

**IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

[2022] SGHC 272

Suit No 686 of 2015

Between

Wang Xiaopu

... Plaintiff

And

(1) Goh Seng Heng

(2) Goh Ming Li Michelle

... Defendants

FOUNDATIONS OF DECISION

[Civil Procedure — Costs — Principles]

[Civil Procedure — Judgments and orders — Enforcement]

[Insolvency law — Bankruptcy — Bankrupt's duties and liabilities]

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Wang Xiaopu
v
Goh Seng Heng and another

[2022] SGHC 272

General Division of the High Court — Suit No 686 of 2015 (Summons No 5041 of 2020)

Lee Seiu Kin J

29 August 2022

1 November 2022

Lee Seiu Kin J:

Introduction

1 Are the costs against bankrupt litigants to be laid against their sponsors?

2 In this matter, the plaintiff obtained an order of committal against the first defendant for contempt of court and applied for costs against the first defendant as well as his sponsor, the second defendant.

3 I heard parties on 29 August 2022. I ordered costs on an indemnity basis against the first defendant but declined to order costs against the second defendant. I set out my reasons below.

Facts

The main action

4 The plaintiff, Wang Xiaopu (“Mdm Wang”) is a director and shareholder of Guangdong Marubi Biotechnology Co. Ltd., a company incorporated under the laws of the People’s Republic of China.¹

5 The defendants are both medical doctors. The first defendant, Goh Seng Heng (“Dr Goh”), is the father of the second defendant, Goh Ming Li Michelle (“Dr Michelle Goh”).² Dr Goh was declared a bankrupt on 19 March 2020.³

6 The original dispute arose in respect of agreements made between the parties for Mdm Wang to purchase shares in the company Aesthetic Medical Partners Pte Ltd (“AMP”). AMP was incorporated by Dr Goh in 2008: *Wang Xiaopu v Goh Seng Heng and another* [2019] SGHC 284 (“*Wang Xiaopu 2019*”) at [6]. In the main action (“Suit 686”), Mdm Wang claimed against the defendants for misrepresentation, alternatively, for breach of contract. Woo Bih Li J (as he then was) ordered that Dr Goh repay sales proceeds of S\$30.7m from the sale of 66,000 shares in AMP to Mdm Wang in exchange for the re-transfer of those shares, failing which Dr Goh was to account for the sales proceeds and a consequential tracing order for these proceeds would be granted: *Wang Xiaopu 2019* at [265].

¹ Statement of Claim (Amendment No. 3) for S 686/2015 (“SOC”) at para 1.

² SOC at paras 2–3; Defence and Counterclaim (Amendment No. 4) for S 686/2015 at paras 2–3.

³ See HC/ORC 5201/2021 for HC/B 940/2020.

Committal proceedings against Mr Goh

7 Following Dr Goh’s failure to pay the sum ordered, Mdm Wang applied in HC/SUM 5041/2020 (“SUM 5041”) for an order of committal against Mr Goh on 16 November 2020.⁴ It is undisputed that Dr Michelle Goh gave an undertaking to the Official Assignee (“the Undertaking”) to fund Dr Goh’s legal fees in the proceedings.

8 On 19 October 2021, I found Dr Goh to be in contempt of court and sentenced him to seven days’ imprisonment: *Wang Xiaopu v Goh Seng Heng and another* [2021] SGHC 282 (“*Wang Xiaopu 2021*”) at [1]. The costs of and incidental to this application were reserved to be determined at a later date.⁵ Dr Goh appealed and I ordered that the execution of the Order of Committal be stayed pending the disposal of his appeal.⁶ Dr Goh’s appeal against the sentence in CA/CA 66/2021 was dismissed on 27 June 2022: *Goh Seng Heng v Wang Xiaopu* [2022] SGCA 48 at [29]. He was ordered to pay Mdm Wang costs of S\$20,000 for the appeal.⁷

9 The present application concerned the costs of and incidental to SUM 5041.

⁴ See HC/SUM 5041/2020 filed 16 November 2020.

⁵ See HC/ORC 6109/2021.

⁶ See HC/ORC 6214/2021.

⁷ See CA/ORC 30/2022.

