

AMIN HALIM BIN CASAN

Appellant/Plaintiff

AND

MASA'IN BINTI AWANG HAJI TUAH
NORMILLA SDN BHD

1st Respondent/Defendant
2nd Respondent/Defendant

(Court of Appeal of Brunei Darussalam)
(Civil Appeal No. 7 of 2024)

Steven Chong, C.J., Lunn and Sir Peter Gross JJAs

Date of Judgment: 19 November, 2025.

Headnote: Civil: costs of trial; A. awarded damages against Rs for personal injuries but A. 30% contributorily negligent.; Judge ordered costs to A.; O. 59, r. 3(2), RSC-Court's power to order that part of the costs should not follow the event. Court ordered discount of 10% from Order of costs to Rs for increased costs of trial of contested contributory negligence. Order: Rs to pay A. 90% of A's costs.

Ms Subrina Tan Yii Chun (M/S Fortis Law) for Appellant.

Ms Veronica K.Rajakanu (M/S. V.K. Rajakanu & Associates) for 2nd Respondent/Defendant.

1st Respondent/Defendant unrepresented and filed no submissions.

Cases cited:

NTUC Foodfare Co-operative Ltd. V SIA Engineering Co Ltd and Yap Tee Chuan [2018] 4 SLR 762. [High Court]

NTUC Foodfare Co-operative Ltd. V SIA Engineering Co Ltd and Yap Tee Chuan [2018] 2 SLR 588. [CA]

NTUC Foodfare Co-operative Ltd. V SIA Engineering Co Ltd and Yap Tee Chuan [2018] 2 SLR 1043 [CA-Costs.]

Singapore Airlines Ltd v Tan Shwu Leng [2001] 2 SGCA 70

Tulio Planeta v Maro Andrea G [1994] 2 SLR(R) 501

Re Elgindata Ltd. (No.) 2 [1993] 1 All ER 232

Lunn J.A.

1. In our Judgment, dated 14 July 2025, we dismissed the Appellant/Plaintiff's appeal against various findings of the Judge. Having received written submissions from the Appellant and the 2nd Respondent, in our Judgment, dated 8 October 2025, we ordered that the 1st and 2nd Respondents pay the Appellant's costs at trial on the standard basis, to be taxed if not agreed, and that the Appellant pay the 1st and 2nd Respondent's costs of the appeal on the standard basis, to be taxed if not agreed.

2. The first Order was stated to be subject to our receipt of further submissions from the Appellant and the Respondents on whether the Court should specify that the Appellant receive only a portion

of those taxed costs, having regard to the disputed finding of the Judge of contributory negligence and his rejection of various heads of claim of the Appellant.

2nd Respondent's submissions

3. In written submissions for the 2nd Respondent, dated 15 October 2025, Ms. Rajakanu contended the Court should not receive and consider the written submissions of the Appellant, given that the Appellant had made no application for leave to file a reply in response to the 2nd Respondent's submissions, dated 28 July 2025, in which the Court had been asked to order a 40% discount on costs awarded to the Appellant. Failure to take those steps was tantamount to an acceptance of the order sought by the 2nd Respondent.

Order 59, Rule 3(2)-Costs: orders other than an order that costs follow the event

4. Order 59, Rule 3(2) of the Rules of the Supreme Court provides a power in the Court to make an Order other than that the costs follow the event, "...when it appears to the Court that in the circumstances of the case some other order should be made as to the whole or any part of the costs."

5. Ms. Rajakanu submitted that there were circumstances which required the Court to make an order that the 2nd Respondent was responsible for only part of the Appellant's costs at trial, namely a discount of a minimum of 40% from the costs awarded to the Appellant in the High Court.

The issue of contributory negligence

6. First, Ms. Rajakanu submitted that in response to the Appellant's case, that he was not culpable of contributory negligence, the 2nd Respondent had been required to produce evidence to the contrary to challenge the Appellant's evidence. In the result, the 2nd Respondent succeeded and the Judge determined that the Appellant was liable for 30% contributory negligence.

