IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1999] SGHC 134

Suit 1544/1998

Between

Hong Lam Marine Pte Ltd

… *Plaintiff*

And

Bobby Chin Yoke Choong
Michael Eng Wei Teck

… *Defendant*

GROUNDS OF DECISION

Version No 1: 20 Nov 2026 (00:35 hrs)

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

[1999] SGHC 134

Suit 1544/1998
Tay Yong Kwang JC
19 May 1999

Judgment:

GROUNDS OF JUDGMENT

1 In 1993, a shipbuilding agreement was made between Siong Huat Shipyard Pte Ltd ("Siong Huat") and Hong Lam Marine Pte Ltd ("Hong Lam"), the Plaintiffs in this action. A dispute having arisen, Siong Huat commenced arbitration proceedings against Hong Lam on 14 February 1996. Hong Lam lodged a counterclaim against Siong Huat in the arbitration proceedings. After a chain of events on which I will elaborate shortly, Siong Huat withdrew its claim in the course of arbitration. After hearing the parties, the arbitration tribunal awarded some $3.87 million to Hong Lam in its counterclaim and ordered Siong Huat to pay the costs of the proceedings. The present action concerns Hong Lam's claim against the Receivers and Managers of Siong Huat for the costs awarded in the arbitration proceedings. As requested, written submissions were filed by the parties after the trial.

CHRONOLOGY OF EVENTS

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2 It would be convenient to tabulate here the material events that have occurred:

> 14 February 1996 - Siong Huat commenced the arbitration proceedings.
>
> 1 March 1996 - Preliminary meeting held by the Arbitration Tribunal (comprising Mr Lawrence Boo, Mr Michael Khoo and Mr Steven Chong).
>
> Mr Michael Por (M/s Tan Lee & Partners) appeared for Siong Huat. Mr Scott Thillagaratnam and Mr Leong Kah Wah (M/s Joseph Tan Jude Benny & Scott) appeared for Hong Lam. - Directions given and oral hearing finally rescheduled to commence on 24 July 1996.
>
> 12 July 1996 - Siong Huat placed under receivership by its debenture holders, International Factors Leasing Pte Ltd.
>
> - Mr Bobby Chin and Mr Michael Ng of KPMG Peat Marwick (the two Defendants in this action) appointed as Receivers and Managers ("R and M") of Siong Huat.

24 July 1996 - Arbitration hearing commenced. Counsel for Siong Huat informed the Arbitration Tribunal that the R and M required time to consider whether or not to proceed with the arbitration proceedings and requested a three-month adjournment.

> The request was objected to by Counsel for Hong Lam. The Tribunal allowed Counsel for Siong Huat time to take instructions from the R and M.
>
> 25 July 1996 - Counsel for Siong Huat informed the Tribunal that he had no instructions from the R and M to proceed as they had not agreed to fund his costs and again asked for a three-month adjournment.
>
> Again Counsel for Hong Lam objected and applied to proceed with the Counterclaim. The Tribunal stood down the proceedings to enable Siong Huat's Counsel to take further instructions. He later informed the Tribunal that the R and M agreed to proceed with the Defence to the Counterclaim. American Home Assurance Co (AHA) had agreed to indemnify the R and M in respect of the costs. Mr Prem Gurbani then took over the conduct of the proceedings from Mr Michael Por. Mr Gurbani told the Tribunal that he had no instructions to prosecute Siong Huat's claim. 30 July 1996 - Proceedings relating to the Counterclaim continued. 1 August 1996 - Mr Michael Por appeared before the Tribunal, having been

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authorised to prosecute Siong Huat's claim. He was funded by the shareholders of Siong Huat. 3 August 1996 - Mr Michael Por continued to lead evidence in respect of Siong Huat's claim.

15 August 1996 - Mr Michael Por applied to withdraw Siong Huat's claim. That was allowed with costs and on condition that no further proceedings be brought by Siong Huat against Hong Lam.

17, 20, 21, 23, 29 August 1996	-	Proceedings relating to the Counterclaim continued.

