IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2018] SGCA 82

Originating Summons No 9 of 2018

Between

Ho Soo Fong

… *Applicant*

And

Revitech Pte Ltd

… *Respondent*

GROUNDS OF DECISION

[Civil Procedure] — [Extension of time]

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Ho Soo Fong
v
Revitech Pte Ltd

[2018] SGCA 82

Court of Appeal — Originating Summons No 9 of 2018
Tay Yong Kwang JA and Belinda Ang Saw Ean J
26 November 2018

Tay Yong Kwang JA (delivering the judgment of the court):

1 The applicant, Mr Ho Soo Fong ("Mr Ho"), was a director and 75% shareholder of Ho Pak Kim Realty Pte Ltd ("HPK"). HPK was the plaintiff in an action against the respondent, Revitech Pte Ltd ("Revitech") in Suit No 36 of 2006 ("S 36/2006"). On 2 August 2010, following the determination of liability in S 36/2006, the court ordered costs to Revitech on its counterclaim. It also ordered that, in the event HPK was unable or unwilling to pay Revitech costs when taxed or agreed, Revitech would be at liberty, after giving due notice to Mr Ho, to make Mr Ho pay such costs personally ("the Costs Order") on the basis that Mr Ho was the *alter ego* and the moving force behind HPK.

2 On 24 May 2017, Mr Ho filed Originating Summons No 563 of 2017 ("OS 563") seeking to be added as a party to S 36/2006 and to set aside the Costs Order. OS 563 was heard and dismissed by Lai Siu Chiu SJ ("the Judge") on 29 January 2018.

3 Before us, Mr Ho sought an extension of time to file and serve a notice of appeal against the Judge's decision in OS 563. Having heard from the parties, we dismissed Mr Ho's application on the basis that OS 563 was devoid of merit and had no prospect of success. OS 563 was simply an attempt to re-open matters that have long been concluded. We now set out the facts and the brief reasons for our decision.

Brief facts and procedural history

4 We provide here a summary of the salient events in this matter. A more detailed chronology appears in the annexure at the end of our grounds of decision.

5 In 2006, HPK commenced S 36/2006 against Revitech over a construction dispute. Revitech filed a counterclaim. Mr Ho was HPK's representative during the trial and was its main factual witness. The trial was heard in three tranches. On 2 August 2010, after the conclusion of the trial, the Judge ordered costs on a standard basis against HPK on Revitech's counterclaim. She also made the Costs Order.

6 On 30 September 2010, the Court of Appeal heard HPK's appeal from S 36/2006. The appeal was in the main dismissed although the Court of Appeal directed that the Costs Order be suspended pending the assessment of damages, with liberty to either party to apply after the completion of the assessment of damages.

7 Damages were eventually assessed in Revitech's favour. The suspended Costs Order came up for further consideration before the Court of Appeal on 11 July 2014 ("the 11 July 2014 hearing"). As HPK's solicitors had been

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discharged prior to this hearing, Mr Ho represented HPK at the hearing. Mr Ho addressed the Court of Appeal on the merits of the Costs Order. After hearing Mr Ho and Revitech, the Court of Appeal restored the suspended Costs Order.

8 Dissatisfied with the Court of Appeal's decision at the 11 July 2014 hearing, HPK filed several applications in 2014 and 2015 supported by affidavits by Mr Ho seeking to set aside, stay and vary the decision.[1] At the hearing of each of these applications, HPK (represented by Mr Ho) was again given the opportunity to address the Court of Appeal. These applications were dismissed by the Court of Appeal.

9 The costs in the Costs Order were eventually taxed on 23 August 2016. HPK and Mr Ho filed an application to set aside the taxation and in the alternative, to obtain an extension of time to apply for a review of the taxation. This was dismissed on 3 May 2017.[2]

10 On 24 May 2017, Mr Ho filed OS 563 seeking to be added as a party to S 36/2006 and to set aside the Costs Order. While OS 563 was underway, the Attorney-General (the "AG") applied pursuant to s 74 of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) ("SCJA") to restrain Mr Ho (and HPK) from continuing proceedings connected with S 36/2006 on the basis that Mr Ho was a vexatious litigant. Mr Ho consented to the AG's application and a consent order was recorded ("the vexatious litigant order").

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1 See SUM 3656/2014, filed on 21 July 2014; SUM 6346/2014, filed on 12 December 2014; and SUM 210/2015 filed on 12 August 2015.