Parties' cases

10 In this application, the plaintiff sought full costs of and incidental to SUM 5041 on an indemnity basis, to be borne by Dr Goh and Dr Michelle Goh.⁸

11 Counsel for Mdm Wang submitted that as Dr Goh was an undischarged bankrupt, any costs given against his estate in bankruptcy would yield little for Mdm Wang.⁹ Mdm Wang would be placed on the backfoot as she must bear the costs of seeking to enforce orders made in her favour when the necessity of doing so arose from Dr Goh's egregious conduct. Counsel submitted that, as a matter of policy and principle, it was hence just for Dr Michelle Goh to bear the party-and-party costs arising from Dr Goh's litigation as a plaintiff faced with an insolvent defendant funded by a third party would otherwise be left high and dry.¹⁰

12 While Dr Michelle Goh was unrepresented, Dr Goh's counsel noted during his oral submissions on costs that Dr Goh was on the defensive in the committal proceedings and his liberty was at stake, and that on a policy level, ordering costs to be borne by Dr Michelle Goh would set an undesirable precedent whereby people may be reluctant to act as sponsors for bankrupts.

Issues

13 The key issues to be determined were:

⁸ Plaintiff's Written Submissions ("PWS") at para 4.

⁹ PWS at para 21.

¹⁰ PWS at paras 23–24.

- (a) whether Dr Michelle Goh should be made liable for the costs of SUM 5041; and
- (b) whether costs should be awarded on an indemnity basis, and the quantum of these costs.

Issue 1: Whether costs should be ordered against Dr Michelle Goh

The law on ordering costs against non-parties

14 Under Order 59 r 2(2) of the Rules of Court (Cap 322, 2014 Rev Ed) (“ROC”), the court has the discretion to determine by whom and to what extent the costs are to be paid. This discretion includes awarding costs in favour of or against a non-party: *DB Trustees (Hong Kong) Ltd v Consult Asia Pte Ltd and another appeal* [2010] 3 SLR 542¹¹ (“*DB Trustees*”) at [22]–[24].

15 The facts of *DB Trustees* are as follows. The Singapore Court of Appeal (“SGCA”) had awarded the costs of two appeals and the proceedings below to the appellant, DB Trustees (Hong Kong) Ltd. There, the appellant submitted that Ms Koh, who was the only director of Consult Asia Pte Ltd who owned all but one of Consult Asia Pte Ltd’s shares, should be ordered to pay these costs instead of Consult Asia Pte Ltd (at [16]).

16 The SGCA held that the overarching rule with regards to ordering costs against a non-party is that “it must, in the circumstances of the case, be *just* to do so” (at [29])(the “*DB Trustees* rule”). Ordinarily, considerable weight will be placed on two factors which ought almost always be present to make it just to order costs against a non-party, although they are not indispensable

¹¹ Plaintiff’s Bundle of Authorities for Costs Hearing (“PBOA”) at Tab 4.

prerequisites that must be met before a costs order against a non-party can be made (at [29] and [36]):

- (a) There must be a close connection between the non-party and the proceedings. This is a fact-dependent exercise and there are many ways to demonstrate a close connection. It is sufficient that the non-party either funds or controls legal proceedings with the intention of ultimately deriving a benefit from them: (at [30]–[34]).
- (b) The non-party must have caused the incurring of costs. This is a matter of causation. Ordinarily, it would not be just to order a non-party to pay costs if the litigant would have incurred the legal costs regardless of the non-party’s role (at [35]).

17 In *DB Trustees*, the SGCA found it appropriate for Ms Koh to bear the costs of both appeals jointly and severally with Consult Asia Pte Ltd (at [19]). First, as the only director, she was solely responsible for Consult Asia Pte Ltd’s participation in the relevant proceedings. Second, she was in essence the only shareholder and director of Consult Asia Pte Ltd and the real and only beneficiary of any successful outcome of Consult Asia Pte Ltd’s litigation. As such, she had directed Consult Asia Pte Ltd’s unreasonable conduct in the proceedings and stood to gain from any success it may have enjoyed, without incurring a corresponding risk from any failure (at [38]–[41]). Third, Consult Asia Pte Ltd appeared unable to satisfy the adverse costs orders made (at [42]). There was hence a close connection between Ms Koh and the proceedings, and Ms Koh had caused the incurring of unnecessary legal costs which Consult Asia Pte Ltd was unable to pay (at [43]).

