

**IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

[2022] SGHC 232

Suit No 1022 of 2018

Between

Chan Hui Peng

... Plaintiff

And

Public Utilities Board

... Defendant

FOUNDATIONS OF DECISION

[Civil Procedure — Witnesses]

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Chan Hui Peng
v
Public Utilities Board

[2022] SGHC 232

General Division of the High Court — Suit No 1022 of 2018
Andre Maniam J
2 September 2022

23 September 2022

Andre Maniam J:

Introduction

1 In November 2020, the suit between the plaintiff (“Ms Chan”) and the defendant (“PUB”) went to trial. The trial was scheduled for two weeks but only proceeded for four days, when it was settled by Ms Chan accepting an offer to settle that PUB had earlier made.

2 Ms Chan was not only the plaintiff, she also testified over the four trial days. Ms Chan’s husband, Mr Sim Kwang Jui (“Mr Sim”) accompanied her to and from court on the four trial days. Mr Sim had also been *subpoenaed* by PUB as a witness, but his attendance as a witness was scheduled for the second week, and so he never had to attend court as a witness.

3 After the conclusion of the trial, Mr Sim sought payment from PUB and its lawyers, WhiteFern LLC (“WhiteFern”). Initially, he wanted to be paid for

attending court on the *first* day of trial: for his transport to and from court, lunch, and one day’s worth of his salary. That amounted to \$34.59 for transport and meal expenses (for which Mr Sim provided receipts), and \$750 for Mr Sim’s time (Mr Sim said he earned \$14,700 a month; \$750 per day is roughly one day’s pay based on 20 working days a month).

4 PUB’s position was that it was not obliged to pay Mr Sim anything, but WhiteFern said they could advise PUB to pay for Mr Sim’s transport and meal expenses amounting to \$34.59.¹ Mr Sim was however not prepared to settle for that.

5 He said that he would be referring to the Law Society the issue of “other subpoena fees on [his] 1st day of attendance in court”.² In response, WhiteFern said that the Law Society was not the proper forum for that issue,³ but that did not deter Mr Sim. He complained to the Law Society that PUB’s lawyers had *cheated* him out of payment for attending court on the first day. That complaint was dismissed at the review committee stage.⁴

6 Mr Sim then filed a claim in the Small Claims Tribunals against WhiteFern. He raised his claim to \$3,815.09 and alleged that he had a *contract* with WhiteFern for the provision of services for that contract sum – those services being his court attendance as a *subpoenaed* witness.⁵ Mr Sim no longer

¹ Email from WhiteFern to Mr Sim dated 28 January 2021, 1.49pm, para 6.

² Email from Mr Sim to WhiteFern dated 11 February 2021, 12.00pm, para 1.

³ Email from WhiteFern to Mr Sim dated 16 February 2021, 7.44pm, para 4.

⁴ Letter from the Law Society to WhiteFern’s Mr Anparasan s/o Kamachi dated 9 June 2022.

⁵ Claim made in the Small Claims Tribunals dated 22 June 2022.

claimed for one day's worth of court attendance, but some five days' worth. The Small Claims Tribunals dismissed Mr Sim's claim.

7 At that point, PUB offered Mr Sim \$1,000 to settle the matter.⁶ That was more than what he initially wanted, which was \$34.59 for transport and meal expenses, plus \$750 for one day's court attendance, totaling \$784.59. But Mr Sim turned down the \$1,000 offer. He said he would file a lawsuit if he was not paid \$3,932.93 (slightly more than his claim amount before the Small Claims Tribunals); he also complained to the Minister of Sustainability and the Environment.