2 See BC 152/2010 and SUM 1455/2017, filed in BC 152/2010 on 28 March 2017.

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11 As a result of the vexatious litigant order, Mr Ho required leave of court to continue with OS 563. He therefore applied *ex parte* for such leave and his application was granted by Chan Seng Onn J ("Chan J").[3]

12 On 29 January 2018, OS 563 was heard and dismissed by the Judge. Because of the vexatious litigant order, Mr Ho also needed to obtain leave of court before he could appeal against the Judge's dismissal of OS 563. Mr Ho again applied *ex parte* for such leave and it was granted by Chan J on 13 March 2018.[4]

13 On 28 March 2018, about a month after his time to appeal against OS 563 had lapsed, Mr Ho filed his current application before us seeking an extension of time to file and serve his notice of appeal.

Our decision

14 A court faced with an application for extension of time should consider four factors: (a) the length of the delay; (b) the reasons for the delay; (c) the chances of the appeal succeeding if time for appealing were extended; and (d) the prejudice caused to the would-be respondent if an extension of time was in fact granted: see *Lee Hsien Loong v Singapore Democratic Party and others and another suit* [2008] 1 SLR(R) 757 ("*Lee Hsien Loong*") at [28].

15 On the facts of this case, the primary consideration was whether Mr Ho's intended appeal against OS 563 was so hopeless that granting an extension of time would really be an exercise in futility and a waste of time and costs. In our view, OS 563 had no chance of success.

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3 See SUM 1220/2017, filed on 26 October 2017.

4 See OS 223/2018, filed on 22 February 2018.

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16 Although counsel for Mr Ho raised several issues before us and in OS 563, his main contention was that Mr Ho was not given an opportunity to address the court on 2 August 2010 on the Costs Order before it was made as he was not a party to the proceedings in S 36/2006.[5] In fact, Mr Ho claimed that he had notice of the Costs Order only as late as 23 August 2016 when costs were taxed.

17 Mr Ho's claims could not be correct. He would have been the person instructing HPK's counsel at the hearing on costs on 2 August 2010 and he did not allege that his then counsel failed to inform him about the Costs Order after it was made by the Judge. Mr Ho was not only present at the 11 July 2014 hearing concerning the Costs Order, he also represented HPK. It is plain to us that Mr Ho was aware of the Costs Order by 11 July 2014 at the latest.

18 The documentary evidence on record – including Mr Ho's own affidavits filed in support of HPK's subsequent successive applications to challenge the Costs Order – proved this to be so. In his affidavit dated 21 July 2014, Mr Ho detailed exchanges between himself and the Court of Appeal at the 11 July 2014 hearing. At that hearing, Mr Ho addressed the Court of Appeal on why he should not be made personally liable for costs. The suspended Costs Order was explained to Mr Ho and was then restored. On at least three further occasions after 11 July 2014, Mr Ho had the opportunity to ventilate his case on the Costs Order before the Court of Appeal. There could therefore be no doubt that Mr Ho had notice of the Costs Order by 11 July 2014 at the latest and had been heard on the same issue several times. Indeed, many of the grounds raised

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[5] Applicant's Skeletal Submissions in OS 563, dated 23 January 2018, at paras 8–9 and 23; Applicant's Skeletal Submissions for the Applicant's Application for Extension of Time to File and Serve Notice of Appeal in OS 9/2018 ("Mr Ho's OS 9 Submissions"), dated 10 May 2018, at paras 8–9 and 33.

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before us appeared to have similarly been raised before the Court of Appeal on those prior occasions.

19 Mr Ho's application in OS 563 was merely another attempt to re-open the proceedings in S 36/2006 and the Court of Appeal's decision on the Costs Order. Such matters have long been concluded. In our view, the Judge was therefore entirely justified in dismissing OS 563. Mr Ho's appeal against the Judge's dismissal of OS 563 would ultimately be a non-starter. Accordingly, we dismissed his application.

Observations on the *ex parte* proceedings

20 Before we conclude, we think it is useful to address one other point canvassed by counsel for Mr Ho. As Mr Ho was subject to the vexatious litigant order, he had to satisfy the High Court that his intended proceedings were not an abuse of process of the court and that there was a *prima facie* ground for the proceedings: s 74(1)(*b*) of the SCJA. It was submitted that since Mr Ho had succeeded in obtaining leave to continue proceedings in the two applications before Chan J, OS 563 could not be an abuse of process and had a *prima facie* chance of success.[6]

21 Mr Ho's applications were made *ex parte*, in Revitech's absence. The court's attention was not brought to the fact that Mr Ho had had the opportunity to address the Court of Appeal on multiple occasions on the merits of the Costs Order. Mr Ho's affidavits and submissions before Chan J claimed that he had notice of the Costs Order only on 23 August 2016, which, as shown above, could not be correct. They made no mention of the 11 July 2014 hearing or his three

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6 Mr Ho's OS 9 Submissions, at paras 15 and 24; see also Ho Soo Fong's affidavit in OS 9/2018, dated 28 March 2018, at paras 26 and 29.

