Godfrey Gerald QC v UBS AG and Others
[2004] SGHC 187

Case Number : SIC 3323/2004, CA 114/2002

Decision Date : 27 August 2004

Tribunal/Court : High Court

Coram : V K Rajah JC

Counsel Name(s) : Lim Chor Pee (Chor Pee and Partners) for applicant; Hri Kumar (Drew and Napier LLC) for first respondent; Wilson Hue (Attorney-General's Chambers) for second respondent; Laurence Goh (Laurence Goh Eng Yau and Co) for third respondent

Parties : Godfrey Gerald QC — UBS AG; The Attorney-General; The Law Society of Singapore

Civil Procedure – Costs – Principles – Unsuccessful application to admit Queen's Counsel – Whether Queen's Counsel or de facto applicant should bear costs – Section 21 Legal Profession Act (Cap 161, 2001 Rev Ed)

Civil Procedure – Judgments and orders – Draft order submitted to Registrar to be perfected – Whether necessary to submit draft order to unrepresented party for approval first – Whether failure to do so resulting in nullity of extracted order – Order 2 r 1, O 42 rr 8(1), 8(5) Rules of Court (Cap 322, R 5, 2004 Rev Ed)

Courts and Jurisdiction – Court of appeal – Court clarifying own order after order pronounced – Whether court acting functus officio – Whether court possessing inherent jurisdiction to clarify terms of order – Order 92 r 5 Rules of Court (Cap 322, R 5, 2004 Rev Ed)

27 August 2004

V K Rajah JC:

1 The applicant, Mr Anthony Wee Soon Kim ("Mr Wee") is no stranger to court. He is a retired lawyer who has, in his personal capacity, battled a number of protracted and well-publicised jousts in court. This consequential application arises from one such matter; it seeks, in essence, to set aside an order made by the Court of Appeal, *inter alia*, on the ground that the court was *functus officio* when it clarified an earlier order.

2 In Originating Motion No 22 of 2002, an application was made by Mr Gerald Godfrey QC for admission as an advocate and solicitor of the Supreme Court for the sole purpose of appearing on behalf of Mr Wee in Suit No 834 of 2001 ("Suit 834"). That suit involved Mr Wee's claim against UBS AG ("UBS") for misrepresentation and other banking account related issues. Tay Yong Kwang J dismissed the application on the basis that the statutory criteria prescribed by s 21 of the Legal Profession Act (Cap 161, 2001 Rev Ed) ("LPA") had not been satisfied. Tay J also ordered Mr Wee to personally pay $5,000 in costs to UBS. The other parties to that application were, in accordance with s 21 of the LPA, the Attorney-General and The Law Society of Singapore. An appeal was subsequently filed against Tay J's decision.

3 Mr Godfrey QC's appeal came up for hearing on 17 March 2003. Mr Goh Aik Leng ("Mr Goh"), who had until then appeared for both Mr Godfrey and Mr Wee in their respective causes, applied for leave to discharge himself as counsel in Suit 834 and its related matters, including the subject appeal. Mr Goh informed the Court of Appeal that Mr Wee would argue the appeal "in person" (see *Godfrey Gerald, Queen's Counsel v UBS AG* [2003] 2 SLR 306 at [10]). The court granted Mr Goh leave to discharge himself, and Mr Wee thereafter argued the appeal "in person". The appeal was unsuccessful. Tay J's decision was upheld in its entirety. On the issue of Mr Wee's liability to pay the

costs of Mr Godfrey QC's unsuccessful application before Tay J, the Court of Appeal observed at [42] and [45]:

> Mr Wee's submission that UBS was not a party to the appellant's application was patently incorrect. Indeed, UBS was one of the three respondents to this appeal. It is not unprecedented for the judge to order the applicant to pay costs to the respondents (see *eg Re Reid James Robert QC* [1997] 2 SLR 482; *Re Gore Daniel Richard QC* [1997] 2 SLR 478).
>
> …
>
> We found that there were ample grounds for the judge to order that Mr Wee be personally liable for costs. As in *The Karting Club of Singapore v David Mak (Wee Soon Kim Anthony, Intervener)*, Mr Wee was responsible for initiating an unwarranted application.

