Wee Soon Kim Anthony v UBS AG
[2006] SGHC 18

Case Number : BOC 180/2004, 186/2004, 195/2004, 204/2004, 208/2004, SIC 4019/2005

Decision Date : 01 February 2006

Tribunal/Court : High Court

Coram : Kan Ting Chiu J

Counsel Name(s) : Harish Kumar (Engelin Teh Practice LLC) for the respondent; Applicant in person

Parties : Wee Soon Kim Anthony — UBS AG

Constitutional Law – Natural justice – Bias – Whether the costs order made against the plaintiff raised issues of the judge's fairness and impartiality

Constitutional Law – Natural justice – Bias – Whether the judge's actions at trial gave rise to a reasonable suspicion of personal animosity to the extent that there was a real danger of apparent bias

1 February 2006

Kan Ting Chiu J:

1 The plaintiff in these proceedings, Anthony Wee Soon Kim ("the plaintiff"), had sued the defendant, UBS AG ("the bank"). The case came on before me at the first instance, when I dismissed the claim. When it went on appeal to the Court of Appeal, it met with the same result.

2 In the action before me, the plaintiff had appointed the law firm, Engelin Teh & Partners, to act for him. When the firm was converted into the law corporation Engelin Teh Practice LLC, the latter continued to act for him.

3 After the dismissal of the action, the plaintiff came back before me again on several matters, including the review of the taxation of five solicitor-and-client bills drawn up by Engelin Teh Practice LLC.

4 The plaintiff did not want me to review the taxation of those bills, and applied for me to recuse myself. When I declined to do that, he filed an appeal to the Court of Appeal against my decision.

5 In support of his application, the plaintiff deposed an affidavit on 29 July 2005 which was filed on 5 August 2005. In this affidavit, he listed two grounds of "apparent bias and/or actual bias":

(a) "Interruptions and Judicial Remarks re Thomas Sim …"; and

(b) "Unusual Costs Orders".

6 Thomas Sim ("Mr Sim") was a member of Engelin Teh & Partners and subsequently Engelin Teh Practice LLC who was involved in drafting the plaintiff's Statement of Claim against the bank. His name came up when the plaintiff was cross-examined by the counsel for the bank on inconsistencies between his pleaded case and his evidence. The plaintiff's response was to put the responsibility on Mr Sim. He claimed that the inconsistent parts of the Statement of Claim had been drafted by Mr Sim without his instructions, and were not amended despite his specific instructions to have them amended.

7 Mr Sim was not listed as a witness at the trial. Even after his name came up, the plaintiff did not want to call him as a witness and was not prepared to waive solicitor-and-client privilege to enable him to give evidence on the preparation of the Statement of Claim.

8 I was concerned that allegations against the professional conduct of Mr Sim were made without giving him an opportunity to present his side of the events, and that I had to decide on the plaintiff's allegations without hearing Mr Sim. The matter was discussed between counsel and myself and the upshot of that was that the plaintiff decided to call Mr Sim as a witness, and waived solicitor-and-client privilege.

9 The plaintiff set out in his affidavit extracts of the notes of evidence which he relied on as evidence of bias. I reproduce these extracts without the emphases added by him:

> P1570 Verbatim Notes of Evidence
>
> ASKW: No, Sir. My case is that it was done on the advice and the words "without my knowledge or consent" were the words of my pleader whom I assume at the material time knew what he was doing because had he known what he was doing, namely, to look at all the documents, he would not have used the words "without my knowledge or consent".
>
> Court: All these I take to refer to Mr Thomas Sim?
>
> ASKW: Yes.
>
> Court: You know, actually, it's very strange. You are saying that he is really quite a shockingly incompetent lawyer; he's stood the case on his head; he has drafted something to you and all this is being said almost on a daily hourly basis and it doesn't bother any … I assume it does not bother everyone of us that Mr Sim has not even been accorded the courtesy of [being] told in a letter that "This is being said, would you like to respond?", if nothing else, by way of letter.
>
> Mr Singh: Your Honour …
>
> Court: I mean ... (To Mr Davinder) Hold on. It actually disturbs me a little.
>
> Mr Lim: Well, I mean, this …
>
> Court: Quite aside from the fact that it also disturbs me that I am supposed to have to make a decision on this when daily, the accusations are repeated, privilege is claimed and nothing is being done, I mean, as far as I can tell.
>
> At page 3744:
>
> His Honour: Why did you say "obviously picked up"? Until we hear Mr Sim, we wouldn't know.
>
> Mr Lim: Yah, of course.
>
> His Honour: That is what Mr Wee says, that he didn't say that. Until we hear Mr Sim, we don't know whether there is confusion. You are right, you know, Mr Lim, there may well be confusion but we cannot assume without hearing anybody that there is confusion just because Mr Wee says so.

