

Goh Seng Heng v Wang Xiaopu
[2020] SGCA 66

Case Number : Civil Appeal No 225 of 2019 (Summons Nos 62 and 65 of 2020)
Decision Date : 09 July 2020
Tribunal/Court : Court of Appeal
Coram : Tay Yong Kwang JA; Steven Chong JA; Belinda Ang Saw Ean J
Counsel Name(s) : Lee Sien Lang Joseph, Muk Chen Yeen Jonathan and Samuel Lee Jia Wei (LVM Law Chambers LLC) for the appellant; Yim Wing Kuen Jimmy SC, Mahesh Rai s/o Vedprakash Rai, Dierdre Grace Morgan and Wong Wan Kee Stephania (Drew & Napier LLC) for the respondent.
Parties : Dr Goh Seng Heng — Wang Xiaopu — Dr Goh Ming Li Michelle

Civil Procedure – Costs

9 July 2020

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

Factual background

1 In CA/CA 225/2019 (“CA 225”), the appellant appeals against the decision of the High Court in HC/S 686/2015 (“Suit 686”, in which the appellant was the first defendant) given on 5 December 2019 ordering him to repay the sales proceeds of \$30,700,000 from the sale of 66,000 shares in Aesthetic Medical Partners Pte Ltd (“AMP”) to the respondent (who was the plaintiff), together with interest. The High Court also made a declaration and several ancillary orders. On 6 February 2020, the High Court ordered the appellant to pay the respondent \$460,000 in costs and disbursements fixed at \$286,639.48 and RMB40,466. The judgment amount and the costs and disbursements have not been paid.

2 On 6 March 2020, the appellant applied in person for a bankruptcy order against himself in HC/B 940/2020 (“B 940”), declaring in his supporting affidavit that he had no assets but had liabilities amounting to \$676,350 owing to a potential judgment creditor, Liberty Sky Investments Ltd (“Liberty Sky”), which has a judgment against him for damages to be assessed. He also affirmed that he was unable to pay his debts and that the cause of his insolvency was business failure. In his Statement of Affairs, he declared that he was still married and that his wife’s net income was \$3,000. He also listed out the names of his two daughters aged 34 and 33 and two sons aged 29 and 26. He also stated that his previous employer was AMP, his previous job title was director and the last date of his employment was July 2014. His last net monthly salary was declared as \$250,000. In both his affidavit and his Statement of Affairs, the appellant stated his address as 20 Yew Siang Road #01-01, Singapore 117756 (“the Flynn Park apartment”). This is the address of a condominium called Flynn Park which is more than 30 years old.

3 On 19 March 2020, the appellant was adjudged a bankrupt on his own application. It turned out that he had applied for the bankruptcy order in B 940 without consulting his lawyers (who included a Senior Counsel) or even informing them although they were in the midst of preparing for his appeal in CA 225. As a result, his lawyers filed the appellant’s appeal papers on 23 March 2020 without having sought the sanction of the Official Assignee to continue with the appeal.

4 On 26 May 2020, the respondent applied in CA/SUM 62/2020 ("SUM 62") for various orders including an order that CA 225 be deemed withdrawn or struck out without further order as the appellant had not obtained the Official Assignee's sanction. Later that same day, the appellant's lawyers applied in CA/SUM 65/2020 ("SUM 65") for the time for the filing of the appeal papers in CA 225 to be extended while they sorted out the matter of the sanction with the Official Assignee's office.

5 By way of correspondence, we directed that both SUM 62 and SUM 65 be heard first as they concerned the capacity of the appellant to maintain his appeal in CA 225. On 17 June 2020, the Official Assignee granted the sanction under s 131(1)(a) of the Bankruptcy Act (Cap 20, 2009 Rev Ed) to the appellant upon certain conditions, including the requirement for the appellant from time to time to increase the amount of the security deposit which had been placed with the Official Assignee by a third party, depending on the progress of the action.

6 As a result of the above developments, the respondent informed the Court and the appellant that she would not object to the appellant's SUM 65 except that the appellant should pay costs to her (the amount was proposed at \$2,000, inclusive of disbursements, in the respondent's submissions before us). The respondent also indicated that she would not be proceeding with the prayer in her SUM 62 to strike out the appeal but would proceed with the other prayers with some modifications. Those other prayers initially sought further security for costs at \$50,000 (on top of the \$20,000 provided in the Rules of Court, in order to have a total of \$70,000) and payment of the costs and disbursements ordered by the High Court within a specified time frame, failing which CA 225 was to be struck out without further order with costs to be awarded to the respondent. The respondent now asks for further security for costs to be set at \$20,000 instead of \$50,000 because, as a condition for the grant of sanction, the Official Assignee directed the appellant to raise \$30,000 as further security to be held by his lawyers and that has been done. By asking for the further amount of \$20,000, the respondent would have a total of \$70,000 as security for the costs of the appeal, the amount that she asked for originally. The respondent justifies this amount by relying on the Appendix G guidelines for party-and-party costs awards in the Supreme Court Practice Directions which state the range of costs for appeals from complex trials to be from \$60,000 to \$100,000.