4 The Court of Appeal concluded (at [46]) by ordering that in so far as the dismissed appeal was concerned there be "… costs to all three respondents" and that "the usual consequential orders follow". The minutes of the Court of Appeal did not *expressly* state that Mr Wee was to be *personally* liable for the costs of appeal. That aspect of the order is now the genesis of the subject application.

5 Soon after the appeal was dismissed, the respondents to this application, namely UBS, the Attorney-General and The Law Society of Singapore sought to perfect the order of the Court of Appeal. Their solicitors collectively took the position that as Mr Goh had discharged himself, the provisions of O 42 r (8)(5) of the Rules of Court (Cap 322, R 5, 2004 Rev Ed) ("RSC") applied to the approval process apropos the draft Order of Court. This sub-rule stipulates that the draft shall be submitted to the Registrar if the other party has *no solicitor*. In the circumstances, the draft Order of Court was accordingly submitted to the Registrar for approval without being dispatched by the respondents' solicitors to Mr Goh, Mr Godfrey QC or Mr Wee for their scrutiny. The Registrar duly approved the draft order as submitted. The engrossed Order of Court reads:

> IT IS ORDERED that:-
>
> 1. Messrs Goh Aik Leng & Partners be granted leave to discharge as Solicitors for the Appellant.
>
> AND IT IS FURTHER ORDERED that:
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> 2. The Appeal be dismissed with costs to the 1st, 2nd and 3rd Respondents to be paid by Anthony Wee Soon Kim, the Plaintiff in Suit No. 834 of 2001.
>
> 3. The sum of $10,000.00 (with interest, if any) deposited by the Appellant as security for the Respondents' costs be paid out in three equal proportions to:-
>
> 1. Drew & Napier LLC, Solicitors for the 1st Respondent;
> 2. The Attorney-General, the 2nd Respondent; and
> 3. The Law Society of Singapore, the 3rd Respondent,
>
> to account of their costs.

6 On or about 22 April 2003, the Attorney General's Chambers ("AGC") wrote to Mr Wee with a view to resolving the quantum of costs payable by him in lieu of taxation. This proved to be the proverbial red flag inciting Mr Wee to spring into action upon receipt of this proposal. He strenuously maintained that the Court of Appeal had not made an order asking him to bear the costs personally;

any costs payable to the respondents were due from Mr Godfrey QC, not him. He further complained bitterly that the respondents, and in particular UBS's solicitors, had not complied with the express procedure prescribed by the RSC for the approval of draft orders of court.

7 The Registrar of the Supreme Court was drawn into this contretemps when the AGC, on 15 April 2004, sought the Court of Appeal's clarification about the purport of the disputed order. The Court of Appeal, in turn, directed the Registrar to obtain the views of the parties in writing before it "clarifie[d] the matter". Upon considering the duly expressed views of all the parties, the Court of Appeal declared through the Registrar, on 6 May 2004, "that the order the Court made that day was that Mr Anthony Wee was to pay the costs of the appeal *personally*" [emphasis added]. It bears mention that Mr Wee, in expressing his views in writing, had expressly contended that the Court of Appeal would be *functus officio* if it sought to clarify the position. The Court of Appeal by proceeding to clarify the position despite such an objection must be taken to have implicitly disagreed with his views.

8 Mr Wee then filed this application to set aside the order of the Court of Appeal. His present counsel made two principal arguments. First, it was contended that the procedure for extracting the Order of Court employed by the respondents was incorrect. Second, it was argued that the Court of Appeal was *functus officio* when it purportedly "clarified" the purport of its earlier order. Mr Wee's counsel maintained dubiously that as a result, Mr Godfrey QC and not Mr Wee should bear the costs of the unsuccessful appeal. I dismissed the application without hesitation and thereafter, turned down a request for further arguments. Mr Wee now appeals against my decision.

9 It is critical to elucidate, at the outset, the peculiar characteristics of an *ad hoc* application to admit Queen's Counsel pursuant to s 21 of the LPA. The applicant is nominally the Queen's Counsel who seeks admission to practice as an advocate or solicitor. A fundamental feature of a s 21 LPA admission is that the *ad hoc* admission is exclusively for "the purpose of any *one* case" [emphasis added]. This is to be distinguished from an admission of an advocate and solicitor pursuant to s 11(1) of the LPA that confers a right of general audience and representation without any limitation to a particular case.