8 PUB then wrote to ask me as the trial judge to resolve the issue of what (if anything) Mr Sim should be paid for having been *subpoenaed* by PUB,⁷ and both PUB and Mr Sim made submissions on this issue. By this time, Mr Sim's claims had risen to some \$7,826.28: he included claims for his unsuccessful complaint to the Law Society, and his unsuccessful claim in the Small Claims Tribunals; he also included a claim for his time in writing to court.⁸ In his submissions, Mr Sim added that "if [his] time is required to be spen[t] to attend future court session as a litigant in person", he would "ask for the legal cost, disbursements and [his] time cost as litigant incurred for the legal action to be taken and to be charged to PUB and [WhiteFern]".⁹ Having regard to that, in the context of the matter as a whole, I decided to deal with the matter based on the written submissions, without requiring Mr Sim to attend an oral hearing.

⁶ Mr Sim's submissions dated 23 August 2022, para 5.

⁷ WhiteFern's correspondence to the court dated 4 August 2022.

⁸ Mr Sim's submissions dated 23 August 2022, para 6.

⁹ Mr Sim's submissions dated 23 August 2022, para 7.

9 I decided that neither PUB nor its lawyers were obliged to pay Mr Sim anything for having *subpoenaed* him. This decision was conveyed to both PUB and Mr Sim by way of a letter from the court dated 22 September 2022. These are my full grounds of decision.

Summary of the court’s decision

10 Mr Sim went to court because he was accompanying his wife, the plaintiff. He was not attending court on the *subpoena*, he was not complying with an order to attend court, and he did not incur time and expenses in complying with the *subpoena* for which he ought reasonably to be compensated. Mr Sim’s claims for payment in relation to the *subpoena* were thus dismissed.

Issues

11 The main issue may be framed as: what compensation (if any) is a *subpoenaed* witness entitled to, if the trial ends before he is required to attend court as a witness?

12 More specifically:

(a) Is Mr Sim entitled to any payment for his expenses, for having been *subpoenaed*?

(b) Is Mr Sim entitled to any payment for his time, for having been *subpoenaed*?

The applicable rules of court

13 Order 38 rule 22 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) (“ROC (2014 Rev Ed)”) states:

A witness shall not be compelled to attend on a *subpoena* unless a reasonable sum to cover his expenses of going to, remaining at, and returning from, Court is extended to him.

14 The equivalent rule in the Rules of Court 2021 (“ROC 2021”) is Order 15 rule 4(9), which is worded differently:

A witness who complies with an order to attend court or an order to produce documents is entitled to claim reasonable compensation for his or her time and expenses in complying with the order from the requesting party upon request.

15 ROC 2021 came into force on 1 April 2022 and applies to and in relation to all civil proceedings in the Supreme Court which are commenced on or after 1 April 2022 (ROC 2021, Order 1 rule 2(3)(a)). ROC (2014 Rev Ed) continues to apply in relation to any proceedings commenced in the General Division of the High Court before 1 April 2022, until the disposal of those proceedings by the General Division (ROC 2021, Order 1 rule 2(2) and para 1(a) of the First Schedule). The present issue concerns payment in relation to a *subpoena* issued for a trial in 2020, prior to ROC 2021 coming into force (indeed, ROC 2021 no longer uses the term “*subpoena*” but instead “order to attend court”). I thus considered ROC (2014 Rev Ed) to be relevant, rather than ROC 2021. However, if ROC 2021 had applied instead, Mr Sim would likewise not be entitled to any payment.

16 Order 38 rule 22 of ROC (2014 Rev Ed) refers only to a *subpoenaed* witness’ “expenses of going to, remaining at, and returning from, Court”. The commentary on this in *Singapore Civil Procedure 2021* vol 1 (Cavinder Bull gen ed) (Sweet & Maxwell, 2021) (“*Singapore Civil Procedure 2021*”) at

para 38/22/1 recognised that the position is different with expert witnesses, but for factual witnesses (like Mr Sim):

It would seem that beyond a tender of expenses as provided by this rule, a witness of fact has no right to make his attendance in compliance with the *subpoena* conditional on tender of any other amount, whether by way of compensation in respect of opportunity cost incurred in making himself available to give evidence or the costs of seeking legal advice and complying with the *subpoena*. [Underlining added for emphasis]

17 The commentary further stated that Singapore had no equivalent of the provisions under the Australian rules which allow *subpoenaed* witnesses to be compensated for not only expenses but also loss reasonably incurred in complying with the *subpoena*.