Our decision

7 Our decision here is confined to the matters in SUM 62 and SUM 65. The appeal on the merits has been scheduled to be heard in the third week of August 2020.

8 Order 57 r 3(4) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) provides that the Court of Appeal may at any time, in any case where it thinks fit, order further security for costs to be given. On the issue of staying an appeal pending payment of the costs ordered for the trial, the parties agree that the Court has the inherent powers under O 92 r 4 of the Rules of Court to grant such a stay in exceptional circumstances where there is a clear need for it and the justice of the case so demands (*Roberto Building Material Pte Ltd and others v Oversea-Chinese Banking Corp Ltd and another* [2003] 2 SLR(R) 353 at [17]). The Court of Appeal in that case went on to state that the circumstances where such an order may be made must be rare indeed and the twin criteria of prejudice and justice would be decisive (at [19]).

9 The primary case of the respondent in SUM 62 is that the appellant has been dissipating his assets worth millions of dollars to enrich his family and to put the assets beyond the reach of his creditors. She submits that the appellant, whom she describes as "a seasoned litigant in the Singapore courts", has abused the process of the court in an astounding manner that is rarely seen and should not be allowed to continue with his appeal in CA 225 without the conditions sought in

SUM 62.

10 It is undisputed that between 2013 and 2015, the appellant received a total of some \$60m from the respondent and two other groups of investors (RSP Investments and Liberty Sky) as payment for AMP shares. The appellant had a successful medical practice for many years, earning more than \$1m each year. For 2014 and 2015, his annual income from his medical and aesthetic practice in AMP was about \$3.5m. Such a level of income is also borne out by the Statement of Affairs in his bankruptcy where the appellant declared his net monthly salary for July 2014 at \$250,000 per month. There is a clinic known as Dr Goh Seng Heng & Partners in the Paragon shopping complex. After taking urgent instructions in the course of this hearing, Mr Jonathan Muk ("Mr Muk") informed the Court that the clinic is being run by the appellant's elder daughter and that the appellant is working as a consultant in the company which owns the clinic, earning a "small salary" of \$2,000 per month.

11 Shortly after receiving the funds from the respondent and Liberty Sky, the appellant purchased two apartments in Sentosa Island at \$4.88m and \$5.8m, one each for his second daughter and his elder son ("the two apartments"). He also bought a ground floor unit in Leedon Heights through his family company.

12 The appellant also had some \$18.44m in an OCBC bank account held by his elder son for the family. Sometime in 2016, while the appellant was involved in another High Court action and was served with a *Mareva* injunction, an agreement was reached to put up the two apartments together with the appellant's matrimonial home at 36 Cove Way, a bungalow in Sentosa Island, as security for up to \$20m in exchange for the discharge of the injunction. The appellant's elder daughter affirmed in an affidavit in 2017 that the family wanted to help the appellant discharge the injunction by offering security. In exchange for the elder son agreeing to offer his apartment as security, the family decided that all the money in the OCBC bank account would be "gifted to (name of the son), as the eldest son of the family". It was asserted that the money was for the said son to deal with as he pleased and that no part of it belonged to the appellant.

13 The bungalow at 36 Cove Way ("the bungalow") was purchased in August 2010 in the joint names of the appellant and his wife as their matrimonial home. In April 2019, the appellant transferred his interest in the joint tenancy to his wife, purportedly for slightly more than \$5m. Mr Muk could not tell us what has happened to that purported payment. We are also not told how the wife, declared in the appellant's Statement of Affairs as earning a net income of \$3,000, was able to make that payment. At that time, the trial in this case was ongoing with the first two tranches of hearing already completed. In February 2019, judgment against the appellant was delivered in the action commenced by Liberty Sky. That action also concerned the appellant's fraudulent misrepresentations to induce Liberty Sky to purchase AMP shares for about \$14.4m. Damages were ordered to be assessed. Based on the judgment in that action, the respondent estimated that the damages would amount to \$675,000 (which is close to the amount of liabilities declared at \$676,350 by the appellant in his Statement of Affairs in B 940). The appellant appealed in that action but his appeal was dismissed by this Court in February 2020.

14 The appellant has offered no good reason in his affidavits why he divested his interest in the bungalow to his wife in April 2019. Upon questioning by the Court, Mr Muk explained that the appellant had some matrimonial problems with his wife. He also explained that the wife is still living in the bungalow with her mother and that the appellant would visit his wife and his mother-in-law every now and then. He is still married and there is no evidence of any matrimonial proceedings.