30 August 1996 - The said proceedings concluded.

7 October 1996 - Written submissions were exchanged between the parties.

6 December 1996 - Winding-up order made against Siong Huat.

6 January 1997 - Hong Lam obtained leave of Court to pursue the Counterclaim against Siong Huat.

7 January 1997 - Final Submissions made before the Tribunal.

12 March 1997 - Solicitors for the R and M wrote to Hong Lam's solicitors, informing them that the R and M intended to finalize the receivership of Siong Huat with a view to seeking a discharge and asking for confirmation whether Hong Lam had any claim against the R and M.

17 March 1997 - Hong Lam's solicitors replied, saying that the Tribunal had awarded costs against Siong Huat on day 6 of the proceedings, that the costs were to be taxed if not agreed and that Hong Lam therefore had a claim against the R and M for such costs.

31 March 1997 - The solicitors for the R and M suggested that Hong Lam proceed to tax the said costs with a view to settling the issue of costs.

2 April 1997 - Arbitration Award published. Hong Lam was awarded about $3.87 million and costs against Siong Huat in respect of the Counterclaim. Siong Huat was also ordered to reimburse Hong Lam the amount of $48,000 which Hong Lam had deposited with the Singapore International Arbitration Centre ("SIAC") which the Tribunal had applied towards partial payment of the costs and expenses of the arbitration. Siong Huat was also to pay to the SIAC $78,617.13 or to pay that amount to Hong Lam if payment was made by Hong Lam.

4 September 1998 - Hong Lam commenced this action against the R and M of Siong Huat.

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THE CLAIM

3 The costs and expenses of the arbitration proceedings amounted to $174,617.13. After deducting the deposit of $48,000 paid by Siong Huat, the balance payable by Siong Huat came to $126,617.13. After taxation, Hong Lam's costs and disbursements for the arbitration proceedings amounted to $201,355.59. These two amounts form the subject of this action against the R and M of Siong Huat.

THE DEFENCE

4 The Defence of the Defendants here is that they did not agree to fund the costs of the Claim and that the Counterclaim of Hong Lam proceeded against Siong Huat on the basis that the Defendants would not be liable for the costs which were to be borne in any event by AHA. No proceedings, the Defendants say, have therefore been maintained by them or by Siong Huat against Hong Lam with their consent. Further, the Defendants aver, if they are held liable for costs, the liability should not extend to the costs of the entire arbitration proceedings but should be limited to the period during which they are the R and M (i.e. from 12 July 1996 to date). Alternatively, the Defendants say, they were acting as agents of Siong Huat. Also, the arbitration was between Siong Huat and Hong Lam and the costs thereof were awarded against Siong Huat and not the R and M.

THE PLAINTIFFS' EVIDENCE

5 Caroline Yang Yuen Tsyr, the Legal Advisor of Hong Lam, elaborated on the events spelt out in the Chronology set out earlier. On 19 July 1996, Siong Huat's solicitors wrote to inform Hong Lam's solicitors of the appointment of the R

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and M and that the R and M needed time to sort out the financial affairs of Siong Huat to ascertain the value and availability of the Company's assets before deciding on the course of action to take in the arbitration proceedings. They asked whether Hong Lam would agree to a three-month adjournment for this purpose and said that Siong Huat was prepared to bear the administrative costs which would be occasioned thereby. Hong Lam objected to the request for an adjournment.

6 On 25 July 1996, the Second Defendant wrote to Mr Prem Gurbani to confirm that the latter represented the American Insurance Group ("AIG"), of which AHA was part, and that AIG was inclined to pursue the arbitration on behalf of Siong Huat. The Second Defendant confirmed that he had no objection to the arrangement and to Mr Prem Gurbani acting in the matter. He also reiterated that the R and M would "not be responsible for all the costs, charges, countercharges and incidental expenses" of the arbitration and that AIG and/or Gurbani & Co would be "funding the entire costs of this legal proceeding".

7 When Hong Lam obtained leave to continue with the Counterclaim on 6 January 1997 notwithstanding the winding-up order against Siong Huat, one of the orders was in the following terms:

"4. The solicitor and client costs incurred by the Defendants' (i.e. Siong Huat) continued participation in Arbitration No. 6 of 1996 shall not be borne by the Defendants and/or the Liquidator so appointed".