18 For completeness, the position in Singapore has now been broadened to cover not only a *subpoenaed* witness' expenses, but also his time. For matters to which Order 15 rule 4(9) of ROC 2021 applies: “[a] witness who complies with an order to attend court ... is entitled to claim reasonable compensation for his or her time and expenses in complying with the order ...” [emphasis added]

19 Order 38 rule 22 of ROC (2014 Rev Ed) states that a witness shall not be compelled to attend on a *subpoena* unless there has been a reasonable tender of expenses. It does not expressly say that a witness who attends on a *subpoena* is entitled to payment for his reasonable expenses, but this would follow from the rule. This is how the rule was interpreted in *Lam Hwa Engineering & Trading Pte Ltd v Yang Qiang* [2013] 2 SLR 524 (“*Lam Hwa*”) at [20]: “The litigant who subpoenas the witness would be *obliged*, under O 38 r 22, to compensate the witness’s travel expenses” [emphasis in original].

20 The threshold question is: did Mr Sim attend court on the *subpoena* (or, in the language of ROC 2021, was he “[complying] with an order to attend court”)?

Why did Mr Sim go to court?

21 Even before the *subpoena* was served on him, Mr Sim had intended to attend the trial of the suit, which was scheduled to commence on 23 November 2020.

22 Mr Sim mentioned his “original intention to follow [his] wife’s trial proceedings and watch after and take care of [his] wife during her trial”, and complained that he was “deprived of [his] privilege and the satisfaction of using [his] leave to sit in the court hearing to follow the actual proceeding” because he was *subpoenaed* as a witness and asked to leave the courtroom while other witnesses testified, as he was a material factual witness.¹⁰

23 On 12 November 2020, Mr Sim applied for leave for the period of 23 to 27 November 2020, *ie*, the first week of trial. His leave application was approved the day he applied.¹¹

24 The *subpoena* was then served on him on 15 November 2020, by PUB’s lawyers WhiteFern.¹²

25 In the days before the trial commenced, Mr Sim raised with WhiteFern the issue of payment for his attendance as a witness. In his email of

¹⁰ Mr Sim’s submissions dated 23 August 2022, para 6.2.

¹¹ WhiteFern’s submissions dated 23 August 2022, para 7(b) and Tab B.

¹² WhiteFern’s submissions dated 23 August 2022, para 7(b).

20 November 2020, he said, “I will need to apply leave to my company in order to be able to attend the court”. He did not tell WhiteFern that even before he was served with the *subpoena*, he had already successfully applied for leave for the first week of trial, because he planned to accompany his wife.

26 In his email, Mr Sim said that he was told to appear in court on the first day of the trial, but he was not told which day he was scheduled to attend (as a witness). As such, he asserted that WhiteFern was responsible to pay for his appearance as witness for the whole trial period, *ie*, 23 November to 7 December 2020. He concluded by saying that if he did not hear further from WhiteFern by 5pm on 21 November, he would assume that WhiteFern had to pay him for the day(s) that he was in court; he said his monthly salary was \$14,700.¹³

27 WhiteFern replied on 22 November 2020, the day before the trial, to say they were unable to confirm when Mr Sim was required to attend as a witness, as the plaintiff’s solicitors had yet to respond on their order of witnesses. WhiteFern said, “[w]e will accordingly only be able to let you know *when* we would require your attendance at trial, if at all, after we have heard from them on Monday [23 November 2020, the first day of trial].” [emphasis added]

28 That email (which Mr Sim had read before going to court on 23 November 2020) indicated that Mr Sim was not required to attend as a witness from the start of the trial: WhiteFern had said they could only inform him *whether* he would be required as a witness, and if so, *when*, after hearing back from the plaintiff’s solicitors on 23 November 2020 regarding the plaintiff’s witnesses.

¹³ Email from Mr Sim to WhiteFern dated 20 November 2020, 9.24pm.