Whether it was just in the circumstances of the case to order costs against Dr Michelle Goh

Whether the allegations of dissipation of assets to Dr Goh’s family justified an order of costs against Dr Michelle Goh

18 Counsel submitted that in light of allegations about the dissipation of assets to Dr Goh’s family, Dr Michelle Goh stood to benefit from the proceedings, and also that there was “a clear and close connection between [Dr Michelle Goh] and Dr Goh” such that it was just for Dr Michelle Goh to be ordered to bear Dr Goh’s costs.¹²

19 With all due respect to counsel, notwithstanding any dissipation of assets (which, for the avoidance of doubt, I make no finding on), I did not see how Dr Michelle Goh would stand to benefit from committal proceedings, the nature of which is to impose punitive consequences upon a party (*ie*, Dr Goh) for his non-compliance with court orders. Moreover, the familial connection between Dr Michelle Goh and *Dr Goh* did not automatically connect Dr Michelle Goh to *committal proceedings against Dr Goh*. I was unpersuaded that any dissipation of Dr Goh’s assets and his familial relationship to Dr Michelle Goh evinced a “close connection” between Dr Michelle Goh and the committal proceedings.

Whether Dr Michelle Goh’s undertaking to act as Dr Goh’s litigation sponsor justified an order of costs against her

20 Counsel for Mdm Wang also submitted that arising from Dr Michelle Goh’s Undertaking to the Official Assignee, it was just for Dr Michelle Goh to

¹² PWS at paras 28–29.

also bear costs arising from Dr Goh’s litigation – otherwise, a plaintiff faced with an insolvent defendant would be left high and dry.¹³

21 The question at hand is when the *DB Trustees* rule would apply to sponsors of bankrupt litigants – in other words, when would it be just, in all the circumstances to order costs against the third-party sponsors of bankrupt parties? As a starting point, the SGCA has recognised that a sponsor who assists a bankrupt to pursue his appeal *could* be a potential non-party against whom costs can be ordered in the event that the appeal fails: *Goh Heng Seng v Wang Xiaopu* [2020] SGCA 66 at [16]. However, as accepted by counsel for both Mdm Wang and Dr Goh, there is presently little local authority on the *circumstances* under which a costs order against a third-party sponsor of an impecunious litigant would be appropriate.

22 Counsel for Mdm Wang sought to rely on the English case of *Locabail (UK) Ltd v Bayfield Properties Ltd and others* [2000] 2 Costs LR 169 (“*Locabail*”), where costs were ordered against the claimant who was funded by a third-party sponsor. As counsel for Mdm Wang rightly recognised, the case of *Locabail* did not suggest that there was a general rule that third-party sponsors of impecunious litigants should be liable for the costs of the proceedings, but simply that it was just in the circumstances of that case for costs to be ordered against the third-party sponsor. *Locabail* centered around a property known as Hawks Hill. The registered proprietor of Hawks Hill was a Panamanian company (“Aurora”) which was owned by Mr Ares Emmanuel. Mr Emmanuel had procured Aurora to grant a first charge over Hawks Hill to Locabail (UK) Ltd (“Locabail”). Locabail and Mr Emmanuel subsequently

¹³ PWS at paras 23–24.

agreed to have Hawks Hill transferred to the first defendant, Bayfield Properties Ltd (“Bayfield”), and for the initial charge to be replaced by a charge in favour of Allied Trust Bank Ltd (“Allied Trust”). Allied Trust would in turn advance funds to Bayfield for the purchase of Hawks Hill from Aurora.

23 Mr Emmanuel’s second wife, Mrs Emmanuel, was in occupation of Hawks Hill. She sought to set aside a possession order obtained by Allied Trust (whose rights had now been assigned to Locabail), on the basis that she had acquired an interest in Hawks Hill under the doctrine of proprietary estoppel owing to oral representations made to her by Mr Emmanuel. Her application to set aside the possession order was dismissed and costs were ordered against her.