8 Hong Lam submitted that the R and M were liable for all costs and disbursements incurred in the arbitration proceedings from 14 February 1996 (commencement) to 15 August 1996 (withdrawal of the Claim). Thereafter,

Hong Lam said, the R and Ms' liability for costs continued as they had authorised AHA to defend the Counterclaim and failed to take any steps in the arbitration proceedings even after the winding-up order was made against Siong Huat on 6 December 1996.

9 Under cross-examination, Caroline Yang, a lawyer by training, said that she had been advised by their solicitors that the R and M were responsible for the costs upon their appointment as the R and M of the company.

THE DEFENDANTS' EVIDENCE

10 The Second Defendant gave evidence at the trial. He explained that the R and M, having been appointed only some 12 days before the first date fixed for the arbitration hearing, were not in a position to decide whether to proceed with the arbitration or not. They had not received Siong Huat's Statement of Affairs and had not yet sorted out its financial situation or ascertained the value of its assets. They also needed time to ascertain the facts and the merits of the pending arbitration proceedings.

11 When Mr Michael Por informed the Second Defendant on 24 July 1996 that the request for a three-month adjournment had been turned down by the Tribunal, he instructed Mr Por to apply again the next day for an adjournment. As the R and M were in no position to make a decision on the arbitration proceedings, they did not agree to fund Mr Por's costs therein.

12 On 25 July 1996, Mr Por telephoned the Second Defendant to inform him that Hong Lam's Counsel had objected to the request for an adjournment again and had applied to proceed with Hong Lam's Counterclaim against Siong Huat.

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The Second Defendant told Mr Por that he would discuss the matter with the First Defendant.

13 Both the R and M recognized that it was their duty to defend the Counterclaim and were prepared to do so. However, in the words of the Second Defendant, they "were slightly apprehensive because it appeared to us that if we instructed Mr Por to proceed, we might be incurring personal liability for his costs".

14 Shortly after the telephone conversation with Mr Por, the R and M were informed by Mr Prem Gurbani who was keeping a watching brief for AHA that AHA had agreed to indemnify the R and M in respect of the costs of defending the Counterclaim. With that assurance, both the R and M gave instructions to proceed with the defence. This was evidenced by the Second Defendant's letter dated 25 July 1996 to M/s Gurbani & Co (the material portions of which appear in paragraph 6 of this judgment). Mr Por then withdrew from acting for Siong Huat and Mr Prem Gurbani took over only for the purposes of defending the Counterclaim and not of prosecuting the Claim.

15 When Mr Michael Por appeared before the Tribunal on 1 August 1996 stating that he was authorised to appear on behalf of Siong Huat to prosecute the Claim, he was funded by the shareholders of Siong Huat. Neither of the two R and M was involved in the making of the decision to prosecute Siong Huat's claim. Before this trial commenced, Mr Prem Gurbani informed me that the R and M did speak to Mr Por before he proceeded to act for Siong Huat again in the arbitration proceedings.

16 After the withdrawal of the Claim on 15 August 1996, the arbitration proceedings continued only in relation to Hong Lam's Counterclaim and to

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Siong Huat's defence thereto. Hong Lam had counterclaimed for certain declarations and an amount of more than $5 million but was awarded only some $3.87 million. The Second Defendant believed that Hong Lam would have been awarded a higher amount if the Counterclaim had not been defended. The costs order was against Siong Huat and not the R and M who were non-parties to the arbitration.

17 The Second Defendant ended his testimony by stating that the R and M acted at all material times in their appointed capacities and did not at any time assume personal liability for Siong Huat's costs. He also maintained that the R and M had carried out their duties honestly and with due care and had made every effort to act in Siong Huat's best interests. They had also acted at all material times in accordance with legal advice and believed that defending the Counterclaim was necessary and within the scope of their duty as R and M.