29 No agreement was reached between Mr Sim and WhiteFern (or PUB) as to what (if anything) Mr Sim should be paid for attending court. Instead, WhiteFern asked Mr Sim for documentary evidence pertaining to his request for payment:¹⁴

- (a) documents evidencing his monthly income of \$14,700;
- (b) his company's confirmation that it would not be paying Mr Sim for his attendance at trial;
- (c) his application for leave; and
- (d) his leave approval from his company.

30 Mr Sim only responded to WhiteFern on this on 7 December 2020, by which time the trial had already ended with Ms Chan accepting an offer to settle that PUB had made earlier. The last full day of trial was Thursday, 26 November 2020. On Friday, 27 November 2020, the court was informed that the matter had been settled; the remainder of the trial was vacated, and the *subpoenas* issued (including that to Mr Sim) were discharged. Mr Sim thus never had to attend court as a witness.

31 Indeed, Mr Sim *never did* attend court as a witness. He accompanied his wife to court for the start of the trial on Monday, 23 November 2020, but this was what he had always intended to do; it was not because he had been *subpoenaed* as a witness by PUB.

¹⁴ Email from WhiteFern to Mr Sim dated 22 November 2020, 1.20am.

32 When the trial started, WhiteFern raised the issue of Mr Sim's presence right away:

- (a) WhiteFern said that as Mr Sim was a potential witness, he should not remain in the courtroom;
- (b) Ms Chan's lawyers said that they would leave it to the court whether Mr Sim should be sitting in the courtroom or not;
- (c) WhiteFern indicated that Mr Sim would not be required to attend until 1 December 2020, and asked that he be excused from attending court until then;
- (d) the court then asked Mr Sim to leave the courtroom and wait for WhiteFern to let him know when he was required to come back as a witness – it was explained to him that he was a potential factual witness covering some ground that earlier witnesses would be covering, and so he should not be in the courtroom until it was his turn to testify;
- (e) Mr Sim's attendance as a witness was scheduled for 2.30pm on 1 December 2020, unless he heard otherwise from WhiteFern or the court; his mother's attendance (likewise on *subpoena*) was scheduled for 10am on 1 December 2020 and Mr Sim was informed that he could accompany her to court that morning;
- (f) Mr Sim was then excused from the trial – it was then around 10.33am, and Mr Sim was thus present at the trial for only around half an hour; and
- (g) Mr Sim left the courtroom, but he did not leave the court building – he stayed outside the courtroom while the trial was in session, not only

for the rest of 23 November 2020, but also on 24, 25, and 26 November 2020.

Mr Sim's position

33 Mr Sim now claims the sum of \$7,826.28, for which he provides the following breakdown (in his own words, from para 6.10 of his 23 August 2022 submission):

- a) Actual Time in court for Nov-23 to 26 (4 days) and 1 day cancellation @ **766.67 x 5**
- b) Transport to and fro cost of @\$25 per day with sub-total **\$109.59** (including receipt of \$34.59 on Day 1 for Taxi and lunch meal submitted to [WhiteFern])
- c) Other legal filing fees & costs - filing Complaint to Law Society & SCT \$ **73.34**
- d) Disbursement (Transport and Printing costs) **\$75**
- e) Litigant time costs (as the court deems appropriate for 37 hours spent) \$ **3,543**.

Mr Sim did not spend time or incur expenses complying with the subpoena

34 Order 38 rule 22 of ROC (2014 Rev Ed) applies to a witness' attendance on a *subpoena*; likewise, Order 15 rule 4(9) of ROC 2021 applies to "[a] witness who complies with an order to attend court".

35 When Mr Sim went to court in the period of 23–26 November 2020, he was not attending on the *subpoena*, he was not complying with an order to attend court; he was simply accompanying his wife, the plaintiff. His court attendance as a *subpoenaed* witness was scheduled for the afternoon of 1 December 2020 – but that attendance never happened, for the trial had ended by then. WhiteFern had already told him the day before the trial started, that he was not required to

attend as a *subpoenaed* witness from the start of the trial: they would let him know later whether he was required as a witness, and if so, when.