Unmeritorious claims

7. Secondly, the Appellant had advanced claims for heads of damages which had been dismissed by the Judge, namely: loss of future earnings; loss of ability to carry out DIY activities; and partial loss of salary or overtime and/or benefits.

Unsuccessful claim for full damages

8. Thirdly, in submissions, dated 22 July 2023, the Appellant had sought damages of BND 409,044.00, excluding interest and costs, but the Judge had awarded damages of only BND 124,529.92, again excluding interest and costs. This Court had upheld that award.

9. Ms. Rajakanu invited the Court to take a similar approach to that taken by the Court of Appeal in Singapore in *NTUC Foodfare Co-operative Ltd. V SIA Engineering Co Ltd and Yap Tee Chuan*, in considering the appropriate order of costs in circumstances where the Appellant did not succeed in his full claim.¹ There, the Court of Appeal applied a 40% discount to the costs awarded by the lower court to take into account the time spent at trial on factual issues relating to the claim on which the Appellant had failed, namely 'Rebuilding Losses' of the Plaintiff's food kiosk located in the Transit Lounge of Changi Airport, Terminal 2 Building.

¹ *NTUC Foodfare Co-operative Ltd. V SIA Engineering Co Ltd and Yap Tee Chuan* [2018] 2 SLR 1043.

Offer to the Appellant of BND 185,000 to settle

10. Ms. Rajakanu contended that the Appellant had received an offer to settle the proceedings to a total of BND 185,000, but had unreasonably refused it, thereby incurring unnecessary costs of trial. The amount of damages awarded to the Appellant, BND 160,690.91 (with interest), was, very close to the BND \$185,000 offered by the Respondents. Order 22 A, r. 12 provided that in exercising its discretion in respect of costs, the court, “... *may take into account any offer to settle, the date the offer was made, the terms of the offer and the extent to which the plaintiff’s judgment is more favourable than the terms of the offer to settle.*” In its Judgment in *Singapore Airlines Ltd v Tan Shwu Leng*², the Court of Appeal of Singapore upheld the lower court’s decision to award costs of \$1,000 only for those costs incurred after the date of the offer, having taken into account that the Judgment award of damages was only marginally above the offer of the Defendant.

Appellant’s submissions

11. For the Appellant, Ms Subrina Tan submitted that the Appellant had succeeded at trial in face of the 2nd Respondent’s wholesale contest of the issue of negligence. There were no grounds or special circumstances that justified a departure from the general rule that costs were to be awarded to the successful party. In awarding costs to the Appellant, the Judge did not make any criticism of the claims advanced by the Appellant.

12. In proving the negligence of the 2nd Respondent, first the Appellant adduced evidence that the 2nd Respondent controlled, managed and supervised the Appellant’s work at the site of the accident. In consequence, the Judge found that the 2nd Respondent was in joint occupation of the worksite and the factual employer of the Appellant. Secondly, the Appellant challenged the assertion that the 2nd Respondent operated a safe system of work.

13. Ms. Subrina Tan suggested that the judgment in *NTUC* was to be distinguished on the basis that in the instant case most of the time of trial was spent on the issue of the negligence of the 1st and 2nd Respondents, on which issue the Appellant succeeded.

14. In support of her submission that the general rule that costs should follow the event did not cease to apply simply because the successful party raised issues or made allegations that failed, Ms Subrina Tan referred to the judgment of the Court of Appeal of Singapore in *Tulio Planeta v Maro Andrea G*³. Nevertheless, such a party, “...*could be deprived of his costs in whole or in part where he had caused a significant increase in the length of the proceedings*”⁴

15. The Appellant had succeeded at trial and had been awarded damages on five of the seven contested heads of damages. The claims on which he had not succeeded were not unmeritorious. Although the Judge declined to order damages for future loss of earnings, he had awarded damages for loss of earnings.

Offer to the Appellant of BND 185,000 to settle

16. Of the 2nd Respondent’s assertion that the Appellant had received an offer to settle of BND 185,000, Ms. Subrina Tan pointed out that in its Judgment this Court had found that the 2nd Respondent’s offer was only BND \$85,000. Further, that offer was significantly less than the

² *Singapore Airlines Ltd v Tan Shwu Leng*[2001] 2 SGCA 70.