18 Under cross-examination, the Second Defendant said that while the R and M did discuss the arbitration with the solicitor handling it in order to be apprised of the facts and the merits of the case, it was not in very great detail in view of the short period of time available.

19 Asked whether Mr Michael Por appeared as Counsel for the R and M on 24 July 1996 and 25 July 1996 before the Tribunal, the Second Defendant said Mr Por did not attend in that capacity as his firm had not been instructed to act for the R and M. The Second Defendant confirmed that Mr Por did call him for further instructions when the second request for an adjournment was refused on 25 July 1996. The Second Defendant explained that when they asked for the adjournment of the arbitration, they meant Siong Huat's Claim. They told Mr Por that since there was a Counterclaim against Siong Huat and Mr Prem Gurbani was holding a watching brief for AHA, they would like Mr Prem

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Gurbani to handle the Counterclaim. They were aware then that Mr Gurbani was going to take over from Mr Por.

20 The Second Defendant could not remember whether instructions were given to Mr Por to withdraw the Claim but he was sure that the R and M told him not to proceed with it.

21 The Second Defendant explained that upon the appointment of the R and M, the executive powers of the directors of Siong Huat ceased but their statutory duties and responsibilities under the Companies Act remained. Questioned as to whether the R and M were the only ones who could decide whether to pursue the arbitration or not, the Second Defendant said he was not sure. The R and M would be the ones who would generally make such a decision based on the funds available and on the merits of the arbitration. At the same time, they would discuss the matter with the directors of the company and seek their views on the merits of the case. Although the directors could not direct the R and M as to what to do, the R and M had to take their views into account lest they opened themselves to a negligence suit.

22 The directors told the R and M that Siong Huat was interested in pursuing both the Claim and the Counterclaim. The R and M had no objections to the company proceeding with the arbitration provided the R and M were not held responsible for the costs incurred.

23 As to whether paragraph 2 of his letter dated 25 July 1996 to Gurbani & Co was couched in terms which suggested that Gurbani & Co was appointed to pursue the whole arbitration proceedings, the Second Defendant insisted that the intention in that letter was for the solicitors to act for Siong Huat in respect of the Counterclaim only. He did not state so expressly in this letter as he did

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not think it was necessary to do so. Mr Gurbani knew what he meant anyway. Further, the Tribunal was proceeding with the hearing that very day (25 July 1996) and the R and M had to act fast to get this letter of appointment for Gurbani & Co out. In his mind, it was clear that there were two solicitors, one pursuing Siong Huat's Claim and the other defending Hong Lam's Counterclaim.

24 The Second Defendant said that where the Claim was concerned, the R and M had to study the facts and consider the funds available. In contrast, they felt that it was their duty to defend the Counterclaim to ensure that no frivolous or unsubstantiated claim against Siong Huat succeeded by default, particularly when AHA agreed to indemnify them for the costs of the Counterclaim. Even though any judgment that Hong Lam might obtain by default would rank as an unsecured debt and would not affect the Debenture holders' interest, it was incumbent on the R and M nevertheless to take into account the interests of Siong Huat as they were managing its affairs. If they could realize sufficient assets to discharge the debts owing to the Debenture holders, they could preserve the company as a going concern after they were discharged.

25 The Second Defendant accepted the proposition that if the R and M had instructed Mr Michael Por to proceed with the Claim, they would be responsible for the costs. Similarly, they were responsible for their solicitor's and the Tribunal's costs in the Counterclaim but were covered by AHA's indemnity. However, they did not take into account the costs of Hong Lam.

26 The letter dated 12 March 1997 (AB 11) sent by the solicitors for the R and M to the solicitors for Hong Lam was a standard letter sent to all parties with whom the R and M had had dealings to ensure that there were no unknown

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liabilities before they applied for a discharge. They have not been discharged because of Hong Lam's claim against them.

27 Asked whether the R and M disclosed to Hong Lam that they had authorized Gurbani & Co to defend the Counterclaim, the Second Defendant said he did not see the need to as that fact was so clear. When he instructed Mr Gurbani to defend the Counterclaim, he considered that he had dropped the Claim. On 1 August 1996, he told Mr Michael Por that he had no objection to the Directors pursuing the Claim provided they funded it themselves. This was confirmed in his letter dated 1 August 1996 (AB 103). The Directors had to seek his consent before proceeding with the Claim as their executive powers ceased upon the appointment of the R and M.

