

WYNO Marine Pte Ltd (In Liquidation) v Lim Teck Cheng and Others (Koh Chye Heng and Others, Third Parties)
[2000] SGHC 10

Case Number : Suit 2274/1993, BOC 328, 572 and 573 of 1999, SIC 6867, 6892, 6893 and 6894 of 1999
Decision Date : 18 January 2000
Tribunal/Court : High Court
Coram : Choo Han Teck JC
Counsel Name(s) : K Shanmugam SC and Ashok Kumar [Allen & Gledhill] for the plaintiffs; S Selvam [Ramdas & Wong] for the 1st, 2nd and 6th defendants; Monoj Kumar Roy [Roy & Partners] for the 1st Third Party; Benjamin Goh Kay Poh [Bernard, Rada & Partners] for the 3rd Third Party
Parties : WYNO Marine Pte Ltd (In Liquidation) — Lim Teck Cheng; Hong Lam Marine Pte Ltd; Ong Hock Hoe trading as Lee & Kong Engineering Work; Kong Fook Peng trading as Lee & Kong Engineering Work; Lee Beng Chong trading as Lee & Kong Engineering Work; Kok Lee Seng trading as Lee & kong Sub-contractor — Koh Chye Heng; Ong Ah Yeo Yenna; Foong Ah Pang

JUDGMENT:

ORAL JUDGMENT

1. I am asked to review the award of costs by the learned assistant registrar in respect of the bills of costs by the plaintiffs, first Third Party and third Third Party. His initial awards were \$390,000, \$290,000 and \$240,000 respectively. At the parties' request for a review, the learned assistant registrar revised his awards to \$485,000, \$270,000 and \$210,000 respectively.
2. Mr Shanmugam SC submits that the work done would easily justify an award of up to \$900,000 for the plaintiffs alone, but he says that in any event it should be more fairly pegged around \$750,000.
3. The two Third Parties are content with their revised awards, but Mr Selvam for the first defendant asks that these awards be revised lower especially if the plaintiffs' costs are revised upwards.
4. It was submitted by Mr Shanmugam SC, without challenge by Mr Selvam that the learned assistant registrar assessed the overall costs payable to be \$920,000 and then proceeded to apportion this sum among the three claiming parties. There is no written grounds from the assistant registrar to confirm that this was the approach he took. However, on review, he revised his awards by reducing the costs to the two third parties, and increasing the costs to the plaintiffs, beyond the total amount reduced from the Third Parties therefore increasing the overall payment to be made by the first defendant.
5. The governing principle in a review of the taxation of costs is clearly set out in the Court of Appeal decision in *Diversey (Far East) Pte Ltd v Chai Chung Ching Chester & Ors (No. 2)* [1993] 1 SLR 542. The decision delivered by the learned Rajendran J. favours a non-interference approach to the awards by the taxation officer on the basis that such awards are matters of judicial discretion. It follows therefore, that unless a wrong principle was applied in the assessment of the costs, the award should stand.
6. However, there are instances such as this in which there are no written grounds to indicate what principles had been applied. I note Mr Shanmugam SC's submission (supported by Mr Roy and Mr Goh) that the assistant registrar first assessed the global amount and then apportioned that to the three claiming parties. If, that is so, in my humble view, it would be an application of a wrong principle for

the simple reason that it proceeded with no basis for arriving at the global sum. The consideration of a gross overall sum is relevant in cases where the bill is put up by a single party, but not where more than one party's bills are being assessed together. Keeping the overall sum in view is a useful way of controlling the escalation of costs. Since there are no written grounds, I cannot assume what approach the learned assistant registrar took. I say this without at all questioning the integrity of counsel.

7. I will, therefore, approach this review by working out what I think the costs ought to be. If the differences are small then the awards of the assistant registrar ought not be disturbed. If the differences are substantial then the reviewing judge may be entitled to revise the awards.

8. In this case, I have the advantage of being the trial judge in this action and although I cannot claim to remember much of the case, the overall flavour lingers in my mind, but as Rajendran J says in the *Diversey* case, it is not appropriate in a review of this sort to indulge in protracted and minute examination of the evidence or the issues of the trial.

9. By mutual agreement, the parties conceded that a total of 38 days were spent at trial after deducting wasted time-off. On this basis, I would award a sum of \$10,000 a day for 38 days to the plaintiffs. The total for this comes to \$380,000. I think that the costs per trial day in the High Court can vary between \$3,000 to \$15,000 depending on the circumstances. In this case, I take into account that Mr Shanmugam SC fought the longest and the hardest, but also that there were days when the Third Party counsel relieved him somewhat. Therefore, over the long course of 38 days, an estimate of \$10,000 to Mr Shanmugam would be fair.

10. I would also award him \$120,000 for getting up; perhaps slightly on the low side, but I am constantly keeping in mind the approaching overall sum total, having taken into account the \$380,000 for the 38 trial days. I will also award him \$20,000 for each of three long adjournments in the course of the trial. The total award to the plaintiffs which I think would be fair and just is therefore \$560,000 (\$380,000 + \$120,000 + \$60,000). I am ignoring the short adjournments.

11. In respect of the first Third Party, I am of the view that he should be awarded \$5,000 a day for the 38 days trial. He was concerned with fewer issues than the plaintiffs, and the bulk of the work at trial was carried by Mr Shanmugam SC. For the lesser extent to which he has to prepare (a defence as opposed to a claim) I assess \$60,000 to be a fair amount for getting up. I would also award him \$10,000 for each of the three refreshers. Thus his award should be \$280,000 (\$190,000 + \$60,000 + \$30,000).

12. In respect of the third Third Party, his role was even smaller than that played by the first Third Party and his trial action was similarly reduced. I would award him \$4,000 a day for 38 days. I would award a sum of \$40,000 for the getting up and \$10,000 for each of the three refreshers. The total award for him should be \$222,000 (\$152,000 + \$40,000 + \$30,000).

13. It is clear that my assessment does not differ very much from that of the learned assistant registrar in respect of the two Third Parties. There will therefore be no revision in respect of their costs. Mr Selvam's application is dismissed.

14. In respect of the plaintiffs' costs, I think that the difference of \$75,000 to be sufficiently substantial to warrant a revision. I, therefore, allow the plaintiffs' application and revise the total costs awarded to him from \$485,000 to \$560,000.

15. In conclusion, I should say that the evidence of the two Third Parties had been very helpful and

crucial in my judgment at the trial, but where costs are concerned, unfortunately, there is no value added for such performances, save the record of my gratitude.

16. I would describe the overall positions of the claiming parties as follows. The third Third Party was defending a small, albeit, important outpost; and the first Third Party was defending an entire front-line. But the plaintiffs were charged with the supreme command of the war, and bore the brunt of the fight in the many fronts that were opened.

- Sgd -

Choo Han Teck

Judicial Commissioner

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