15 On 5 March 2020, one day before the appellant filed his bankruptcy application, he changed his registered residential address from 36 Cove Way to the Flynn Park apartment. A search at the Land

Titles Registry revealed that the Flynn Park apartment is not owned by the appellant or his family members. The evidence from a process server shows that the appellant was not living at the Flynn Park apartment in June 2020 but was at the bungalow with his wife in the late evening. We see no good reason why the appellant needed to move (purportedly) to the Flynn Park apartment and why he had to change his address.

16 The appellant refused to disclose to the respondent the identity of the third party sponsor who provided the \$30,000 security required by the Official Assignee. He justified the refusal on the ground of litigation privilege. Upon questioning by the Court, we were told that the sponsor is his elder daughter (who was the second defendant in Suit 686). The identity of the sponsor is relevant here because of the allegations about dissipation of assets to the appellant's family. Further, in certain circumstances, the Court may decide to order costs against non-parties and the sponsor could be such a potential non-party for assisting a bankrupt to pursue his appeal in the event that the appeal fails.

17 In any case, while the appellant's family was willing to help him discharge the injunction taken out against him (see [12] above) by pledging their properties as security for up to \$20m, it is hard to believe that they would not assist him to pay his declared debts of \$676,350 such that he had to apply to make himself a bankrupt. They have their own homes, are gainfully employed and not all are married. Further, the elder son received some \$18.44m purportedly as a family gift for his part in offering his \$5.8m Sentosa apartment as part of that security and the Sentosa apartment was also a gift from the appellant anyway. It seems to us that the purported gift of \$18.44m to the elder son for agreeing to pledge a property worth \$5.8m or so which was paid for by the appellant was entirely disproportionate to say the least.

18 The respondent had applied for a *Mareva* injunction against the appellant in March 2017 but subsequently withdrew her application upon the appellant's letter of undertaking dated 4 April 2017 in which he undertook not to "move or dissipate his assets, whether in Singapore or worldwide, in order to deliberately frustrate any possible judgment in Suit 686". Unfortunately, the undertaking was linked to another action against the appellant (in which the *Mareva* injunction was discharged in exchange for the security of \$20m provided by the appellant's family as discussed above) and it also stated that the appellant would be automatically released from his undertaking if the appellant's appeal in that action against the *Mareva* injunction was allowed. As things turned out, 9 days later on 13 April 2017, the appellant succeeded in his appeal in that action and accordingly, the appellant's undertaking to the respondent here was similarly discharged.

19 On the available evidence, we agree with the respondent that there was abuse of process of the Court by the appellant and we accept that the respondent would be prejudiced by the appellant's conduct as detailed above. The appellant's conduct casts his integrity into serious doubt. It is clear to us that the appellant was blatantly divesting and dissipating his assets to the value of tens of millions of dollars while ignoring his judgment debts. The unnecessary change of registered residential address and the highly suspicious manner in which he made himself bankrupt without even consulting or informing his lawyers on record show that he was preparing to stymie the respondent in recovering her money in the event that his appeal in CA 225 fails.

20 This riches-to-rags story acted out by a multi-millionaire on the stage of litigation is simply hard to believe. Accordingly, we think it highly appropriate in this case to exercise our powers to order the appellant to provide further security for costs in the amount of \$20,000 sought by the respondent and to secure the payment of the outstanding costs and disbursements for Suit 686 before he is allowed to proceed with his appeal in CA 225. We set out our orders below.

21 In relation to SUM 65:

- (1) By consent, the time required for the filing of the appellant's appeal papers as stipulated in the Rules of Court is extended to today;
- (2) The said appeal papers filed on 23 March 2020 are deemed filed and served today;
- (3) The appellant is to pay the respondent costs fixed at \$2,000 (inclusive of disbursements) forthwith.

22 In relation to SUM 62:

- (1) The appellant is to provide further security for costs fixed at \$20,000 for CA 225;
- (2) The appellant is to provide security for the costs and disbursements ordered by the High Court in Suit 686 (without the need to compute interest on the costs and disbursements);
- (3) The securities stated in (1) and (2) above are to be provided by 4 pm on Thursday, 6 August 2020 and are to be by way of the appellant's solicitors' undertaking to pay the respective amounts when ordered to do so by the Court of Appeal or by any other method agreed in writing between the parties;
- (4) If the appellant fails to comply with the orders in (1) to (3) above, the appeal in CA 225 is dismissed with costs without further order, with the costs to be agreed or to be fixed by the Court of Appeal.
- (5) The costs of this application are to be costs in the appeal.