28 The Second Defendant did not instruct Mr Por to withdraw the Claim on 15 August 1996. He was informed about the withdrawal after the event.

29 Asked whether the R and M had made any provision for Hong Lam in their accounts, the Second Defendant said when an accountant made a provision, he would have a specific reason in mind. The R and M had however held back an amount of about $40,000 pending any contingent liability arising from the present action and one other matter which had since been resolved. He did not treat Hong Lam's claim for costs as a contingent liability. The money was withheld from the Debenture holders but was not ear-marked for any particular action. The said amount withheld would discharge the debt owing to the Debenture holders in full.

30 The Second Defendant said, on hindsight, looking at the amount claimed by Hong Lam in its Counterclaim and the amount finally awarded by the Tribunal, it would seem that defending the Counterclaim was fully justified. He disagreed

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with the suggestion that he had not received any advice about defending the Counterclaim, contrary to his statement in his affidavit of evidence-in-chief.

31 Mr Prem Gurbani informed the Court that the arbitral award against Siong Huat had been largely satisfied by AHA as a result of subsequent arbitration proceedings brought against AHA by Hong Lam in respect of the performance bonds issued by AHA.

THE DECISION OF THE COURT

31 The question to be decided here is whether the Defendants as R and M are personally liable for the costs of the arbitration in the circumstances that have occurred.

32 Section 218(1) of the Companies Act provides:

"218 (1) 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."

Have the R and M incurred "debts" for which they are liable? The difficulty in invoking this provision is that it covers only the solicitor-client costs of solicitors instructed by the R and M ("services rendered") and not the costs of Hong Lam or their solicitors who were certainly not rendering services to the R and M.

33 *Walter Woon* in *Butterworths' Annotated Statutes of Singapore*, Volume 1 (1997 Issue), states at pages 642 and 643:

"Appointment of a receiver and manager paralyses the power of the company to deal with its property. The powers of the directors are in abeyance and the powers of the company are exercised by the receiver. The legal persona of the company persists but its powers are delegated to the receiver.

…

However, the directors remain in office and are responsible for filing of routine company returns.

…

A further effect of appointment is that by the terms of the debenture the receiver and manager is normally constituted as the agent of the company.

…

Nonetheless the primary duty of the receiver is to the debenture holder and not to the company (*Re B Johnson & Co Builders Ltd* [1955] 1 Ch 634); though he owes a duty to the company to preserve its assets and goodwill (*Re Newdigate Colliery Ltd* [1912] 1 Ch 468). However, in the absence of any express or implied terms in a debenture or trust deed, receivers appointed out of court are not agents of the company: *Tan Ah Teck v Coffral (Malaysia) Sdn Bhd* [1992] 1 MLJ 553, 558 (High Court, Malaysia)."

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34 In *Company Law (2nd Edition)*, the same learned author states at pages 500 and 501 as follows:

"The question of who the receiver is an agent for is significant for four reasons. Firstly, if he is agent for the company, the company will be liable in respect of any debts he incurs; whereas if he is the agent of the debenture holders or an independent officer of the court, the company is not so liable. Secondly, as an agent he should have the normal agent's right to an indemnity, either from the company or from the debenture holders as the case may be. This is discussed below. Thirdly, if the receiver is negligent, the appointer is not vicariously liable if the receiver is an agent of the company. Fourthly, in the absence of terms to the contrary, the receiver's principal is liable to pay his remuneration.

