IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2017] SGHC 91

Suit No 434 of 2014 (Summons No 1040 of 2017)

Between

Parakou Shipping Pte Ltd (In Liquidation)

… *Plaintiff*

And

(1) Liu Cheng Chan
(2) Chik Sau Kam
(3) Liu Por
(4) Yang Jianguo
(5) Parakou Investment Holdings Pte Ltd
(6) Parakou Shipmanagement Pte Ltd

… *Defendants*

GROUNDS OF DECISION

[Civil Procedure] — [Costs] — [Certificate for costs for more than two solicitors]

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Parakou Shipping Pte Ltd (in liquidation)
v
Liu Cheng Chan and others

[2017] SGHC 91

High Court — Suit No 434 of 2014 (Summons No 1040 of 2017)
Chua Lee Ming J
13 March; 19 April 2017

25 April 2017

Chua Lee Ming J:

Introduction

1 On 8 February 2017, I delivered my judgment in this action – *Parakou Shipping Pte Ltd (In Liquidation) v Liu Cheng Chan and others* [2017] SGHC 15 ("the Judgment"). The plaintiff, Parakou Shipping Pte Ltd (In Liquidation), did not succeed in all of its claims against the six defendants; I found each defendant liable for one or more claims.

2 On 13 March 2017, I heard the parties on the question of costs in this action and made several orders. The parties subsequently sought clarification regarding disbursements and I clarified my order on 19 April 2017. In summary, I made the following costs orders:

(a) The 1st to 6th defendants were jointly and severally liable for the plaintiff's costs in this action.

(b) The 1st defendant, Liu Cheng Chan ("CC Liu") and the 2nd defendant, Chik Sau Kam ("Chik") were liable for 90% of the plaintiff's costs and disbursements. The 3rd defendant, Liu Por, and the 4th defendant, Yang Jianguo ("Yang") were liable for 80% of the plaintiff's costs and disbursements. The 5th defendant, Parakou Investment Holdings Pte Ltd ("PIH") was liable for 70% and the 6th defendant, Parakou Shipmanagement Pte Ltd ("PSMPL") was liable for 60% of the plaintiff's costs and disbursements.

(c) The plaintiff's application in Summons No 1040 of 2017 for a certificate for costs for three solicitors was dismissed.

(d) The plaintiff's party and party costs was fixed on the standard basis at $600,000 (undiscounted and excluding disbursements). Accordingly, CC Liu and Chik were jointly and severally liable for $540,000, Liu Por and Yang for $480,000, PIH for $420,000 and PSMPL for $360,000. The disbursements were to be fixed by me if not agreed.

3 I also heard the parties on the question of costs arising from certain interlocutory applications. These costs had been reserved to the trial judge. I made the following orders:

(a) Each party was to pay its own costs in respect of the defendants' applications in Summonses Nos 6150–6152 of 2014 to set aside, or alternatively to vary a Mareva injunction against them.

(b) The plaintiff was to pay the defendants' costs fixed at $10,000 plus disbursements to be fixed by me if not agreed, in respect of its

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application in Summons No 1482 of 2015 to increase the limits stated in the Mareva injunction order.

4 Finally, I ruled that the plaintiff was not entitled to the costs of their application in Summons No 2021 of 2014 for the Mareva injunction order.

5 The plaintiff and the defendants have appealed against my decisions in the Judgment and my costs orders. These grounds of decision are in respect of my costs orders.

Whether the plaintiff was entitled to full costs

6 In this case, the plaintiff claimed that the defendants orchestrated various transactions to strip it of its assets in anticipation of it being put into liquidation. The plaintiff brought a multitude of claims against the defendants with respect to each impugned transaction, including claims based on breaches of fiduciary duties and/or statutory duties of care and skill, breaches of trust, liability to account as constructive trustees, lifting of the corporate veil, and undervalued transactions. The full facts, issues and my findings and decisions are set out in the Judgment.

7 As mentioned earlier, the plaintiff did not succeed in all of its claims against each of the defendants. The plaintiff submitted that it had substantially succeeded in the majority of its claims and as a substantially successful party, it should be allowed its full costs. I disagreed with the plaintiff.

