

Gimpex Limited v Unity Holdings Business Ltd and others and another appeal
[2015] SGCA 17

Case Number : Civil Appeal Nos 160 of 2013 and 161 of 2013
Decision Date : 27 March 2015
Tribunal/Court : Court of Appeal
Coram : Sundaresh Menon CJ; Chao Hick Tin JA; Quentin Loh J
Counsel Name(s) : Philip Tay and Yip Li Ming (Rajah & Tann LLP) for the appellant in Civil Appeal No 160 of 2013 and the respondent in Civil Appeal No 161 of 2013; Bazul Ashhab and Mabel Tan (Oon & Bazul LLP) for the respondents in Civil Appeal No 160 of 2013 and the appellants in Civil Appeal No 161 of 2013.
Parties : Gimpex Limited — Unity Holdings Business Ltd and others

Civil Procedure – Costs

27 March 2015

Chao Hick Tin JA (delivering the judgment of the court):

1 Gimpex Limited (“Gimpex”), the plaintiff in the action below, commenced proceedings against three defendants, namely, Unity Holdings Business Limited (“Unity”), the first defendant, Param Energy Pte Ltd (“Param”), the second defendant, and Vinay Parmanad Hariani (“Vinay”), the third defendant. Gimpex claimed damages from Unity for breach of a contract for the sale of coal. It also claimed damages against all three defendants for unlawful conspiracy. Unity in turn brought a counterclaim against Gimpex for damages for breach of the same contract when Gimpex refused to accept the coal delivered by Unity at the contractually stipulated destination (including a claim in demurrages). Param held 25% of the shares in Unity. Vinay was a director and the sole shareholder in Param. Because of the relationship between the three defendants, Gimpex also sought to pierce the corporate veil by making Vinay liable for any damages found to be payable by Unity to Gimpex. At the hearing below, the trial judge allowed Gimpex’s claim against Unity for breach of contract with damages to be assessed by an assistant registrar. However, she dismissed the conspiracy claim and refused Gimpex’s attempt to make Vinay liable for damages payable by Unity to Gimpex. She also dismissed Unity’s counterclaim against Gimpex. As a result, the trial judge made the following orders on costs:

- (a) Param and Vinay are to have their costs, as one set of costs, in defending against Gimpex’s conspiracy and piercing of the corporate veil claims.
- (b) Gimpex is to have the costs of its claim against Unity and the costs of the counterclaim mounted by the defendants.

2 Gimpex, by way of Civil Appeal No 160 of 2013 (“CA 160/2013”), appealed the trial judge’s dismissal of its claim for unlawful conspiracy and refusal to pierce the corporate veil. Gimpex also argued that the trial judge should have determined the damages due to Gimpex for breach of contract for two reasons. First, the evidence was already adduced before the court. Second, there was no need to remit the question of damages to be assessed by an assistant registrar. The defendants, by way of Civil Appeal No 161 of 2013 (“CA 161/2013”), cross-appealed the trial judge’s decision allowing Gimpex’s claim for breach of contract, and dismissal of Unity’s counterclaim.

3 On 9 February 2015, we dismissed CA 161/2013. We also dismissed most of Gimpex's contentions in CA 160/2013 *ie*, those concerning its conspiracy claim and its request for the corporate veil to be pierced., But we agreed with Gimpex that the trial judge should have determined the damages suffered by Gimpex for the breach of contract payable by Unity. Accordingly, we determined the quantum of damages due to Gimpex and set aside the trial judge's order for the damages due to Gimpex to be assessed by an assistant registrar. Our decision is reported in *Gimpex Limited v Unity Holdings Business Limited and others* [2015] SGCA 8 ("CA Substantive Judgment").

4 Following from our decision, and taking into account the submissions of parties, we make the following orders on costs:

(a) The costs orders made by the trial judge as stated above (at [1]) are to stand, except that the costs which Gimpex is entitled to from Unity for its breach of contract claim shall include the costs incurred for proving damages which we have determined.

(b) Param and Vinay are to have their costs in CA 160/2013. Unity is to have only 75% of its costs in CA 160/2013 as Gimpex has succeeded in the point in relation to the assessment of damages which are payable to it by Unity. In determining the costs due to Param, Vinay or Unity, the taxing registrar shall bear in mind the fact that the same solicitors acted for all the defendants at the trial as well as the appeal.

(c) Gimpex is to have the costs in CA 161/2013.

(d) The defendants shall have their costs (one set) in Summons No 2803 of 2010 which was an application by the defendants to set aside an injunction restraining the defendants from receiving payment under the letter of credit (the injunction was premised on the conspiracy claim mounted by Gimpex which it had failed to establish).

(e) All costs are to be taxed if not agreed.

5 There is one other matter which we need to address and it concerns Gimpex's contention that costs due to Param and Vinay from Gimpex should be set-off against costs due to Gimpex from Unity. Gimpex highlighted the fact that all three defendants were represented at the trial, as well as the appeals, by the same solicitors and had adopted common positions in the action. As such, Vinay and Param were effectively the persons giving directions on behalf of Unity in relation to the action. Unity has to date failed to pay up the judgment debt due to Gimpex despite repeated requests. Furthermore, while Unity has been reticent in respect of the judgment debt due to Gimpex, Vinay and Param, through their common solicitors, have repeatedly requested Gimpex to pay the costs due to them in respect of Gimpex's failed conspiracy claim. Accordingly, it appears that there are valid concerns on Gimpex's part that if this court were to treat costs due to Param and Vinay from Gimpex as separate and distinct from those due to Gimpex from Unity, Gimpex might not be able to obtain its costs due from Unity.

6 We are aware that (1) we had refused to lift the corporate veil to make Vinay personally liable for the acts of Unity and Param because there were insufficient bases for doing so; and (2) we did not find that there was any conspiracy among the defendants in the CA Substantive Judgment. That said, it does not follow that they did not share a common interest as far as the entire proceeding was concerned. In fact, we find that there was a common interest among them from the way that they conducted their defence.

7 In the light of the above, it is only fair that any costs ordered in favour of Unity, Vinay and

Param should be set-off against the costs payable by Unity to Gimpex and we so order.

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