

Singapore Telecommunications Ltd v Official Assignee
[2001] SGHC 184

Case Number : OS 600396/2001
Decision Date : 17 July 2001
Tribunal/Court : High Court
Coram : Choo Han Teck JC
Counsel Name(s) : Michael Hwang SC and Kelvin Low (Allen & Gledhill) for the plaintiffs; Lee Cheow Han and Sunari bin Kateni for the Official Assignee
Parties : Singapore Telecommunications Ltd — Official Assignee

Civil Procedure – Costs – Order as to costs against Official Assignee of estate of bankrupt – Whether Official Assignee liable for costs

Civil Procedure – Judgments and orders – Whether application seeking declaration justified

Insolvency Law – Bankruptcy – Official Assignee – Duties and liabilities – Liability as to costs as litigant in action at law

: In 1993 one Chua Puay Kiang (‘Chua’) sued Singapore Telecommunications Ltd (‘SingTel’) and two other defendants in Suit 2103/93 (‘the 1993 action’). Chua was adjudicated a bankrupt on 13 February 1998. The trial was adjourned for the purpose of obtaining the sanction of the Official Assignee to proceed. An application was made on 25 June 1998 to change the name of the plaintiff in the 1993 action from Chua Puay Kiang to ‘The Official Assignee of the Estate of Chua Puay Kiang (a bankrupt)’. The application was allowed and the trial resumed and parties made their final submissions to the trial judge. On 30 October 1998 the judge made the following order: ‘The plaintiff’s claim be dismissed with one set of costs payable to the defendants.’

SingTel commenced this present originating summons before me against the Official Assignee as defendant for a declaration that when the Official Assignee becomes a litigant in an action at law, he is liable in the same way as any other litigant as to costs. Secondly, for a declaration that the Official Assignee is liable to pay the costs in the 1993 action and thirdly, for an order that the costs be so paid.

It was submitted by Mr Lee Cheow Han on behalf of the Official Assignee that the costs should be paid by a third party guarantor. International Information Service Pte Ltd subsequently agreed to bear the costs. Mr Lee submitted that the third party’s undertaking was given pursuant to the direction of the Registrar, Supreme Court and that the Official Assignee did not ask for that undertaking.

Mr Michael Hwang SC appeared on behalf of SingTel and argued that the costs are payable by the Official Assignee. The parties exchanged written submissions on the question as they perceived it to be, namely, whether the Official Assignee is obliged to pay the costs personally.

For what appears to be a straightforward matter, it came up for judicial adjudication in a most unusual way, and I shall revert to this point after I deal with the meaning and effect of the trial judge’s order.

The judgment extracted by the defendants has no ambiguity. When a judge rules that the plaintiff pays the costs to the defendant he means just that. In this case, when the judgment was handed down on 30 October 1998 there was no doubt who the plaintiff was. It was the Official Assignee. The court was not concerned whether the Official Assignee pays the costs out of his own funds (that is,

the funds available to the office of the Official Assignee, and not the personal funds of the officer who holds that position, obviously), or from the estate of the bankrupt, or from some third party guarantor.

How the Official Assignee arranges funds for the payment of costs of litigation in such cases is usually not made known to the court and, indeed, the court is not concerned with that. If the Official Assignee does not sanction the continuation of the legal proceedings, the proceedings come to an end, effectively.

However, there will be cases where the Official Assignee may take a favourable view of the action which, in his opinion, enlarge the wealth of the bankrupt's estate to the benefit of the estate and its creditors if successful. In such cases, he has the discretion to sanction the continuation of the proceedings. He will often require the comfort of a third party's guarantee as to costs. If no such guarantee is forthcoming, the Official Assignee will have to decide whether it is still in the best interests of the estate and its creditors to continue the legal proceedings. If he is of the view that it is he may give his sanction and the proceedings carry on. In both circumstances the opposing party is entitled to apply to the court for security for his costs.