24 Mr Peter Tavoulaareas, Mrs Emmanuel’s first husband, was ordered to pay the costs ordered against Mrs Emmanuel. Mr Lawrence Collins QC, sitting as a Deputy Judge in the Chancery Division of the High Court of Justice held (at 185) that:

... I have come to the conclusion that the relevant factors do make this one of those cases with such exceptional circumstances as would justify an order of costs. I do so on the combination of **(a) Mr Tavoulaareas’ funding of the proceedings and the fact that it follows from his evidence that he knew Mrs Emmanuel would not be able to satisfy a costs order if she lost; (b) his intense identification in his evidence with Mrs Emmanuel’s position; (c) his indifference to the legal and factual issues; and (d) my rejection of the factual basis of Mrs Emmanuel’s case.** I am conscious that, but for the fact that he gave evidence, two of these factors would not have been apparent, and that he may not have had the opportunity to obtain professional advice on his potential liability before he gave evidence. **Nevertheless, I do not consider that it would be unjust or unfair for Mr Tavoulaareas to bear the consequences of funding litigation, the object of which he fully supported, in which he participated and with which he ultimately identified himself. ...**

[emphasis added]

25 I noted that there have also been instances in English case law where the court has found that non-party funders of plaintiffs in an action ought not be held liable for costs ordered against said plaintiffs. In *Hamilton v Al Fayed (No 2)* [2002] EWCA Civ 665 (“*Hamilton*”), the claimant had brought and lost a libel action, which he was able to bring because of a fighting fund contributed by pure funders, on the understanding that the money would be returned only if the action was successful. In holding that the pure funders were not liable for costs ordered against the claimant, Simon Brown LJ stated (at [47]–[48]):

... in my judgment the pure funding of litigation (whether of claims or defences) ought generally to be regarded as being in the public interest providing only and always that its essential motivation is to enable the party funded to litigate what the funders perceive to be a genuine case. This approach ought not to be confined merely to relatives moved by natural affection but rather should extend to anyone – not least those responding to a fund-raising campaign – whose contribution (whether described as charitable, philanthropic, altruistic or merely sympathetic) is animated by a wish to ensure that a genuine dispute is not lost by default ... So long as the law continues to allow impoverished parties to litigate without their having to provide security for their opponent’s costs, those sympathetic to their plight should not be discouraged from assisting them to secure representation.

26 Chadwick LJ held that the risk of injustice to a claimant to have effective and represented access to the courts would be the predominant concern against ordering costs against the funders of impecunious claimants (at [64]– [65]):

... But the courts have had to balance the risk of injustice to the defendant in those circumstances against the risk of injustice to a claimant who is denied access to the courts to pursue a genuine claim; and the scales have come down in favour of the latter. Access to the courts is one thing; effective access with the benefit of legal representation is another. This is not to suggest that those who choose to represent themselves – or who are forced by circumstances to do so – do not receive

a full and fair hearing ... But it would be idle to pretend that an unrepresented claimant in complex proceedings will not be at some disadvantage against a skilled and experienced advocate.

27 From *Locabail* and *Hamilton*, it appears that while the provision of funding is not in itself an automatic justification for a costs order against third-party litigation sponsors, funding may be indicative of factors including the litigation sponsor's close connection to the proceedings and/or role in incurring legal costs. In such cases, it may be just in the circumstances to order that costs be borne by the litigation sponsor. That being said, the court must consider the risk of injustice to claimants who, if not for the funding provided, would be deprived of effective access to the courts with the benefit of legal representation.

28 Preliminarily, I noted counsel for Dr Goh's clarification that Dr Michelle Goh's Undertaking was only to pay for Dr Goh's legal fees, and not his party-and-party costs.

29 More importantly, the cases identified above contemplated costs orders against the sponsors of impecunious *claimants*; they did not account for situations where the impecunious party is on the defensive and has not opted to enter litigation in the first place. SUM 5041 entailed committal proceedings brought *against* Dr Goh and were not commenced by him. The question of whether costs should be ordered against the sponsor of an impecunious third-party defendant is likely to be an uncommon one, as there is little incentive for a claimant to pursue a claim against a bankrupt individual. In this case, the reason why proceedings had been initiated against Dr Goh despite his status as an undischarged bankrupt was simply because these were committal proceedings.

30 Further, it is precisely because these proceedings are for a committal application that the risk of injustice stemming from a lack of access to legal representation was even more serious here. Losing these proceedings could result in imprisonment for Dr Goh (as did happen). The difficulty Dr Goh would have faced as an unrepresented layperson in mounting his defence was a material factor as his liberty was at stake. I was of the view that this factor justified not ordering costs against Dr Michelle Goh.