36 Although Mr Sim was expressly excused (and, indeed, excluded) from the trial by around 10.33am on the first day of trial (23 November 2020), he stayed at the court building (but outside the courtroom) while the trial was in progress until the end of that day, going home only after 6pm; and he again returned to the court building on 24, 25, and 26 November 2020 although the trial court had told him to return to the trial at 2.30pm on 1 December 2020, and not to sit in while earlier witnesses were testifying.

37 Mr Sim’s latest email of 2 September 2022 reinforces the point that he was just accompanying his wife to and from court. He says he had to chaperone and escort her from home to court, and back, on those four days; they travelled together in the same taxis. He further says he made all the logistical arrangements including the payment of taxi fares, “to ensure that Ms Chan was able to appear and attend the Court as required.” Had Mr Sim never been served with the *subpoena*, he would have behaved no differently: he would have accompanied his wife, as he did.¹⁵

38 Indeed, it is clear from what Mr Sim himself says that his complaint is not about having to attend court because he was *subpoenaed*; it is about not being able to attend the trial because he was *subpoenaed*. However, what a witness might receive as expenses of attending on a *subpoena* has nothing to do with compensating him for not being permitted to sit in while earlier witnesses testify.

¹⁵ Email from Mr Sim to the Supreme Court Registry dated 2 September 2022, 2.48pm.

39 In any event, Mr Sim does not deserve any compensation in that regard. If Mr Sim were aggrieved at the *subpoena* keeping him out of the trial, he could have applied to set aside the *subpoena* – or he could have suggested that his wife (who was legally represented) do so – but there was no application to set aside the *subpoena*. Or Mr Sim could have sought to persuade the court to reconsider its decision to exclude him from the trial while earlier witnesses testified, but he did not do that either, nor did his wife. Instead, his wife’s lawyers simply said, “He will be a witness of fact. I leave it to your Honour’s ruling on whether he should be sitting in the courtroom or not.”¹⁶ The court then asked Mr Sim to leave the courtroom, and not to be present while earlier witnesses testified, and the matter rested there.

40 Mr Sim did not come to court because he was attending on the *subpoena*, (or complying with an order to attend court) but because he was accompanying his wife, a litigant. He did not spend time or incur expenses in complying with the *subpoena* for which he ought reasonably to be compensated. There were also other reasons for dismissing Mr Sim’s claims, as set out below.

Mr Sim’s heads of claim

Actual Time in court for Nov-23 to 26 (4 days) and 1 day cancellation @ 766.67 x 5

Time spent at the court building

41 On the wording of Order 38 rule 22 of ROC (2014 Rev Ed), and with the benefit of the commentary in the *Singapore Civil Procedure 2021* (see [16] and [35]–[40] above), the *time* Mr Sim spent at the court building in the period of 23–26 November 2020 and the 1-day cancellation fee he claims, are not

¹⁶ Hearing transcript dated 23 November 2020, p 3, ln 13 to 16.

“expenses of going to, remaining at, and returning from, Court”, and he is not entitled to these heads of claim.

42 If, however, Order 15 rule 4(9) of ROC 2021 were the applicable rule, Mr Sim would in principle be entitled to claim not only for *expenses* but also for *time*, but only if he were “[a] witness who complies with an order to attend court”; and the time for which reasonable compensation is claimed must be “time ... in complying with the order”. As I found, Mr Sim was not at the court “[complying] with an order to attend court”; he had not spent any time at the court “[complying] with [the] order”.

43 PUB submitted that if I were minded to fix Mr Sim’s attendance claim, allowing the claim for half a day for the morning of 23 November 2020 at a rate of \$750 a day, *ie*, \$375, would be fair and reasonable. \$750 is the per day rate Mr Sim had used in his request to PUB and WhiteFern (which he thereafter revised to \$766.67).

