

Sin Tiong Wah International Pte Ltd v Pee Wee Liang
[2019] SGHC 124

Case Number : HC/Registrar's Appeal from the State Courts No. 4 of 2019
Decision Date : 15 May 2019
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Ong Lian-Yi Gregory (David Ong & Co) for the appellant/defendant; Han Hean Juan (Hoh Law Corporation) for the respondent/plaintiff.
Parties : Sin Tiong Wah International Pte Ltd — Pee Wee Liang

Civil Procedure – Costs – Security

15 May 2019

Judgment reserved.

Choo Han Teck J:

1 The plaintiff is a Malaysian working for the defendant in Singapore from October 2014 to April 2018. The plaintiff currently works for Castor & Wheel Singapore Pte Ltd (“Castor & Wheel”). Mr Ong, counsel for the defendant is not sure what the plaintiff currently does. He thinks that the plaintiff could be a driver or a storekeeper or both. Mr Michael Han, counsel for the plaintiff, says he is now a driver and occasionally operates the forklift to carry drums.

2 The plaintiff, while working for the defendant, injured himself in November 2017 moving a 200kg drum (“the Accident”). He claims that his back was badly injured by that incident and is suing for damages in tort.

3 The defendant applied for an order that the plaintiff pays security for costs on the ground that the plaintiff is ordinarily resident outside jurisdiction pursuant to O 23 r 1(1)(a) of the Rules of Court (Cap 322, 2014 Rev Ed) (“ROC”). On 17 January 2019, the deputy registrar in the State Courts allowed the application and ordered the sum of \$10,000 to be paid by way of security. The plaintiff appealed the next day and on 20 February 2019, a district judge allowed the appeal and set aside the order for security for costs. The defendant now appeals before me to restore the deputy registrar’s order.

4 Order 23 r 1(1)(a) ROC allows a defendant to apply for an order that the plaintiff pay security for costs if he can persuade the court that the plaintiff is ordinarily resident out of jurisdiction. This is the crucial requirement. If the plaintiff is not ordinarily resident out of jurisdiction, the application must fail.

5 In the present case, the evidence shows that the plaintiff was resident in Singapore almost the whole time in the past six years. He has left the defendant’s employ but is now working for Castor & Wheel in Singapore.

6 Mr Ong complains that the plaintiff has no fixed address and is therefore a “flight risk”, a term also adopted by Mr Han, but this is an inappropriate term in an application under civil procedure law, and it is not relevant when determining whether the plaintiff was ordinarily resident outside the jurisdiction. The law requires the plaintiff to be ordinarily resident outside the jurisdiction, and not

that the plaintiff must reside in the same place for any specific period of time for the purposes of determining ordinary residence, unless it is to show that the plaintiff changed his address to evade the consequences of litigation (O 23 r 1(1)(d)). This is not the case here and there is neither submission nor evidence that this was the case.

7 "Ordinarily resident" is not difficult to understand and generally connotes residence in a place with some "degree of continuity" (*Tjong Very Sumito and others v Chan Sing En and others* [2011] 3 SLR 580 at [22]). The plaintiff has worked in Singapore since 2013, and he has stayed at three addresses in Bedok in the past few years, one of which was his sister-in-law's home. He has a wife who also works in Singapore, and he goes back to Malaysia once a month to see his 9-year-old daughter who is under the care of his wife's mother. If asked whether this suggests that the plaintiff is ordinarily resident outside the jurisdiction, the answer must be a categorical "no".

8 That being the case, the application cannot succeed. There is no room for discretion of any sort that would have to be exercised had the court found that the plaintiff was ordinarily resident outside the jurisdiction.

9 The deputy registrar found that the plaintiff was resident outside the jurisdiction but on the evidence, it is very difficult to see how that finding can be made in this case, except, perhaps the deputy registrar was influenced by the merits of the claim and the conduct of the plaintiff.

10 The plaintiff had originally applied for compensation pursuant to section 7 of the Work Injury Compensation Act (Cap 354, 2009 Rev Ed) after he claimed to be injured at work. An assessment in the sum of \$26,200 was issued by the Ministry of Manpower, and the plaintiff subsequently withdrew his application, presumably in favour of pursuing a much larger claim in the civil court.

11 The defendant also adduced evidence that shows that the plaintiff probably had a pre-existing injury which he is now claiming to have arisen from the Accident at work. Furthermore, a private investigation report shows an active plaintiff climbing up and down a lorry in his new work-place at Castor and Wheel, long after his alleged injury.

12 It seems, therefore, that the plaintiff might possibly be trying his luck, and if he fails, the defendant may have no recourse for costs should the plaintiff not pay the costs. These are all relevant matters that a court may take into account when exercising its discretion as to whether a plaintiff should be ordered to pay security for costs. When it is at this stage and the court has exercised its discretion, the appellate court should not disturb that decision unless it is so plainly wrong. It is not enough if the appellate court might not have decided the same way on the same facts.

13 It is true that some plaintiffs might exaggerate their injuries to the point of making false claims and that clearly would have been totally unfair on the defendant. In many cases, the plaintiff's solicitors are well placed to advise the client not to pursue a cause when there is only a dim hope of success. Against that hope and the drastic impoverishment that may follow a costs order, the plaintiff will be well-advised to be cautious in proceeding. The lawyer's role is to avert financial calamity, and proceed only when the evidence allows.

14 In this case, the evidence (or rather lack of it) relating to the residency of the plaintiff outside the jurisdiction does not permit the court to contemplate any of the discretionary elements. The plaintiff is ordinarily resident here and O 23 r 1(1)(a) does not avail the defendant. This appeal is therefore dismissed.

15 I will hear arguments on costs at a later date.

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