10 An *ad hoc* admission application pursuant to s 21 of the LPA is, in effect, an application by a party to a matter to have the Queen's Counsel appear for him specifically in that matter or in an application therein. While the s 21 LPA application is nominally in the name of the Queen's Counsel, this cannot disguise the fact that the *de facto* initiator and, hence, substantive party in the application for admission is the very same party on whose behalf the Queen's Counsel's admission is sought. It is an entirely inane contention to even suggest that the Queen's Counsel should be personally liable for the costs of an unsuccessful application. To make such an argument is to refute it. Such an application is no different from any other interlocutory application made by a party in a cause or matter and the usual order of costs ought to visit that *applicant*, if unsuccessful, just as night follows day. Regrettably, Mr Wee appears to be disingenuously relying on the literal form of the application for the admission of Mr Godfrey QC, which cites Mr Godfrey QC's name, in a thoroughly implausible, if not obviously futile, attempt to elude personal responsibility for costs. This cannot be right.

11 Set against the backdrop of such a fundamentally flawed and untenable position, I now deal with Mr Wee's first argument. This relates to the process of approving and finalising the court order. The relevant provisions are O 42 r 8(1) and (5) of the RSC:

> 8(1) Where the party in whose favour a judgment or order is given or made is represented by a solicitor, a copy of the draft shall be submitted for approval *to the solicitor (if any) of the other*

party who shall within 2 days of the receipt thereof, or within such further time as may in any case be allowed by the Registrar, return such copy with his signed consent or any required amendments thereto. [emphasis added]

…

(5) Where the other party *has no solicitor*, the draft shall be submitted to the Registrar.

[emphasis added]

These two sub-rules make it clear beyond peradventure that the procedure for "party approval" of a draft Order of Court only applies when a party is represented by a solicitor.

12 Mr Wee stridently asserts that the draft order was not sent to either Mr Godfrey QC, Mr Goh or to him for approval before it was perfected. As a consequence, his counsel argues, the extracted order is a nullity. This is an absurd contention. The rules are plain. If a party is not represented by a solicitor, the draft shall be submitted to the Registrar. The rationale for this is axiomatic. The process of submitting draft orders to opposing counsel has the salutary objective of obtaining input from solicitors who are, presumably, familiar with the proceedings. The Rules Committee has taken the view that no useful purpose would be served in seeking the approval of what is essentially a document comprising legal technicalities, by unrepresented parties. Indeed, sending drafts to unrepresented parties may invariably lead to delays and barren contentions. That one of the parties is legally qualified does not alter the literal purport of the rule dispensing with service on unrepresented parties. It is not the identity of the party but the fact of being legally represented that is prescribed as a criterion. The Registrar, in turn, is required under O 42 r 8(5) of the RSC to directly superintend the process of extracting such an Order of Court. This is to ensure that an unrepresented party's interests are adequately safeguarded. This attenuates the risk of a successful party arrogating to itself poetic license to take liberties with the terms of the Order of Court.

13 Mr Wee's counsel in the current application also suggested, albeit somewhat diffidently, that Mr Goh had merely discharged himself as "counsel" and not as a "solicitor" on record in the earlier application. This is untenable. It is as plain as a pikestaff that Mr Goh, in discharging himself from his responsibilities before the Court of Appeal and in related proceedings, had indicated that he wanted no further truck with Mr Wee's cause. He had no further role to play in the matter after seeking the Court of Appeal's leave to withdraw from the file.

14 If counsel do indeed intend to engage in such subtle distinctions in their roles in a cause or matter, they should make their position patently clear when applying for a discharge. It would be most unusual for a court to permit or indulge such bifurcated roles, so that a party appears *in person* as his own counsel for the purposes of advocacy and at the same time retains a law firm to act as his solicitor in all other aspects of the matter. It is therefore both reasonable and proper to assume that a solicitor who applies to discharge himself from proceedings, whether as counsel or otherwise, intends to have no further role in the matter *unless* he seeks the court's express leave for continued involvement, however limited that might be. I also note that while Mr Wee's present counsel made this rather remarkable argument, there was nothing on record from Mr Goh that confirmed the stance taken in these proceedings.