Issue 2: Costs ordered against Dr Goh

Whether costs should be ordered on an indemnity basis

31 Counsel for Mdm Wang submitted that indemnity costs should be ordered on the basis of Dr Goh’s dishonest conduct and abuse of process.¹⁴ It was unclear to me the basis on which counsel for Mdm Wang was suggesting that Dr Goh had been abusing the judicial process; I focused instead on counsel’s submission regarding Dr Goh’s dishonest conduct.

32 Pursuant to Order 59 r 5(b) of the ROC, the conduct of all parties, including conduct before and during proceedings, is to be taken into account when determining whether indemnity costs are appropriate in a given case: *Airtrust (Hong Kong) Ltd v PH Hydraulics & Engineering Pte Ltd* [2016] 5 SLR 103¹⁵ (“*Airtrust*”) at [18]. In *Airtrust* (at [23(c)]), Chan Seng Onn J held that a party’s dishonest, abusive or improper conduct in the course of proceedings would be one of the categories of conduct which may provide good reason for an order of indemnity costs to be made. That being said, the failure

¹⁴ PWS at paras 9–16.

¹⁵ PBOA Tab 3.

of a losing party to disclose relevant material did not mean that indemnity costs should be awarded to the winning party as a matter of course, as the seriousness of the non-disclosure must be considered (at [32]).

33 The baseline inquiry for the court when deciding if it is appropriate to make an order of indemnity costs is whether the party's conduct was so unreasonable as to justify this order. It is relevant to consider whether and the extent to which the party's conduct had caused prejudice to the other party, and the court should bear in mind the context and nature of the dispute when considering if the case is of such an exceptional nature that it is appropriate to depart from the standard basis of costs. It would only be in rare cases that indemnity costs are ordered despite the absence of unreasonable conduct, as there is a penal element and stigma attached to an order of indemnity costs (at [50]–[53]).

34 Counsel for Mdm Wang submitted that Dr Goh had behaved dishonestly¹⁶ and that his conduct had prejudiced Mdm Wang, as the piecemeal information and delay made tracing the funds more difficult and incurred significant costs for her.¹⁷ Indeed, in the contempt proceedings, I had found that in the face of a direct court order to provide a full account of the sums which Mdm Wang had paid to him, Dr Goh had intentionally withheld information and lied on affidavit twice. In doing so, he had delayed the execution process and increased costs of Mdm Wang: *Wang Xiaopu 2021* at [28]–[30], [42]. Dr Goh's conduct had indeed reflected a high degree of unreasonableness such that indemnity costs were justified.

¹⁶ PWS at paras 9–14.

¹⁷ PWS at para 15.

Quantum of costs

35 Counsel for Mdm Wang sought costs of S\$49,000 and disbursements of S\$5,595.92.¹⁸

36 Counsel for Mdm Wang submitted that the proceedings had become protracted due to Dr Goh's conduct. Counsel for Dr Goh in turn submitted that the delays in the contempt proceedings could not be placed solely on Dr Goh's shoulders, as two rounds of amendments were required for the contempt statement and four out of the nine pre-trial conferences conducted were because Mdm Wang had sought more time, *eg*, to respond to the affidavits, *etc*.

37 Counsel for Dr Goh noted that the range for party-and-party costs in contempt proceedings in Appendix G of the Supreme Court Practice Directions 2013 (on a standard basis) was between S\$4,000 to S\$16,000. However, I accepted counsel for Mdm Wang's argument that the Appendix G guidelines for contempt proceedings related to interlocutory applications and not open court matters, and that the costs guidelines for trial would be more appropriate to the present committal proceedings.¹⁹

38 Having considered the parties' submissions, I ordered that costs on an indemnity basis against Dr Goh fixed at S\$40,000 plus disbursements of S\$5,595.92.

¹⁸ PWS at para 35.

¹⁹ PWS at para 32.

Conclusion

39 For the foregoing reasons, I ordered costs on an indemnity basis against the first defendant, Dr Goh, fixed at S\$40,000 plus disbursements of S\$5,595.92. I did not order costs against the second defendant, Dr Michelle Goh, as I was not of the view that the circumstances of the present case justify making that order.

Lee Seiu Kin
Judge of the High Court

Grace Morgan (Drew & Napier LLC) for the plaintiff;
Ng Lip Chih (Foo & Quek LLC) and Rezvana Fairouse (NLC
Law Asia LLC) for the first defendant; the second defendant in
person.