In this case, it appears from the affidavits filed that some arrangements were made for a third party company to guarantee the payment of costs, but this was not an order for security to be provided in substitution of any primary liability for costs. In this case, the undertaking as to costs was given by the third party to the Official Assignee. That letter dated 8 June 1998 recites as follows:

We hereby irrevocably undertake to pay your legal costs in respect of the above action.

This was required pursuant to an order of the learned Registrar Mr Chiam Boon Keng made on 28 May 1998.

That letter constitutes the undertaking by the third party to pay `the legal costs` of the Official Assignee. It does not relieve the Official Assignee of any liability to pay costs if such costs were ordered against him.

The judgment of the trial judge carried an unequivocal order that the plaintiff pay the costs of the defendants. The Official Assignee, being the plaintiff, is therefore obliged to effect payment. In this regard, it will be useful to remind ourselves in which mode the Official Assignee was performing his duty. As Cozens-Hardy MR said in **Re Arthur Williams & Co** [1913] 2 KB 88:

[W]here an official receiver ... is simply performing duties which are obligatory upon him in a judicial, or quasi-judicial, character, he is not to be made to pay costs, because he is acting in the performance of his official duty; but whenever the moment comes when he does that which he is under no obligation to do, although he is empowered to do it if he thinks fit, and has a right to do it, then his protection as a judicial officer, or a person of a semi-judicial character, ceases, and the Court has the same jurisdiction to deal with him as with anybody else.

Elsewhere at p 98, Hamilton LJ expressed the point in these terms:

[W]here the official receiver`s functions involve his taking up the position of a litigant he in general does so at his own peril as to costs, and there is nothing in the Rules to relieve him of that incident in connection with such an application as this.

I now revert to the point I alluded to above in respect of this unusual application before me. Where, as it must be clear to all at the outset, that the order to pay costs was made expressly against the plaintiff in the 1993 action, the successful defendant merely had to proceed with enforcement proceedings if the plaintiff fails to pay. Mr Hwang produced before me the authority of **Re Sassoon Ezekiel [1933] MLJ 264** in which costs were ordered against the Official Assignee which he failed to satisfy and the successful party took out a writ of seizure and sale against the Official Assignee. Huggard CJ refused the application of the Official Assignee to set aside the writ of seizure and sale.

The point I wish to express here is that where a party takes a particular view as to how a rule of law or an order of court is to be applied he proceeds forthwith as he may be advised by his counsel. If he is wrong he bears the consequences accordingly. He ought not to seek the opinion of the court whether his proposed action is lawful or correct. It is not the function of the court to render opinions in this way. That is the function of the solicitor. If he thinks or advises that a particular order of court is not clear the proper procedure is to seek a clarification from the judge who made it. If he thinks that the order was wrong, his recourse lay in an appeal to a superior court.

Courts do not make declarations merely to state the obvious to give comfort to a party that a course of action he proposes to take is the correct one in law. A declaration will be made only if it will resolve a specific dispute between the parties when that dispute has come to a boil. That is to say, the parties have done all that needs to be done and a genuine dispute as to the rights and entitlement of the parties have clearly arisen to which nothing else can be done except to proceed to court for adjudication. In this case, there is no doubt a dispute between the plaintiff (SingTel) and the defendant (the Official Assignee) has arisen but the plaintiff ought to have commenced enforcement proceedings to enforce its judgment against the Official Assignee who they say the judgment was directed against. The court`s intervention need only be invoked when, and if, the Official Assignee applies to set aside the enforcement proceedings. The prolixity of the orders sought from me under this originating summons is manifest. The trial judge had ordered the plaintiff (the Official Assignee) to pay costs. Mr Hwang now wants me to declare that that is so. Given his interpretation of the order, this originating summons was unnecessary. The fact that I agree with his interpretation does not justify this application before me. How he is to enforce the order of the court in the 1993 action is a matter for Mr Hwang to advise his clients.

For the reasons that I had just set out, I will make no order in respect of this originating summons.

Outcome:

No order made.