

This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

Long Kim Wing
v
LTX-Credence Singapore Pte Ltd

[2017] SGHC 312

High Court — Suit No 906 of 2014
Woo Bih Li J
2, 28 November 2017

Civil procedure — Costs — Offer to settle

7 December 2017

Judgment reserved.

Woo Bih Li J:

Introduction

1 In my judgment of 30 June 2017 in respect of the action, I granted the Plaintiff judgment against the Defendant for \$5,512.98 and \$12,928.26 and dismissed the rest of the Plaintiff's claims. I also granted the Defendant judgment against the Plaintiff for \$30,000 on the Defendant's remaining counterclaim. I said I would hear parties on costs of the action.

2 On 28 November 2017, I heard the Plaintiff's application in Summons No 5347 of 2017 ("SUM 5347") to determine if his acceptance dated 19 October 2017 of the Defendant's Offer to Settle dated 12 October 2016 ("the OTS") was valid before hearing the parties' submissions on costs of the action. The Plaintiff submitted that the substance of his acceptance of the OTS was that each party

was to bear its own costs in connection with the proceedings, *ie*, the claims and counterclaims since the court had already adjudicated on the substantive issues.

3 I concluded that the Plaintiff's purported acceptance of the OTS was not a valid acceptance. The purported acceptance was made long after I had delivered my judgment in the action and also after the time to appeal had lapsed. Accordingly, I dismissed SUM 5347 but reserved my decision on the costs thereof. I then proceeded to hear submissions on the costs of the action. Thereafter, I also reserved my decision on the costs of the action.

4 The Plaintiff submitted that each party should bear its own costs of the action. The Plaintiff stressed that he did succeed in obtaining judgment for the sums mentioned above. As a successful party, costs should not be granted against him. As for the judgment in favour of the Defendant on its remaining counterclaim, the Plaintiff stressed that the Defendant had withdrawn its counterclaims for three out of four sums on the seventh day of the trial which spanned eight days, leaving one remaining counterclaim. Accordingly, each party should bear its own costs of the counterclaims as well.

5 On the other hand, the Defendant submitted that in substance the Plaintiff had failed in his claims. Even if the two sums he was granted were to be taken into account, they comprised only 2% of the total of all his claims. If only one sum of \$5,512.98 was taken into account (as the Defendant had intended to pay the \$12,928.26 all along), that sum comprised only 0.6% of the total of the Plaintiff's claims.

6 As for the counterclaims, the Defendant submitted that it was the successful party as it had obtained judgment of \$30,000 and was thus entitled to costs.

7 I am of the view that, in substance, the Defendant is the true successful party with regard to the Plaintiff's claims and the Defendant's counterclaims when they are considered in their entirety. The Defendant should be entitled to some costs in principle.

8 The Defendant sought indemnity costs for the action in respect of the Plaintiff's claims and the Defendant's remaining counterclaim in the light of the Plaintiff's conduct in the litigation. Alternatively, the Defendant sought indemnity costs of the action from 12 October 2016 (being the date of the OTS) and standard costs before 12 October 2016 in reliance on the OTS which was not validly accepted by the Plaintiff.

9 I will address the Defendant's reliance on the OTS first. In the OTS, the Defendant had offered to pay \$8,000 to the Plaintiff in full and final settlement of the claims and counterclaims with each party to bear its own costs.

10 As mentioned above, I granted the Plaintiff judgment for \$5,512.98. This was for the Defendant's failure to conduct due inquiry before terminating his employment. I also granted the Plaintiff judgment for another \$12,928.26 being his outstanding salary and other benefits.

11 On the remaining counterclaim, I granted judgment to the Defendant against the Plaintiff for \$30,000 being a sum which the Plaintiff had caused to be paid to another employee without authority.

12 The Defendant submitted that the \$12,928.26 should not be taken into account in order to determine whether the Plaintiff had obtained more than what the Defendant had offered in the OTS as that was a sum which the Defendant had been willing to pay all along and it was the Plaintiff who had declined to present the Defendant's two cheques (in relation to that sum) for payment. Even if that sum were taken into account, the Plaintiff still obtained less than the \$8,000 offered in the OTS bearing in mind that the Defendant was granted judgment for \$30,000 on its remaining counterclaim. The \$8,000 was offered to settle both the claims and the counterclaims and the Plaintiff's net position after a set-off was less than \$8,000. Indeed, he would have to make some payment to the Defendant.