44 Mr Sim was present at the trial for only half an hour, and if he were entitled to any compensation for that, \$375 for half a day as suggested by PUB (or a slightly higher \$383.34 using the rate now suggested by Mr Sim) would be ample.

45 Mr Sim alleged that he waited outside the courtroom because WhiteFern had “ordered” him to do so.¹⁷ If by that he meant that WhiteFern had ordered him to come to court and wait outside the courtroom day after day, although he was only required to testify in the afternoon of 1 December 2022, that never happened. After Mr Sim was excused from the trial and left the courtroom,

¹⁷ Mr Sim’s submissions dated 23 August 2022, para 6.2, and Appendix B, para 1.

WhiteFern and Ms Chan’s lawyers continued to be engaged in the trial – there was simply no opportunity for WhiteFern to have “ordered” Mr Sim to remain at the court building (but outside the courtroom). The position was instead as stated by WhiteFern: Mr Sim could have left, but he chose to stay on his own accord.

46 In any event, even if WhiteFern had “ordered” Mr Sim to remain at the court building, the court had told him directly that he only needed to attend as a witness on 1 December 2022. The court expressly excused Mr Sim from attendance until then.¹⁸ Mr Sim’s continued presence at the court building in the period of 23–26 November 2022 was thus not referable to the *subpoena*.

47 Moreover, after the lunch break on 26 November 2022, WhiteFern informed the court that PUB would not require Mr Sim as a witness *at all*, and Ms Chan’s lawyers agreed to inform Mr Sim of this. However, Ms Chan continued to testify till the end of the day, and Mr Sim continued to wait outside the courtroom; they then travelled home together. This reinforces the conclusion that Mr Sim’s attendance in court in the period of 23–26 November 2022 was unrelated to the *subpoena*; he was just accompanying his wife, the plaintiff.

Cancellation fees

48 There is no basis for Mr Sim to get anything on his claim for 1-day cancellation fees. The trial effectively ended on 26 November 2020 because Ms Chan accepted PUB’s offer to settle; in the morning of 27 November 2020 (a day on which Mr Sim did not come to court), the court was informed of the settlement, vacated the rest of the trial, discharged the *subpoenas*, and gave

¹⁸ Hearing transcript dated 23 November 2020, p 5, ln 1–10, and p 6, ln 10–14.

further directions. If Mr Sim truly believed he was obliged to turn up at the court every day until his *subpoena* was discharged, he should have been there on 27 November 2020, but he was not (and neither was his wife, and so he did not need to accompany her to court).

49 Mr Sim had earlier been told he only needed to return to court on 1 December 2020. There is no evidence that Mr Sim had applied for leave to attend court on that date; his leave was for the period of 23–27 November 2020, as he intended to accompany his wife to and from court that week. Cancellation fees are not expenses recoverable under ROC (2014 Rev Ed); even if ROC 2021 applied, compensation would have only been for time spent complying with the order to attend court. There was no basis to allow Mr Sim any compensation based on cancellation fees.

Transport to and fro cost of @\$25 per day with sub-total \$109.59 (including receipt of \$34.59 on Day 1 for Taxi and lunch meal)

50 Mr Sim provided receipts for taxi fare and lunch on 23 November 2020:¹⁹

- (a) \$9 taxi fare for a trip from 9.10am to 9.19am;
- (b) \$10.30 for a takeaway meal at 1.24pm;
- (c) \$15.29 taxi fare for a trip from 6.08pm to 6.28pm.

51 Mr Sim's transport claim of \$25 per day for the three subsequent days appears to be based on his taxi fares totalling \$24.29 for 23 November 2020 (rounded up to \$25).

¹⁹ Email from Mr Sim to WhiteFern dated 7 December 2020, 5.33pm.

52 If Mr Sim’s presence in the trial for half an hour were regarded as attendance on the *subpoena*, he should only be reimbursed for his taxi fares to and from court, *ie*, \$24.29.

