

Management Corporation Strata Title Plan No 2297 v Seasons Park Ltd
[2007] SGHC 28

Case Number : OS 2063/2006
Decision Date : 27 February 2007
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Leo Cheng Suan (Infinitus Law Corporation) for the plaintiff; Christopher Chuah and Lee Hwai Bin (Wong Partnership) for the defendant
Parties : Management Corporation Strata Title Plan No 2297 — Seasons Park Ltd

27 February 2007

Choo Han Teck J:

1 This originating summons arose from the resolution of Suit 827 of 2003 in which the plaintiff sued the defendant in contract as well as in tort. The parties in that action proceeded on a point of law in two issues as preliminary issues. They concerned the question of the *locus standi* of the plaintiff to sue in contract, and the availability of the independent third party's defence to the defendant. The preliminary issues were decided largely in favour of the defendant. The plaintiff's appeal to the Court of Appeal was dismissed and the matter was to revert to trial judge on the remaining issues. Costs of the appeal were ordered against the plaintiff. Those costs were subsequently taxed and paid.

2 In the interim, the plaintiff negotiated a settlement with the defendant on the rest of the action. No further step was taken in respect of the action and a year later, the defendant applied for a declaration that the action was deemed to have been discontinued pursuant to O 21 r 2(6) of the Rules of Court, and asked for costs against the plaintiff in respect of the action (as opposed to the costs of the appeal). It transpired that the plaintiff brought this originating summons for a declaration that Suit 827 of 2003 had been settled on a "drop hands" basis. Hence, there was no question of costs to be ordered or taxed. The parties agreed that no oral evidence was required to determine the sole issue of this originating summons, that is, did the parties settle on that basis? The defendant's case was that there was no agreement on the costs of the main action in Suit 827 of 2003 and that the defendant had not accepted the plaintiff's offer to discontinue the action on a "drop hand" basis.

3 The relevant documents were to be found in the exchange of correspondence between the plaintiff's and defendant's respective solicitors. The first letter was from the plaintiff's solicitors dated 13 June 2005. It read:

We are instructed that our clients are prepared to discontinue the action against your clients on a "drop hand basis" with each party bearing their own legal costs.

The defendant's solicitors replied on 16 June 2005 to say

Our clients are prepared to consent to your client's discontinuance of the action upon your clients' payment of our clients' costs for the hearing of the preliminary issues and the Appeal as ordered by the Court. The bill of costs will be submitted to the Court for taxation shortly.

...

Please confirm whether your clients agree to discontinue their action on this basis.

At this point it is clear that the defendant's reply complied that it was only seeking costs for the hearing of the preliminary issues and the appeal. It specifically asked if the plaintiff would agree to discontinue the action "on this basis". The reference to "this" must be to the payment of costs "of the preliminary issues and the appeal" as stated in the letter.

4 The plaintiff's solicitors then wrote on 4 July 2005 to ask what would be a fair and reasonable sum "for costs relating to the Preliminary Issue and the Court of Appeal hearing, in lieu of taxation". Not having received a reply to this letter of 4 July, the plaintiff's solicitors wrote on 3 August 2005 to say -

We refer to your letter of 16 June 2005. We are instructed that our clients are agreeable to discontinue the matter on a "drop hand basis".

I think that what the writer meant was that his clients "agree to" as opposed to "are agreeable". The context made this meaning plain although a more precise choice of words would have been expected from a solicitor.

5 The defendant's solicitors then wrote, on 10 August 2005, in reply, not to this letter, but to the previous letter of 4 July, to say:

Our clients have instructed us to propose costs of S\$250,000 ... plus disbursements as a fair and reasonable sum for the hearing of the preliminary issues at first instance and the Appeal, in lieu of taxation for your clients' consideration. Upon satisfaction of our clients' costs, our clients will consent to your clients' discontinuation of the suit.

It seemed clear that the parties had reached a concluded settlement at this stage on terms of the defendant's solicitor's letter of 16 June 2005. What remained negotiable in spite of the agreement was the actual amount of costs payable in respect of the preliminary issues and the appeal.

6 If that was not clear enough, the next letter from the plaintiff's solicitors made it so. In that letter of 22 August 2005, the plaintiff's solicitors wrote -

We refer to your letter dated 10 August 2005 in which you confirmed your clients' agreement to our clients discontinuing the action with each party to [bear] their own costs.

The only outstanding issue is the costs and disbursements for the hearing of the preliminary issues and the appeal. Based on precedents, we are of the view that your proposed costs of \$250,000.00 is excessive and we are instructed to counter-propose costs of \$85,000.00 plus reasonable disbursements. Please let us have your list of disbursements as soon as possible.

The defendant's solicitors' reply confirmed this. In their letter of 29 August 2005 referring directly to the letters of 10 and 22 August 2005, the defendant's solicitors wrote -

1. We refer to our letter of 10 August 2005, and your letter of 22 August 2005.
2. Our clients are unable to agree to your counter-proposed costs at S\$85,000.00 for the hearing of the preliminary issues at first instance and the appeal. Your clients are no doubt aware that the matter was originally fixed for a full-blown hearing, with extensive get-up, and work were expended for this matter, including the filing of numerous affidavits filed for the same (total 18 affidavits of

evidence in chief filed on behalf of the Defendants, and 11 affidavits filed on behalf of the Plaintiffs). The matter also tested novel points of law, not previously decided in Singapore.

3. As a gesture of goodwill and in the interest of settling the issue of costs amicably, our clients are willing to consider costs at \$220,000.00 plus disbursements (set out in paragraph 4 below). In the event that your clients are not agreeable to the revised proposal, we have our clients' instructions to proceed with taxation.

4. On the disbursements for both the hearing of the preliminary issue and the appeal, we have tabulated the amount at S\$24,010.05 (see breakdown attached for your reference).

There can be no dispute that the parties were negotiating the amount of costs of the preliminary issues and the costs of the appeal only. The question of the costs of the main action did not arise because the correspondence consistently showed that the costs of the main action were never in issue. If the defendant claimed that it was, then it was incumbent upon the plaintiff or his solicitors to say so.

7 The plaintiff's solicitors wrote again on 2 September 2005 to ask what would be the lowest sum "on the proposed costs for the Preliminary Issues and Appeal in lieu of taxation". The defendant's solicitors wrote on 23 September to say -

1. We refer to our letter dated 29 August 2005 in respect of the above matter, and the various correspondences exchanged between parties in respect of proposed costs in lieu of taxation for the hearing of the Preliminary Issues and the Appeal.

2. Kindly let us hear from you on the proposed costs and disbursements by **Tuesday, 27 September 2005**, failing which we shall proceed with taxation of the same.

3. Further, as parties have agreed to discontinue the above suit on condition that your [clients] bear our [clients'] costs in the proceedings (agreed or otherwise, taxed), kindly let us have the draft Notice of Discontinuance for our consent.

In response the plaintiff's solicitors sent a draft of the Notice of Discontinuance on 6 October 2005 to the defendant's solicitors for approval in accordance with the etiquette of practice. The defendant's solicitors amended the draft with the following words added - "with costs to the defendants to be agreed or taxed". There can be no question that the words referred only to the costs of the preliminary issues and the costs of the appeal. In my view, the exchange of letters showed that the defendant had accepted the plaintiff's proposal to discontinue the action only on the payment of costs of the preliminary issues and the appeal. There was no reference whatsoever to the costs of the main action.

8 I, therefore, allowed the plaintiff's prayers in this originating summons.

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