8 There were two major issues that cut across the impugned transactions, *ie*, whether the impugned transactions were part of a restructuring plan and whether the plaintiff was insolvent at the material times. These two issues were contested by all the defendants but the plaintiff prevailed. However, the

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plaintiff's claim against each defendant in respect of each impugned transaction was a separate and distinct claim. The plaintiff did not succeed on all of its claims against each defendant. In my view, it was wrong and unfair to the defendants to make them pay costs for those claims that were dismissed. This was not a case where the plaintiff had substantially succeeded in a claim but failed in one or more issues that were argued in respect of that claim. Even in that scenario, depending on the issues that succeeded or failed, the plaintiff may not be awarded full costs.

9 CC Liu, Chik, Liu Por, Yang and PIH accepted that the plaintiff was entitled to costs against them. However, CC Liu and Chik submitted that their liability should not exceed 65%. Liu Por and Yang submitted that their liability should not exceed 40% and PIH submitted that its liability should not exceed 50%.

10 PSMPL submitted that it was entitled to recover costs from the plaintiff since the plaintiff succeeded against it on "one discrete and minor point". I disagreed with PSMPL. The plaintiff had succeeded against PSMPL on the two issues relating to restructuring and insolvency and in its claim based on one of the impugned transactions. PSMPL argued in the alternative that its liability should not exceed 20%.

11 The plaintiff submitted in the alternative that the discounts to be given should be 5% to CC Liu and Chik, 10% to Liu Por, Yang and PIH, and 15% to PSMPL.

12 In deciding on the extent of each defendant's liability for costs, the considerations that I took into account included the following:

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(a) Each of the defendants had failed on the two major issues (referred to in [8] above).

(b) The claims in respect of each impugned transaction differed in complexity and the amounts claimed.

(c) The plaintiff claimed against CC Liu, Chik, Liu Por and Yang in respect of all the impugned transactions. The plaintiff's claims against PIH involved fewer impugned transactions and PSMPL faced the least number of claims.

13 The plaintiff had succeeded in several of its against CC Liu and Chik but failed in a few of its claims. In my view, the appropriate order was for CC Liu and Chik to be liable for 90% of the plaintiff's costs and disbursements. The plaintiff succeeded to a lesser extent as against Liu Por and Yang and I fixed their liability for costs and disbursements at 80%. As for PIH, in my view, it ought fairly be held liable for 70% of the plaintiff's costs and disbursements. Finally, I fixed PSMPL's liability at 60%.

Whether the plaintiff was entitled to costs for three solicitors

14 I dismissed the plaintiff's application in Summons No 1040 of 2017 for a certificate for costs for three solicitors. Such a certificate is awarded only in "exceptional circumstances", *eg*, in "cases which involve a high degree of complexity of facts and/or law, or where there are many issues of both fact and law and trial is lengthy": *Singapore Civil Procedure 2017* vol 1 (Foo Chee Hock JC gen ed) (Sweet & Maxwell, 2017) at para 59/19/2.

15 The complexity in this case arose from the fact there were a multitude of claims in respect of several impugned transactions against six defendants.

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However, there was a fair amount of overlap, both on the law and the facts. There were voluminous documents in discovery and the agreed core bundles used at the trial comprised 19 volumes totalling 12,171 pages. However, the trial was not particularly lengthy – it took about 14.5 days, including a half-day for interlocutory matters and another half-day for oral submissions. All in all, I was of the view that this case, although complex, was not of such a high degree of complexity as to warrant a certificate for costs for three solicitors.

Whether the plaintiff was entitled to indemnity costs

16 The conduct of *all* the parties, including conduct before and during the proceedings, is a matter to be taken into account by the court in exercising its discretion as to costs: O 59 r 5(*b*) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed).

17 The plaintiff pointed to several examples of the defendants' conduct which the plaintiff argued justified an indemnity costs order against them. In my view, the strongest grounds were (a) the defendants' conduct in stripping the plaintiff of its assets and shifting them out of the company to avoid a substantial claim by its contingent creditor, (b) the 1st to 4th defendants' flagrant disregard for their fiduciary duties to the plaintiff and (c) the fact that the defence of a corporate restructuring was found to be a fabrication. I accepted that these were grounds that could have justified the making of an indemnity costs order.