³ *Tulio Planeta v Maro Andrea G*[1994] 2 SLR(R) 501.

⁴ *Re Elgindata Ltd. (No.) 2* [1993] 1 All ER 232.

damages awarded to the Appellant of BND 124,529.92 (without interest). Order 22 A, r.12 was irrelevant.

A consideration of the submissions

17. At the outset, we have no hesitation in rejecting Ms. Rajakanu's submission that we ought not to have any regard to the Appellant's written submissions, dated 15 October 2025, because the Appellant had not sought leave in August 2025 to file a reply to the earlier submissions of the 2nd Respondent, dated 28 July 2025, that the Court should order a discount of 40% from the costs of trial awarded to the Appellant. That was the first time that submission had been made. In filing his submissions in respect of costs, dated 19 July 2025, the Appellant did no more than comply with this Court's Directions to file such submissions 7 days after the delivery of this Court's Judgment. Similarly, as required, the 2nd Respondent filed its submissions 7 days thereafter. However, it having become apparent to the Court that further written submissions were required from the parties, the Court issued further Directions, in response to which the parties filed their submissions dated 15 October 2025.

Offer to Appellant of BND 185,000 to settle

18. With respect, there is no merit in the 2nd Respondent's submission the Appellant had received an offer to settle of BND 185,000.00. The offer made by the Respondent was BND 85,000.00 only. The letter of Rudy Lee, Annie Kon & Associates, dated 10 April 2023, was not an offer of BND 100,000.00 to the Appellant to settle the proceedings on behalf of the 1st Respondent. These are all matters that were determined in our Judgment, dated 8 October 2025.

Negligence and contributory negligence

19. Although the evidence adduced at trial addressing the contested claims of negligence and contributory negligence was intimately inter-linked, clearly the issues were distinct and separate and were treated separately in the Judgment. Each of the claims was significant. The Respondents' disputed their respective liability for negligence entirely. Similarly, the Appellant denied that he was culpable of any contributory negligence. A significant amount of time was spent at trial on resolving the two issues. The Respondent's failed on the issue of their negligence. The Appellant was judged to be 30% contributorily negligent. This Court dismissed the Appellant's appeal against the latter finding.

20. By contrast, very much less time was spent at trial in evidence being adduced and submissions being made in respect of the Appellant's claims of loss of future earnings; loss of ability to carry out DIY activities; and partial loss of salary or overtime and/or benefits. Although the 2nd Respondent adduced some evidence relevant to the Appellant's claim in respect of his ability to perform DIY activities, the other issues were primarily the subject of submissions only.

A discount of a minimum of 40% from costs awarded to the Appellant

21. In relying on her written submissions, dated 15 October 2025, in the Judgment of the Court of Appeal of Singapore in *NUTC* Ms. Rajakanu repeated the submissions dated 28 August 2025. We are satisfied that her reliance on the particular discount afforded to the Respondents from the costs awarded to the Appellant in that case is misplaced.

NUTC

22. The circumstances obtaining in *NUTC* are wholly different from the circumstances in the instant appeal. There, the Appellant/Plaintiff failed on a significant part of his claim, namely the ‘Rebuilding Losses’, before the Judge and the Court of Appeal, on which issue significant time was expended at trial.

23. An airtug operator negligently collided with a pillar of Changi Airport Terminal 2 Building. The Building and Construction Authority issued a ‘Closure Order’ on the Transit Lounge above the place of collision, at which site the Appellant, NUTC, operated a food kiosk. NUTC sued the tug operator and his employer for damages arising from the tug operator’s negligence. The claim included: repair of damaged equipment; loss of gross profits when the premises were closed; rebuilding the kiosk; and costs of rent for the premises after the Building and Construction Authority lifted its ‘Closure Order and Changi Airport Group (Singapore) Pte. Ltd.’ (“*Changi Airport Group*”) resumed charging rent. During that period the Appellant renovated the kiosk, which reopened some three months later. That claim failed entirely before the Judge.