A receiver appointed by the court, not being an agent of the company, is personally liable upon contracts made by himself. He has a right to be indemnified out of the assets of the company as a corollary of his personal liability on contracts. A receiver (whether appointed by the court or not) is personally liable for certain debts incurred by him in the course of receivership, namely, in respect of services rendered, goods purchased or property hired, leased, used or occupied. For this reason, it may not be appropriate to order specific performance of contracts entered into by a company in receivership, if that would require the receiver to incur personal liability for performance. He is, however, entitled to be indemnified out of the assets of the company under his control in so far as he is an agent of the company, on normal agency principles. If he is an agent of the debenture holders, they presumably are responsible for indemnifying him. It should be noted in dealing with English cases on indemnity that s 492(3) of the United Kingdom *Companies Act* 1985

specifically provides that the receiver is entitled to be indemnified. There is no such provision in s 218 of our Act.

A receiver does not incur personal liability under an existing contract merely by allowing the company to carry on with it.

…

A receiver's primary duty is not to the company but to the debenture holders who appointed him. That is not to say that he owes no duty to the company. He does owe fiduciary duties to the company although not to the same extent as the directors. A receiver must not place himself in a position where his interest conflicts with his duty. However, he is not subject to the duty to act in the company's interest, unlike the directors. His primary duty in that regard is to look after the debenture holders' interests. He is not managing on the company's behalf but is managing in order to facilitate the exercise of the power to enforce the security."

35 The Defendants in this action have not adduced any evidence, whether by the production of the debenture or otherwise, to support their contention that they were agents of Siong Huat and were acting as such throughout the arbitration proceedings. Their contention must therefore fail.

36 In *Bacal Contracting Ltd v Modern Engineering (Bristol) Ltd and Others* [1980] 2 AER 655, the receiver of the Plaintiff company continued an action commenced before his appointment and continued to do so even after a winding-up order was made against the Plaintiff company and the liquidator took no part in the action. His Honour Judge Fay Q C sitting as an Official Referee ordered the receiver to pay one of the Defendants' costs incurred after

the date of the winding-up order, provided he had recourse for the costs against the debenture holders. His Honour held that the Court had power under Section 50(1) Supreme Court of Judicature (Consolidation) Act 1925 to order, in a suitable case, the receiver of a company appointed under a debenture to pay the costs of an action carried on by him after the company had been wound up and which had been incurred after the winding-up order. It was just and equitable to make such an order because if the action had been continued by the liquidator and not the receiver, the said Defendant would have ranked as a secured creditor in the liquidation for its costs. The said Section 50(1) appears at page 660 of the report as follows:

"Subject to the provisions of this Act and to rules of court and to the express provisions of any other Act, the costs of and incidental to all proceedings in the Supreme Court, including the administration of estates and trusts, shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and to what extent the costs are to be paid."

37 This case does not really assist the Plaintiffs as no equivalent of our Section 218(1) Companies Act was relied upon by the Court. The said Section 50(1) is broadly equivalent to our Order 59 rule 2(2) of the Rules of Court. However this provision applies only to proceedings in the Supreme Court and not to arbitration proceedings which is our case here.

38 Conversely, a receiver who took over the defence of an action against a company that had gone into liquidation was ordered to pay the Plaintiff the costs of the unsuccessful defence incurred since the receiver’s appointment. In *Anderson v Hyde* [1996] 2 BCLC 144, an action came on for trial on 20 April 1993 and, after two days’ hearing, was adjourned to allow the parties to enter

into negotiations. These were not fruitful and the matter proceeded for further hearing in October 1994 and judgment was given in February 1995. In the meantime, the Defendant company went into receivership and a receiver was appointed by a debenture holder on 15 September 1993. Soon thereafter, on 23 September 1993, the Defendant company was ordered to be wound up. The liquidator did not take over the proceedings and the Defendant company's defence was conducted on the receiver's instructions. The Court of Appeal (Northern Ireland) ordered the costs incurred by the Plaintiff since the appointment of the receiver to be paid by the receiver. However, the Court also ordered that the receiver be allowed the costs payable by him as part of his expenses as receiver.

39 Again, no equivalent of our Section 218(1) Companies Act was cited to justify the making of the costs order. Instead, the same general discretion of the Court to award costs and to determine by whom and to what extent they are to be paid was the apparent basis for the order.