18 However, the conduct of the plaintiff was also a relevant factor under O 59 r 5(*b*). In my view, the plaintiff had asserted a whole gamut of claims against each defendant quite indiscriminately, instead of being more

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discerning about the claims that could reasonably be brought against each defendant.

19 On balance, I did not think that costs should be awarded to the plaintiff on an indemnity basis.

Quantum of costs

20 The plaintiff submitted the amount of $1,174,500 as its party and party costs. The defendants submitted a range of $200,000 to $240,000. Taking into consideration the principle of proportionality and all the relevant circumstances including the complexity of the matter, the volume of documents involved, the amount recovered by the plaintiff, the length of the trial and the fact that the defendants were represented by three sets of solicitors, I decided that $600,000 was a fair and reasonable amount to award as party and party costs in this action.

Costs arising from interlocutory applications

Summonses Nos 6050–6052 of 2014

21 On 21 November 2014, Choo Han Teck J granted the plaintiff's application for a Mareva injunction against the defendants ("the Mareva Order"). Subsequently, on the same day, Choo J granted the defendants' application for a stay of the Mareva Order as the defendants indicated that they would apply for a variation of the Mareva Order.

22 The defendants filed Summonses Nos 6050–6052 of 2014 in which they sought to set aside, or alternatively, vary the Mareva Order. Satisfied that the security provided by the defendants was sufficient to satisfy the plaintiff's

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claim, Choo J set aside the Mareva Order on 13 April 2015 and ordered that the costs of Summonses Nos 6150–6152 of 2014 be reserved to the trial judge.

23 The Mareva Order was set aside only because the defendants offered sufficient alternative security. In the circumstances, I ordered each party to pay its own costs in respect of Summonses Nos 6150–6152 of 2014.

Summons No 2012 of 2014

24 The Mareva Order was made pursuant to the plaintiff's application in Summons No 2021 of 2014. When Choo J granted the Mareva injunction on 21 November 2014, he ordered costs of the application to be in the cause. When Choo J subsequently stayed the Mareva Order on the same day, he ordered that costs be reserved. However, Choo J's subsequent order dated 13 April 2015 (made pursuant to Summonses Nos 6150–6152 of 2014) included an order that the "Order of Court dated 21 November 2014 in Summons No 2021 of 2014 [be] set aside and discharged as against each and all of the 1st to 6th Defendants".

25 The plaintiff submitted that Choo J's order dated 13 April 2015 only set aside the injunction order but not the costs orders and that it was therefore entitled to the costs of the application in Summons No 2021 of 2014. I disagreed. Choo J's 13 April 2015 order clearly and unconditionally set aside his order dated 21 November 2014 in Summons No 2021 of 2014. That meant that his orders as to costs were also set aside.

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Summons No 1482 of 2015

26 Summons No 1482 of 2015 was the plaintiff's application to increase the limit of the Mareva injunction. On 13 April 2015, Choo J dismissed the application but reserved the costs of the application to the trial judge.

27 The main ground the plaintiff's application was its claim in respect of the transfer of 12 ship management agreements ("SMAs") to PSMPL (see [13]–[14] of the Judgment). I found that the SMAs were loss-making and that the transfer of the SMAs was not in breach of the directors' duties (see [128]–[129] of the Judgment). The plaintiff therefore failed in its claims for breach of duties, dishonest assistance and/or knowing receipt, and conspiracy that were based on the transfer of the SMAs. In the circumstances, I ordered the plaintiff to pay the defendants the costs of Summons No 1482 of 2015, fixed at $10,000 plus disbursements to be fixed by me if not agreed.

Chua Lee Ming
Judge

Kenneth Lim Tao Chung, Chua Xinying, Yu Kexin and Yeo Kok Quan, Nigel (Allen & Gledhill LLP) for the plaintiff;
Lok Vi Ming, SC, Chan Junhao, Justin and Lee Sien Liang Joseph (LVM Law Chambers LLC) for the first and second defendants;
Siraj Omar and Premalatha Silwaraju (Premier Law LLC) for the third and fourth defendants;
Yap Hao Jin and Joan Tee (Sim Chong LLC) for the fifth and sixth defendants.

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