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applications thereafter to set aside, stay and vary the Costs Order. Other than a cursory reference to Mr Ho's affidavit filed in OS 563, which in turn made passing reference to the Court of Appeal's reinstatement of the Costs Order, none of the materials either directly or indirectly explained that the Court of Appeal had considered and upheld the Costs Order after submissions were made on whether Mr Ho should be made to pay costs personally. Had the full history of the proceedings been brought to the court's attention, leave to continue might not have been granted as OS 563 and the intended appeal from its dismissal would be frivolous and completely hopeless in merit. In those circumstances, Mr Ho could not rely on the *ex parte* proceedings as evidence of the merits of his proposed appeal from OS 563.

Conclusion

22 For the above reasons we dismissed the present application with costs. After hearing the parties on costs, we ordered Mr Ho to pay Revitech costs fixed at $3,300 inclusive of disbursements, which is the amount that Revitech asked for. We also made the usual consequential orders on the security for costs.

Tay Yong Kwang
Judge of Appeal

Belinda Ang Saw Ean
Judge

Yong Zhee Hoe
(Surian & Partners) for the applicant;
Ong Xin Ying Samantha
(WNLEX LLC) for the respondent.

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Annex: Chronology of events

S/No	Date	Event
1	24 January 2006	HPK files writ of summons against Revitech in S 36/2006
2	9 to 20 October 2006	First tranche of S 36/2006
3	21 to 24 May 2007	Second tranche of S 36/2006 heard before Lai J (as she then was)
4	13 November 2007	Lai J delivers judgment for second tranche of S 36/2006; no appeal was filed
5	6 January to 28 September 2009	Third tranche of S 36/2006 heard before Lai J
6	8 April 2010	Lai J delivers judgment for third tranche of S 36/2006, reserving the issue of costs
7	5 May 2010	HPK files notice of appeal against the merits of Lai J's decision in the third tranche (CA 74/2010)
8	1 August 2010	Revitech files written submissions seeking costs order against Ho personally on indemnity basis
9	2 August 2010	Costs hearing for S 36/2006, Lai J issues the Costs Order against Ho personally if HPK unwilling or unable to pay
10	30 September 2010	Court of Appeal hears CA 74 and reserves the Costs Order pending assessment of liability and damages
11	20 August 2013	HPK's counsel indicates that HPK not participating in assessment of liability and

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		damages
12	3 October 2013	Revitech extracts the Costs Order in ORC 6837/2013
13	29 October 2013	Assessment of liability and damages hearing pursuant to CA 74 without HPK's participation, resulting in damages in favour of Revitech
14	23 January 2014	HPK's counsel Mr Edwin Lee (Eldan Law LLP) discharges himself
15	28 May 2014	Revitech files written submissions requesting for Ho to be appointed to represent HPK before the Court of Appeal for CA 74 for reinstatement of Costs Order
16	30 May 2014	Hearing before Court of Appeal on Costs Order adjourned
17	11 July 2014	Court of Appeal hearing on Costs Order, Costs Order reinstated
18	21 July 2014	Ho files SUM 3656 to set aside the Court of Appeal's decision to reinstate the Costs Order
19	1 October 2014	Court of Appeal hears and dismisses SUM 3656
20	12 December 2014	Ho files SUM 6346 to stay the execution of the Costs Order
21	12 February 2015	Court of Appeal hears and dismisses SUM 6346
22	12 August 2015	Ho files SUM 210 to vary the decisions in S 36/2006 and CA 74
23	9 September 2015	Court of Appeal hears and dismisses SUM 210
24	22 June 2015	Court of Appeal delivers judgment in *AGQ v Attorney-General and another appeal* [2015] 4

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		SLR 760, wherein Ho and HPK had taken out suit against the Government of Singapore
25	23 August 2016	Costs Order taxed at $249,600 (with disbursements of $126,414.92) in BC 152/2010
26	24 May 2017	Ho files OS 563 to add himself as party to S 36/2006 and to set aside the Costs Order
27	4 August 2017	The AG files OS 892 seeking to prevent Ho and HPK from continuing proceedings related to S 36/2006 without leave of the High Court
28	11 October 2017	Ho consents to the vexatious litigant order
29	7 November 2017	Ho files *ex parte* OS 1220 to seek leave to pursue OS 563, which is subsequently granted
30	29 January 2018	OS 563 is heard and dismissed by Lai SJ
31	22 February 2018	Ho files *ex parte* OS 223 to institute an appeal against OS 563
32	13 March 2018	Leave is granted in OS 223
33	21 March 2018	Order granting leave in OS 223 is extracted
34	28 March 2018	Ho files OS 9 seeking extension of time to file notice of appeal

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