40 It can be seen therefore that these two cases turned on distinguishable facts. They involved the receivers taking over the conduct of actions in Court and not in arbitration proceedings. Therefore, non-parties in the actions could, by virtue of the Court's general powers as to costs, be made subject to costs orders. They were also premised on the fact that if the action/defence had been carried on by the liquidator instead of the receiver, the other party's costs would have been accorded priority in the liquidation.

41 In the present case, the hearing in the arbitration proceedings had concluded and the Written Submissions had already been filed and exchanged by the time of the winding-up order against Siong Huat. Any costs incurred by Hong Lam after the said winding-up order would be limited only to the attendances to make

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the final submissions, to collect/receive the award of the Tribunal and to tax the costs of the arbitration proceedings. The Plaintiffs here are not asking for only this portion of costs but for the costs of the entire arbitration proceedings.

42 In principle, I do not see why R and M who commence or elect to carry on arbitration/litigation should not be held to account for the costs incurred therein. The R and M accept that costs incurred in instructing solicitors to act for them would have to be borne by them. These would be solicitor-client costs. If the solicitors are instructed to engage in arbitration/litigation, it is obvious that Party-and-Party costs may also be incurred if the company in receivership fails in its claim or in its defence to a claim by the other party. There does not appear to be any good reason to distinguish such arbitration/litigation costs from the "debts" that fall within the ambit of Section 218(1) Companies Act.

43 It is clear in the present case that the two solicitors involved (Mr Michael Por and Mr Prem Gurbani) could not act for Siong Huat in the arbitration proceedings in the absence of approval from the R and M. The documentary evidence shows that the R and M did authorize the two solicitors to act for Siong Huat. While the R and M did not direct the conduct of the claim/defence, they could have done so. The fact that they chose to leave matters in the good hands of the solicitors in question does not entitle them now to say that they took no part in the arbitration proceedings. They were content to leave matters to the solicitors once they had the protective cover of the indemnities for costs provided by AHA and the shareholders. The indemnities do not exonerate the R and M. They merely give them someone else to turn to if the arbitration proceedings fail. Although the Tribunal had the discretion under paragraph 7 of the First Schedule, Arbitration Act to order costs against any person, it ordered costs against Siong Huat and not the R and M but that does not change the legal

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position before me. The Tribunal was only concerned with the arbitration and the parties before it and not with the ramifications of the arbitration.

44 Despite the Second Defendant's assertion to the contrary, the evidence is that Siong Huat's claim was not "dropped" until Mr Michael Por formally withdrew it on 15 August 1996. By authorizing Mr Gurbani to conduct the defence on 25 July 1996 and Mr Por to carry on with the claim on 1 August 1996, the R and M have adopted the whole of the arbitration proceedings from their inception on 14 February 1996 and are therefore liable for all costs incurred by Hong Lam after 14 February 1996. As the liquidators of Siong Huat did not elect to take over any part of the arbitration proceedings and the R and M did not take any action to curtail the arbitration proceedings or to apply for the Court's directions under Section 218(3) Companies Act, the R and M are also liable for the costs incurred in the arbitration after Siong Huat was ordered to be wound-up. I emphasize here that this judgment in no way implies misconduct, negligence or other default on the part of the R and M.

45 The Plaintiffs therefore succeed in their claim against the R and M for the costs incurred in the arbitration proceedings. They are also awarded interest at 6% per annum on their claim from the date of the writ of summons to the date of judgment and costs of this action to be taxed or agreed between the parties.

46 On hindsight, it was probably not a good idea to permit two different firms of solicitors to act for the same party in one set of proceedings. That led naturally to the embarrassing situation in the arbitration proceedings where apparently conflicting positions appeared in the Claim and in the Defence to the Counterclaim and where the respective solicitors were in the unenviable position of having to keep reiterating that they were acting for Siong Huat only in respect of the Claim or the Defence, as the case may be, and having to be

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reminded by the Tribunal each time that Siong Huat could not have a split legal personality before them.

TAY YONG KWANG

JUDICIAL COMMISSIONER

Tay Yong Kwang JC

Scott Ratnam with Robert Phua (Ramdas & Wong) for the plaintiffs
Prem Gurbani with Mabel Mak (Gurbani & Co) for the defendants

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