At page 3752:

Mr Lim: I think at this stage whether it is long one month or not is the fact that it had been done on one month, right?

His Honour: Look, the whole issue is going to turn on who is long on tales and who is short on credibility. This is so critical in this case, his "I didn't know, I didn't know, I didn't know what is a forward, I didn't know what is a spot and I didn't know this and that". Surely, this is of some relevance.

Mr Lim: Yes. In some reference in terms of credibility whether what he knew or not, your Honour, but …

His Honour: Yah, that's right.

Mr Lim: … in relation to this particular pleading …

His Honour: Look, which is going to be relevant because if Mr Sim comes and say "truly, he didn't tell me. Truly, I took it on myself looking at the documents and I put this in and he approved it. But actually the input was from me". Fine. But if Mr Sim were to come and say "he told me this and the Pleadings reflected what he told me" then of course it puts a different slant to the facts. And again, you know, it's one of those things until he comes, we don't know, OK? We cannot be reading this …

Mr Lim: No, of course, not.

His Honour: … and resolving it on the basis of what the Plaintiff says. Of course if the Defendant accepts each of the Plaintiff's explanation, then they wouldn't be making this application in the first place. What they are saying is "let's check this against Mr Sim". I mean, Mr Sim may well come in Court and state events similar to what Mr Wee had said. We don't know.

["ASKW" is the plaintiff; "Mr Singh" is Mr Davinder Singh SC, counsel for the bank; "Mr Lim" is Mr Lim Chor Pee, counsel for the plaintiff.]

10 In his written Submissions, the plaintiff contended that:

16. The excessive interventions captured in the verbatim notes of evidence has given rise to a reasonable suspicion of a personal animosity to the extent that there exists a real danger of apparent bias resulting in a fair and balanced judgment not being possible.

17. In the present case, it is not necessary to look beyond the court's Verbatim Notes of Evidence in Suit No. 834 of 2001/R. The evidence disclosed were such that any reasonable person reading them will give rise to a real danger or possibility of bias in the following respects:

…

11 I do not understand how the plaintiff read into the notes, evidence of apparent or real bias. His credibility was called into question because of the inconsistency between his evidence and his pleaded case. His response was that it was caused by Mr Sim. I was trying to get a clearer picture of the situation.

12 I said that if Mr Sim was to confirm that he drafted the Statement of Claim on his own, that would support the plaintiff's explanation, but if Mr Sim was to say that the Statement of Claim was drafted on the plaintiff's instructions, that would put a different slant on the matter.

13 The plaintiff has no basis for complaining that "calling Thomas Sim to testify against me has destroyed all hopes for a fair and impartial trial". He was not called with the purpose of giving evidence against the plaintiff. The plaintiff set out in his Submissions without demurral my views in my Grounds of Decision ([2003] SGHC 305 at [47]) that:

> Mr Sim's attendance in court was necessary. First, it could provide a better basis for assessing the plaintiff's contention that the inconsistencies should not be taken against him. Secondly, it was not right for allegations to be made of a solicitor's competence at drafting and his refusal to carry out a client's instructions without giving him the opportunity to respond to them.

and he went on to assert that Mr Sim's evidence vindicated him.

14 On the "Unusual Costs Orders", the plaintiff deposed that:

> 20. As a reward for his attendance in court, I was ordered to pay to his employer, Engelin Teh Practice LLC (and not to Thomas Sim personally) as a witness of fact called by the redoubtable Davinder Singh SC with the view to testify against me.
>
> 21 I fear that the costs order coupled to the manner by which Thomas Sim was called to testify against me make it impossible for me to receive a fair and impartial hearing of the review of BC 180, 186, 195, 204 & 205 of 2004.

15 Again, I cannot understand how the order can give rise to questions of fairness and impartiality. As I had explained in my Grounds of Decision ([13] *supra* at [48]–[50]:

> When Mr Sim attended court, he had prepared a statement and a voluminous set of documents to respond to the allegation. A bill for costs for the attendance was also produced.
>
> Counsel for both parties accept that costs are payable. The plaintiff's solicitors contended that it should follow the event (which I take to mean the losing party should pay the costs), or be borne by the defendant, while the defendant's solicitors argued that it should be paid by the plaintiff in any event.
>
> It was proper and reasonable for Mr Sim to respond and to attend court. In the present case the costs should not be borne by either the plaintiff or the defendant in any event. They should follow the result in that the losing party shall pay them. These costs are to be borne by the plaintiff.

16 The plaintiff did not raise bias as a ground in his appeal before the Court of Appeal. I found that the complaints of bias made before me were without basis, and that there was no cause for me to recuse myself from the review of the taxation of the five bills.

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