

Wu Yow Ngan and another (trading as Chia Seng Sheo Phoor Fruits) v An Feng Li
[2009] SGHC 239

Case Number : DC Suit 608/2009, RAS 92/2009
Decision Date : 23 October 2009
Tribunal/Court : High Court
Coram : Tan Lee Meng J
Counsel Name(s) : Amerjeet Singh s/o Jaswant Singh (Hoh Law Corporation) for the appellants/defendants; Mohan Das s/o Vijayaratnam (Lee Bon Leong & Co) for the respondent/plaintiff
Parties : Wu Yow Ngan and another (trading as Chia Seng Sheo Phoor Fruits) — An Feng Li

Civil Procedure – Costs

23 October 2009

Tan Lee Meng J:

1 The appellants, Mdm Wu Yow Ngan, and her husband, Mr Lee Hai Kuang, appealed against the decision of District Judge Foo Tuat Yien (“DJ Foo”), who set aside an order by the Deputy Registrar of the Subordinate Court, that the respondent, Mr An Feng Li (“An”), furnish \$6,000 as security for costs.

2 The appellants are in the fruit business and they employed An, a Chinese citizen aged 39, as a sales assistant at their shop at 279A Queen Street #01-220 (“the premises”) in July 2007.

3 According to An, his employment agents arranged for him to stay in a second storey dormitory room in a shop house in Katong when he first arrived in Singapore. He claimed that he was instructed by the appellants to move from his room in Katong to the premises in December 2007. He slept on a make-shift bed in the storage area of the premises, where numerous cartons of fruits were stacked up two metres high. His make-shift bed was a timber board, supported by a number of stools. The bed had to be dismantled and stored in the morning.

4 An alleged that at around 11.45 pm on 4 December 2008, three to four cartons of fruits fell on his head while he was sleeping on his make-shift bed (“the accident”). He said that his co-worker, one Mr Wang Xian Tieng, took him to the emergency department of Tan Tock Seng Hospital (“TTSH”) as he had a headache and was feeling giddy. He was given medical leave from 5 to 9 December 2008. On 27 December 2008, he went back to TTSH as he suffered from persistent headaches and nausea. Subsequently, he went back to TTSH on three other occasions to complain about his headaches and nausea.

5 On 13 January 2009, the appellants sent An back to China. They claimed that after the accident, An had demanded compensation from them and had threatened to kill their son if his demand was not met.

6 On 23 February 2009, An commenced proceedings against the appellants for negligence in failing to provide him with a safe and proper place of residence.

7 After the appellants filed their Defence, they filed an application for security of costs in the

sum of \$20,000 to be furnished by An. The Deputy Registrar ordered An to furnish \$6,000 as security for costs. DJ Foo allowed An's appeal against the order in question, after which the appellants lodged an appeal against her decision.

The decision of the court

8 The furnishing of security for costs is governed by O 23 of the Rules of Court (Cap 322, R 5, 2006 Rev Ed), the relevant part of which provides as follows:

1. — (1) Where, on the application of a defendant to an action or other proceeding in the Court, it appears to the Court —

(a) that the plaintiff is ordinarily resident out of the jurisdiction;

....

then, if, having regard to all the circumstances of the case, the Court thinks it just to do so, it may order the plaintiff to give such security for the defendant's costs of the action or other proceeding as it thinks just.

9 It was not disputed that An is ordinarily resident out of the jurisdiction. However, it is clear that security for costs need not be ordered merely because a plaintiff is a foreigner with no address or assets within the jurisdiction. In *Jurong Town Corp v Wishing Star Ltd* [2004] 2 SLR 427, Chao Hick Tin JA, who delivered the judgment of the Court of Appeal explained at [14] as follows:

It is settled law that it is not an inflexible or rigid rule that a plaintiff resident abroad should provide security for costs. The court has a complete discretion in the matter: see *Keary Developments Ltd v Tarmac Construction Ltd* [1995] 3 All ER 534. It seems to us that under r 1(1)(a), once the pre-condition, namely, being "ordinarily resident out of the jurisdiction", is satisfied, the court will consider all the circumstances to determine whether it is just that security should be ordered. There is no presumption in favour of, or against, a grant. The ultimate decision is in the discretion of the court, after balancing the competing factors. No objective criteria can ever be laid down as to the weight any particular factor should be accorded. It would depend on the fact situation. Where the court is of the view that the circumstances are evenly balanced it would ordinarily be just to order security against a foreign plaintiff.

10 As for what factors are relevant in the exercise of the court's discretion, in *Porzelack Kg v Porzelack (UK)* [1987] 1 All ER 1074 at 1077, Browne- Wilkinson VC explained that the question is "what in all the circumstances of the case is the just answer".

Under [O 23 r 1(1)(a)] it seems to me that I have an entirely general discretion either to award or refuse security, having regard to all the circumstances of the case. However, it is clear on the authorities that, if other matters are equal, it is normally just to exercise that discretion by ordering security against a non-resident plaintiff. The question is what, in all the circumstances of the case, is the just answer.

11 In *Omar Ali bin Mohd v Syed Jafaralsadeg bin Abdulkadir Alhadad* [1995] 3 SLR 388 ("*Omar Ali*"), Chao Hick Tin J stated as follows at [18]:

A major matter for consideration is the likelihood of the plaintiff succeeding. This is not to say that every application for security for costs should be made the occasion for a detailed examination of the merits of the case. Parties should not attempt to go into the merits of the case unless it can be clearly demonstrated one way or another that there is a high degree of probability of success or failure.

12 In the present case, it would not be just if An's claim is stifled because he cannot furnish security for costs. His case is that he was injured by cartons of fruit falling on him while he was sleeping on a make-shift bed in the premises on the orders of the appellants. Since the accident, he has had headaches and nausea and he went to TTSH five times within one month of the accident. He should be given a chance to prove that he had an injury that may not have been apparent when he was seen by different doctors each time he went to TTSH. It is not for this court to conduct a detailed examination of the merits of the case. Apart from this, he also has a claim for related expenses and wages attributable to his medical leave. Whether or not An will eventually succeed in his claim is for the trial judge to decide. What is clear at this stage is that An's former employers should not be allowed to stifle his claim by requiring security for costs to be furnished.

13 After taking all the circumstances of the case into account, I dismissed the appeal against DJ Foo's decision with costs.

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