53 PUB’s position is that at most Mr Sim should be allowed his transport *and meal* expenses incurred on 23 November 2020.²⁰ In my view, however, as Mr Sim was told to leave the trial at around 10.33am, it was not reasonably necessary for him to have stayed till lunchtime (after 1pm), and then to charge his lunch expenses to PUB. Accordingly, the court would not award Mr Sim his lunch expenses, even if he were regarded as having attended court on the *subpoena* for half an hour that morning. In his email of 2 September 2022, Mr Sim says that he “had not included the claim of [his] entitled meals for the 2nd to 4th day”. Mr Sim however had no entitlement to eat at PUB’s expense on the 2nd to 4th day of trial, and any claim for these meal expenses would have been dismissed.

54 Even awarding Mr Sim his transport expenses would have been problematic, for (as Mr Sim confirmed) he had travelled to and from court together with his wife. His wife would have travelled to and from court in any event, as she was the plaintiff, and testifying as a witness. Mr Sim did not incur any additional travel expenses on account of being served with the *subpoena*.

55 Moreover, as between Ms Chan and PUB, the court had made no order as to costs for a period that ran to the first day of trial, and Ms Chan was ordered to pay PUB costs for the period thereafter. PUB was thus not obliged to pay for Ms Chan’s transport expenses on the four trial days. Requiring PUB to compensate Mr Sim for his transport expenses would in effect be requiring PUB

²⁰ WhiteFern’s submissions dated 23 August 2022, para 12.

to pay for Ms Chan’s transport expenses – for Ms Chan and Mr Sim travelled together to and from court. Awarding Mr Sim his transport expenses would contradict the court’s earlier decision regarding costs as between Ms Chan and PUB. Accordingly, Mr Sim should not be awarded his transport expenses in any event.

Other legal filing fees & costs - filing Complaint to Law Society & SCT \$ 73.34

56 Mr Sim sought to be compensated for proceedings he had unsuccessfully commenced. Both the Law Society complaint and the Small Claims Tribunals claim were dismissed. There is no basis to compensate Mr Sim for unsuccessfully pursuing proceedings against WhiteFern for payment that he was not entitled to.

57 Moreover, these are not expenses of attending court on the *subpoena*. They do not concern Mr Sim’s time and expenses of complying with an order to attend court: instead, they concern Mr Sim’s time and expenses in unsuccessfully pursuing WhiteFern for payment.

58 WhiteFern was in any event not the party liable to compensate Mr Sim: if Mr Sim ought to be compensated, PUB was the party liable to compensate him. As the court in *Lam Hwa* put it at [20], it is “[t]he litigant who subpoenas the witness” who is obliged to compensate the witness. That litigant was PUB (the defendant to Ms Chan’s claim), not WhiteFern (PUB’s lawyers).

Disbursement (Transport and Printing costs) \$75

59 This item relates to transport and printing costs incurred in Mr Sim’s unsuccessful proceedings before the Law Society and the Small Claims

Tribunals as well as another complaint he had lodged with the Singapore Medical Council (“SMC”).²¹ For the reasons above (at [56]–[58]), Mr Sim should not be awarded anything in relation to the Law Society and Small Claims Tribunals proceedings. As for his SMC complaint, such costs are likewise not expenses of attending court on the *subpoena*, and they do not concern Mr Sim’s time and expenses of complying with an order to attend court.

Litigant time costs (as the court deems appropriate for 37 hours spent) \$ 3,543

60 Mr Sim sought to be compensated, at the rate of \$766 per day, for time spent in relation to the Small Claims Tribunals proceedings, for corresponding with WhiteFern to get payment, and for writing to PUB, the Minister, and the court. These are not expenses of attending court on the *subpoena*; they are not time and expenses of complying with an order to attend court.