13 I agree that looking at the figures alone, the Plaintiff did not get more than what was offered in the OTS when my judgment on both the claims and counterclaims is considered in its entirety.

14 However, the Plaintiff submitted that the Defendant should not be entitled to rely on the OTS to claim any indemnity costs as the sum of \$8,000 offered was derisory because the main claim for wrongful termination and for a severance package was already in the region of \$460,713.46. Also, the Plaintiff submitted that the OTS was not a genuine offer. The \$8,000 offered was really to meet only one claim of the Plaintiff's which was for the reimbursement of general entertainment and travel expenses. On the other hand, the crux of the Plaintiff's claims was whether the Plaintiff had been wrongly terminated. Also, the offer of \$8,000 did not appear to encompass the Defendant's counterclaims, the crux of which was whether the Plaintiff had made various unauthorised

payments to another employee of the Defendant. Therefore, there was no incentive for the Plaintiff to settle.

15 I agree with the Plaintiff's argument that the OTS was not a genuine offer to settle all the claims and counterclaims. Consequently, the Defendant is not entitled to rely on the OTS to claim any indemnity costs in respect of the action.

16 As for the Defendant's claim for indemnity costs on the basis of the Plaintiff's unreasonable conduct during the trial, I agree that the Plaintiff's conduct was egregious in one aspect, *ie*, where he alleged that he had been framed by officers of the Defendant but did not establish the relevance or the fact of such an allegation. However, this did not mean that his conduct was egregious throughout the trial. Furthermore, he did succeed in obtaining a judgment in his favour, although for small sums. As for the sum of \$5,512.98, this was due to the Defendant's failure to conduct due inquiry and this issue took some time at the trial. As for the counterclaims, the Defendant withdrew three out of four counterclaims, although the getting-up for the three counterclaims would not have involved much work. As for the remaining one, there was considerable overlap between that and the Plaintiff's claims as the remaining counterclaim was also a valid ground for the Defendant to terminate the Plaintiff's employment. All things considered, I am of the view that it would be just if I grant the Defendant 80% of the costs of the Plaintiff's claims and the Defendant's remaining counterclaim on a standard basis.

17 Although the trial spanned eight days, it was actually for seven days as two half-days were used. The Defendant had claimed \$112,200 (excluding disbursements) on a standard basis using the Guidelines for Party-and-Party

Costs Awards in Appendix G of the Supreme Court Practice Directions but this was on the basis that the action involved complex issues. On the other hand, the Plaintiff submitted that the action was a simple one and costs (excluding disbursements) should be \$99,000 on a standard basis. However, the Defendant pointed out that in the Plaintiff's closing reply submissions in the action, the Plaintiff had submitted that there were novel points of law.

18 I add that the Plaintiff had also submitted then that if he should succeed, he should be entitled to costs on a standard basis of \$175,000 (excluding disbursements) and that if the Defendant succeeded, there should be a small discount on the Defendant's costs as the Plaintiff undertook more preparatory work for the trial.

19 I do not think that there were substantive novel points of law. The action was more fact-centric. It was not complex as such but neither was it a straightforward single claim. There were multiple claims on different bases by the Plaintiff. All things considered, I am of the view that 100% of the costs on a standard basis would amount to \$113,000 including the costs of arguments for costs of the action, but excluding disbursements, and excluding the costs for SUM 5347 which I will address separately elsewhere. 80% of \$113,000 is \$90,400 and I order that this sum of \$90,400 is to be paid forthwith by the Plaintiff to the Defendant.

20 The parties are to agree on the quantum for disbursements of the action payable by the Plaintiff to the Defendant, failing which the court will fix the quantum. Any request for an appointment before the court to fix that quantum must be made in writing by 5pm of 4 January 2018 (or such other later time as

the court may allow), failing which the claim for disbursements will be deemed to be waived.

Woo Bih Li
Judge

Ganga Avadiar and Eileen Yeo (Advocatus Law LLP) for the
plaintiff;
Jared Chen, Rich Seet and Chua Yong Quan (WongPartnership LLP)
for the defendant.
