean JA
Yong Pung How CJ

Leslie Chew, Lionel Tay and Genevieve Sim (Khattar Wong & Partners) and Mabel Mak (Gurbani & Co) for the appellants
Scott Thillagaratnam and Robert Phua (Ramdas & Wong) for the respondents

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