

Long Well Group Ltd and others v Commerzbank AG and others
[2018] SGHC 164

Case Number : Suit No 28 of 2012
Decision Date : 23 July 2018
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Tan Tee Jim SC, Christopher James De Souza, Amanda Lim Jia Yan, Basil Lee and Gayathri Sivasurian (Lee & Lee) for the plaintiffs; Andre Yeap SC, Lai Yew Fei and Khelvin Xu Cunhan (Rajah & Tann Singapore LLP) for the defendants.
Parties : Long Well Group Limited — PT Citrabumi Sacna — Private Energy Pte Ltd — First Power International Limited — Commerzbank Aktiengesellschaft — Commerz Asset Management Asia Pacific Pte Ltd — Commerzbank Asset Management Asia Ltd — Commerz Asia Best SPC

Civil procedure – Costs – Principles

23 July 2018

Judgment reserved

Choo Han Teck J:

1 On 16 March 2018 I delivered my judgment in respect of the substantive matters in this suit and ordered costs to follow the event, to be taxed if not agreed. On 21 March 2018, counsel for the defendants requested for leave to make further arguments before me, on the issue of costs.

2 The main contention of the defendants' counsel is that costs should not follow the event in the present case because the plaintiffs "failed on each and every one of the numerous issues raised, save for the claim for breach of contract". According to the defendants' counsel, the trial would have been shorter and the parties would have had fewer factual and legal issues to deal with had the plaintiffs not raised so many issues at trial. Counsel further argues that the quantum claimed by the plaintiffs, \$419,978.82, is excessive.

3 In response, counsel for the plaintiffs submits that the request for further arguments is procedurally defective for two reasons. First, the request for further arguments does not comply with paragraph 82(1)(d) of the Supreme Court Practice Directions ("Practice Directions"), in that it does not state the law under which the request is made, to the prejudice of the plaintiffs. Second, s 28B of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) ("SCJA") only allows for further arguments "after any hearing other than a trial of an action". In the present case, there was a trial of an action. Counsel for the plaintiffs thus submits that the appropriate recourse is an appeal. Alternatively, counsel for the plaintiffs submits that the further arguments should be rejected; *ie*, costs should follow the event. Costs should not follow the event only where the issues raised were unnecessary or unreasonable, and protracted the trial. Here, the plaintiffs have substantially succeeded in their claims, having been awarded more than 80% of the claimed amount. Further, counsel for the plaintiffs avers that the same facts raised at trial would have been raised even if the plaintiffs' claim was confined to the claim which ultimately proved successful.

4 I will deal first with the plaintiffs' first procedural objection. I agree that the defendants did not, in their request for further arguments, comply with paragraph 82(1)(d) of the Practice Directions.

Although in their reply submissions the defendants had stated that their request for further arguments was made in reliance on the court's inherent jurisdiction, I am of the view that where a clear rule applies, as in this case, there is no basis for this court to ignore the non-compliance. On this ground alone I would dismiss the defendants' application, but their application has no merit in substance either and so, for completeness, I shall explain why that is so.

5 On the merits, there is no reason to change my order for costs to follow the event. I do not think that it was unreasonable for the plaintiffs to have raised the claims which were ultimately unsuccessful. Although, on the defendants' approach of counting the number of issues on which the plaintiffs have failed, the plaintiffs failed on more issues than it has succeeded, the issue on which the plaintiffs have succeeded is not an insignificant issue. The plaintiffs had succeeded in more than 80% of the amount claimed.

6 Although the power to hear further arguments under s 28B of the SCJA may be limited to hearings other than a trial of an action, the same does not apply to the court's inherent jurisdiction. Both counsel referred me to the case of *Thomson Plaza (Pte) Ltd v Liquidators of Yaohan Department Store Singapore Pte Ltd (in liquidation)* [2001] 2 SLR(R) 246 ("*Thomson Plaza*") where it was said at [6] that it is "settled law that even in respect of a final order, the judge has an inherent jurisdiction to recall his decision and to hear further arguments, so long as the order is not yet perfected." Counsel for the plaintiffs appears to rely on the fact that a notice of appeal was filed by the 3rd defendant in respect of my judgment of 16 March 2018 to argue that this court no longer has the inherent jurisdiction referred to in *Thomson Plaza*. The notice of appeal was filed after the defendants had sought leave to make further arguments, upon which the questions of further arguments and costs had to await my decision. Thus the argument relating to s 28B of the SCJA is not relevant.

7 For the reasons above, I affirm my order for costs to follow the event. Although my original order was for costs to be taxed if not agreed, counsel agreed to make submissions on costs in lieu of taxation or agreement. I order costs to be paid by the 3rd defendant to the plaintiffs fixed at \$200,000. Seeing as the plaintiffs did not succeed in their claims against the other defendants, I order costs to be paid by the plaintiffs to the 1st and 4th defendants fixed at \$40,000 for each defendant, taking into consideration the fact that the 1st and 4th defendants were minor parties and were represented by the same counsel. As for costs in relation to the counterclaim, since the counterclaim taken out by the 3rd and 4th defendants against the 1st, 2nd and 3rd plaintiffs failed, I order costs to be paid by the 3rd and 4th defendants to the 1st, 2nd and 3rd plaintiffs fixed at \$10,000 each plaintiff.