61 The same observation applies to Mr Sim’s remark that he has “not costed” his time spent preparing his complaint letters to the SMC and the Law Society, to which he attributed a further 39 hours.²²

62 Moreover, Mr Sim’s rate of \$766 per day is questionable. It is based on his *previous* salary of \$14,700 per month with his *previous* employer, Targo Technology GmbH Singapore branch (“Targo”). It appears that Mr Sim revised his per day rate from \$750 per day (which was what he had initially been claiming) to \$766 per day because that was the rate Targo used (based on 260 working days a year, *ie*, around 21 working days a month) in encashing his

²¹ Mr Sim’s submissions dated 23 August 2022, Appendix A, para 9 and Appendix B, para 5.

²² Mr Sim’s submissions dated 23 August 2022, Appendix B, para 4.

untaken leave.²³ This was reflected in a document entitled “Resignee salary computation for the month of January 2021” which Mr Sim provided.²⁴ The same document shows Mr Sim’s resignation date (presumably meaning his last day as a Targo employee) as 31 January 2021.

63 Mr Sim provided no information or documents as to whether he worked, or had any work income, after 31 January 2021. Most of his “litigant time costs” were in relation to things done by him after 31 January 2021.

64 I did not accept Mr Sim’s contention that reasonable compensation to a litigant-in-person is to be computed according to the person’s work income. That would mean that a successful litigant-in-person who has no work income, eg, a homemaker, or a retiree, would get no compensation for the time and work required for the proceedings: this cannot be right. But in so far as work income is a relevant consideration, Mr Sim failed to substantiate what his work income was (if he had any) after his resignation on 31 January 2021.

65 More fundamentally, Mr Sim does not deserve *any* compensation for the time he spent. He cited Order 21 rule 7 of ROC 2021, which reads:

The Court *may* award costs to a successful party who is not represented by solicitors that would compensate him or her reasonably for the time and work required for the proceedings and for all expenses incurred reasonably. [Emphasis added in italics and underline]

66 The equivalent provision under ROC (2014 Rev Ed) is Order 59 rule 18A:

On a taxation of the costs of a litigant in person, there *may* be allowed such costs as would reasonably compensate the litigant

²³ Mr Sim’s submissions dated 23 August 2022, Appendix B, para 1.

²⁴ Mr Sim’s submissions dated 23 August 2022, Appendix B-2.

for the time expended by him, together with all expenses reasonably incurred. [Emphasis added in italics]

67 In a case concerning the rule in ROC (2014 Rev Ed), the Court of Appeal in *Ong Wui Teck (personal representative of the estate of Chew Chen Chin, deceased) v Ong Wui Swoon and another and another appeal* [2019] SGCA 61 emphasised at [74] that the rule does not entitle a litigant-in-person to costs *as of right*: it only provides that he *may* be allowed reasonable compensation for the time and work required, and does not displace the fundamental principle that costs follow the event, *ie*, that the court generally awards costs to the *successful* party.

68 The position is even more pointed under the ROC 2021 rule: the court “*may award costs to a successful [litigant-in person]” [emphasis added]. Mr Sim was not successful in his claims – he was repeatedly *unsuccessful*. There is no basis for requiring PUB or WhiteFern to pay for Mr Sim to pursue unsuccessful claim after unsuccessful claim. Indeed, in early 2021, Mr Sim ought to have accepted payment of his transport and meal expenses for the first day of trial; he should most definitely have accepted PUB’s later offer of \$1,000 which was more than what he had initially claimed. Now, he gets nothing.*

Conclusion

69 Mr Sim was served with a *subpoena*, but the trial ended before he was scheduled to attend as a witness. He went to court because he was accompanying his wife, the plaintiff; he did not do so as a *subpoenaed* witness. Mr Sim did not spend time or incur expenses in complying with the *subpoena* for which he ought reasonably to be compensated. He is not entitled to any

payment from PUB or its lawyers WhiteFern for having been served with the *subpoena*. Mr Sim's claims for payment are dismissed.

70 Mr Sim has spent the better part of two years pursuing payment that he is not entitled to. He should stop chasing after the wind.

Andre Maniam
Judge of the High Court

Anparasan s/o Kamachi and Tan Hui Ying Grace (WhiteFern LLC)
for the defendant;
Sim Kwang Jui in person.