15 I am of the view that the conduct of the solicitors for UBS and AGC in perfecting the relevant Order of Court, pursuant to the provisions of O 42 r 8(5) of the RSC, is beyond reproach. They acted appropriately in submitting the draft order directly to the Registrar for approval. Mr Wee himself was not, as he himself had correctly contended, a named party to the proceedings and could not

paradoxically complain in the same breath that the draft order was not sent to him for approval. Mr Wee's position was not prejudiced by the process adopted by the respondents' solicitors. I ought to add, in any event, that *even* if there were any procedural lapses in this case, the provisions of O 2 r 1 of the RSC would preclude any contention that the perfected Order of Court was a nullity. The Court of Appeal's subsequent clarification has laid to rest any scintilla of doubt that Mr Wee attempted to conjure.

16 There is a further procedural point raised in relation to the Order of Court. The Court of Appeal, without elaboration, had ordered that the security deposit be paid over to the respondents. The respondents proceeded to divide this amount between themselves in three equal amounts. Mr Wee took issue with this, again unnecessarily. This division of the monies held as security for the appeal was plainly implicit in the court's order.

17 There now remains the second and principal plank of Mr Wee's application: that the Court of Appeal, in "clarifying" the order, was *functus officio*. Mr Wee's argument is that the Court of Appeal had no power to either clarify its order and/or to give any further directions after the order was first made. As no express order for costs had been made against him *qua* third parties, this omission, he claims, could not be judicially repaired after the conclusion of the hearing. Mr Wee's contention is once again, plainly wrong and wholly misconceived.

18 The Latin term *functus officio* is an abbreviated reference to a facet of the principle of finality in dispute resolution. *Functus officio* means that the office, authority or jurisdiction in question has served its purpose and is spent. A final decision, once made, cannot be revisited. In dispute resolution, this principle may manifest itself in the guise of *res judicata*, *functus officio* or issue estoppel. This principle of finality is intended to embody fairness and certainty. It is not to be invoked merely as a sterile and mechanical rule in matters where there are minor oversights, inchoateness in expression and/or consequential matters that remain to be fleshed out. Given that the court is always at liberty to attend to such axiomatic issues, various judicial devices such as the "slip" rule and the implied "liberty to apply" proviso are invoked from time to time to redress or clarify such issues. In short, both the High Court and the Court of Appeal retain a residual inherent jurisdiction even after an order is pronounced, to clarify the terms of the order and/or to give consequential directions.

19 That such inherent jurisdiction exists, has never been doubted. In point of fact, it is regularly invoked and exercised by the court: see O 92 r 4 of the RSC and the helpful and incisive conspectus in Professor Jeffrey Pinsler's article "Inherent Jurisdiction Re-Visited: An Expanding Doctrine" [2002] 14 SAcLJ 1 and the commentary in *Singapore Court Practice 2003* at paras 1/1/7 and 1/1/8. This inherent jurisdiction is a virile and necessary one that a court is invested with to dispense procedural justice as a means of achieving substantive justice between parties in a matter. The power to correct or clarify an order is inherent in every court. This power necessarily extends to ensuring that the spirit of court orders are appropriately embodied and correctly reflected to the letter. Indeed, to obviate any pettifogging arguments apropos the existence of such inherent jurisdiction, the RSC was amended in 1995 to include O 92 r 5, which expressly states:

> Without prejudice to Rule 4, the Court may make or give such further orders or directions incidental or consequential to any judgment or order as may be necessary in any case.

By dint of this rule, the court has an unassailable broad discretion and jurisdiction to give effect to the intent and purport of any relief and/or remedy that may be necessary in a particular matter. Admittedly, while the rule sets out in stark terms the court's wide inherent jurisdiction in this area of procedural justice, I should add for completeness, that the power to "make or give such further orders or directions incidental or consequential to …" does not *prima facie* extend to correcting

substantive errors and/or in effecting substantive amendments or variations to orders that have been perfected. This is plainly not such a case.

20 While *ex facie* Mr Wee was not a nominal party to the appeal, he was indisputably, to all intents and purposes, the *de facto* appellant. The Court of Appeal recognised this and consequently gave him leave to argue the appeal "in person". An ordinary third party would not usually be given such a right of audience to appear and argue "in person" when the party on the record is *ex facie* different. Mr Wee has lamentably and inexplicably refused to acknowledge or accept his responsibilities and liabilities as an unsuccessful litigant. All said and done, he has no conceivable grievance, let alone valid ground concerning the manner in which the subject Order of Court was extracted and clarified. Mr Wee, by tilting at windmills, has cavilled pointlessly in this entirely misconceived application.

Application dismissed.