24. The Judge dismissed the claim on the basis that the airtug operator did not owe a duty of care to the Appellant. Further, the kiosk did not suffer any physical damage directly from the collision. The reason for rebuilding the kiosk was not that the kiosk was damaged. The Judge said that even if she had found a duty of care to exist, she would have found that the Rebuilding Losses of the Appellant were not caused by the airtug operator’s negligence and that the Appellant did not reasonably mitigate his losses in rebuilding the kiosk.⁵

25. The Court of Appeal allowed the appeal in part, holding that there was a duty of care owed to the Appellant by the Respondents and that they were liable for the loss of gross profits during the period of closure of the premises and for repair and replacement of NUTC’s damaged equipment.⁶ That damage was caused when electricity was cut off to the Appellant’s equipment by Changi Airport Group during the period of closure. Nevertheless, the Court held that the air tug operator’s negligence did not cause the Appellant to sustain the Rebuilding Losses. The Appellant rebuilt the kiosk to address the concerns expressed by Changi Airport Group about the integrity of the waterproof membrane. However, there was no evidence to support those concerns. Moreover, Changi Airport Group did not require the kiosk to be rebuilt. Rather, it informed the Appellant that it would be permitted to commence business operations as long as it engaged a qualified person or professional engineer to endorse the overall safety and operational readiness of the kiosk. The Respondents did not secure or provide the requisite endorsement. Rather, they claimed that no qualified professional person or professional engineer was willing to undertake the job without information on the extent of damage to the Terminal Building. However, they did not attempt to secure such endorsement and left the matter to their contractors. The Appellant adduced expert evidence that a visual inspection of the kiosk would be sufficient to determine its structural safety. To do so, it was not necessary to examine the entire Terminal 2 Building. In any event, it had been certified safe. The Judge accepted the evidence of the expert.

⁵ *NUTC Foodfare Co-operative Ltd. V SIA Engineering Co Ltd and Yap Tee Chuan* [2018] 4 SLR 762.

⁶ *NUTC Foodfare Co-operative Ltd. V SIA Engineering Co Ltd and Yap Tee Chuan* [2018] 2 SLR 588.

26. In affording the Respondents a discount of 40% of the costs awarded to the Appellant, in the Judgment of the Court, Steven Chong JA explained, “...*much of the time at the trial was spent on factual issues pertaining to the Rebuilding Losses.*”

27. We are satisfied that the resolution of the unsuccessful claims made by the Appellant in respect of loss of future earnings, loss of ability to carry out DIY activities and partial loss of salary or overtime and/or benefits did not cause a significant increase in the length or cost of the proceedings. Accordingly, the general rule that the successful party is entitled to an order of costs did not cease to apply. The Judge rejected the Appellant’s claim for loss of future earnings and loss of salary or overtime and/or benefits on the simple basis that the Appellant had chosen to leave his employment, without his employment having been terminated.

Contributory negligence

28. On the other hand, we are satisfied that the resolution of the denial by the Appellant of the Respondent’s claim that he was culpable of any contributory negligence did necessitate an increase in the length and the cost of the proceedings.

Conclusion

29. Doing the best we can to reflect that finding in a discount of the costs to be paid by the Respondents to the Appellant for the increased costs of trial, we assess the discount at 10% which, we are satisfied, achieves practical justice between the parties. In the result, we order that the Appellant is entitled to 90% of the costs in the High Court, to be taxed if not agreed.

Costs

30. In her written submissions for the Appellant, Ms. Subrina Tan opposed any order discounting the Order of costs in his favour at trial. In her written submissions for the 2nd Respondent, Ms. Veronica Rajakanu sought an order for a minimum 40% discount of that Order for costs. Whilst Ms Subrina Tan sought an order for costs, “*on this issue*” in the event that she succeeded, Ms. Veronica Rajakanu made no submission. Having regard to our Order, we make no order as to costs in respect of the written submissions on this issue.



DATO SERI PADUKA STEVEN CHONG, C.J.



MICHAEL LUNN, J.A.



SIR PETER GROSS, J.A.

