# Amar Hoseen Mohammed Revai
# v
# Singapore Airlines Ltd

## [1994] SGHC 213

High Court — Suit No 2321 of 1993
K S Rajah JC
28 June; 20 August 1994

***Civil Procedure*** *— Costs — Security — Plaintiff ordinarily resident out of Singapore — Discretionary power of court to order security for costs — Whether discretion should be exercised — Order 23 r 1(1) Rules of the Supreme Court (Cap 322, R 5, 1990 Ed)*

***International Law*** *— Conventions — Applicability of international conventions forbidding requirement of security for costs — Article 28(2) Carriage of Air Act (Cap 32A, 1989 Rev Ed)*

**Facts**

The plaintiff, a Jordanian, entered into a contract of carriage with the defendant Singapore Airlines Ltd ("SIA") to be transported from Singapore to Sydney. The plaintiff claimed that while the aircraft was in flight, he slipped and fell, sustaining injuries to his head and neck, because he stepped on a piece of butter which had been negligently dropped and allowed to remain on the floor of the aisle by SIA's servants and/or agents. The cabin crew voyage report detailed the attention that he had received thereafter. The defence was that it was not liable as the act was caused wholly or contributed to by the plaintiff's negligence.

Before the assistant registrar, SIA applied for an order that the plaintiff give security for its costs of $40,000 by payment into court and for the plaintiff's proceedings to be stayed pending provision of such costs. Subsequently, it also applied for leave to amend its defence, pleading that the plaintiff's claim was not *bona fide* and was a sham. The application for security for costs was allowed but the amount of security was reduced to $15,000. Leave was also granted to SIA to amend its defence. The plaintiff appealed against both orders.

**Held, allowing the plaintiff's appeal in part:**

(1) The international conventions expressly forbidding any requirement of security for costs did not have the force of law in Singapore. Article 28(2) of the Carriage of Air Act (Cap 32A, 1989 Rev Ed) impliedly permitted the requirement of security for costs by providing that the procedure was to be governed by the law of the court seised of the case: at [38] and [39].

(2) Courts are slow to whittle away a natural person's right to litigate despite his poverty. The requirement for security for costs from a foreigner, a natural person, making on the face of things a genuine claim against a large airline must not deny him access to the courts. In exercising its discretionary power to order security for costs, the court must have regard to all the circumstances of the case. It was no longer an inflexible and rigid rule that a resident abroad should

provide security for costs. Security would be ordered only if the court thought it just to do so in the circumstances of the case: at [40], [43] and [44].

(3) A major consideration was the likelihood of the plaintiff succeeding. In the present case, there was no direct admission of liability, but there was the defendant's evidence of attention given to the plaintiff whilst he was on board the plane as set out in the cabin crew voyage report. On the face of it, the plaintiff had a good chance of succeeding. The poverty of the plaintiff was not a basis on which the court would require security. At this stage of the proceedings, the plaintiff's claim could not be dismissed out of hand as being far-fetched and a hoax, and he should not be shut out: at [45], [49], [52] and [58].

**Case(s) referred to**

*Aeronave SPA v Westland Charters Ltd* [1971] 1 WLR 1445; [1971] 3 All ER 531 (refd)

*Bradfield v Transworld Airlines Inc* 152 Cal Reptr 172 (Cal CA, 1979) (refd)

*Cowell v Taylor* (1885) 31 Ch D 34 (refd)

*De St Martin v Davis & Co* [1884] WN 86 (refd)

*Gateway Land Pte Ltd v Turner (East Asia) Pte Ltd* [1987] SLR(R) 746; [1987] SLR 553 (refd)

*Goldman v Thai Airways International Ltd* [1983] 1 WLR 1186; [1983] 3 All ER 693 (refd)

*Hogan v Hogan, No 2* [1924] 2 IR 14 (folld)

*Pearson v Naydler* [1977] 1 WLR 899; [1977] 3 All ER 531 (folld)

*Sembawang Engineering Pte Ltd v Priser Asia Engineering Pte Ltd* [1992] 2 SLR(R) 358; [1992] 2 SLR 806 (refd)

*Sir Lindsay Parkinson & Co Ltd v Triplan Ltd* [1973] QB 609; [1973] 2 All ER 273 (refd)

**Legislation referred to**

Carriage of Air Act (Cap 32A, 1989 Rev Ed) Art 28(2) (consd); Arts 17, 28(1)

Contributory Negligence and Personal Injuries Act (Cap 54, 1989 Rev Ed)

Rules of the Supreme Court (Cap 322, R 5, 1990 Ed) O 23 r 1(1) (consd)

Rules of the Supreme Court (UK) O 23 r 1

*Surian Sidambaram and Gurdeep Singh (KS Chia Gurdeep & Param) for the plaintiff;*
*Tan Joo Thye (Rodyk & Davidson) for the defendant.*

20 August 1994 Judgment reserved.

**K S Rajah JC:**

1 There were two appeals filed by the plaintiff against the decisions of the learned assistant registrar:

(a) ordering the plaintiff to give security for costs of $15,000;

(b) giving the defendants leave to amend the defence.

2 I set aside the order of the learned assistant registrar ordering the plaintiff to provide security for costs of $15,000 and dismissed the appeal granting leave to amend the defence.

3 The defendants are now only appealing against the order I made on security for costs.

4 The question was whether the plaintiff, a foreigner not ordinarily resident in Singapore, should be ordered to give security for costs.

5 The plaintiff is a businessman carrying on business in Jordan. The defendants are an international air carrier incorporated in the Republic of Singapore, with branch offices worldwide.

6 The defendants had agreed to fly the plaintiff from Singapore to Sydney under a contract of carriage dated 17 February 1992. It was an implied term of the contract of carriage that the defendants would fly the plaintiff safely to his destination.

**Background – plaintiff's case**

7 The plaintiff boarded the defendants' flight number SQ221 in Singapore for Sydney on the 20 February 1992. Whilst the aircraft was in flight, the plaintiff was walking in the aisle of the aircraft when he slipped and fell, and suffered injuries to his head and neck because of a piece of butter which had been negligently dropped and allowed to remain on the floor of the aisle by the defendants' servants and or agents on board the aircraft.

8 The plaintiff was attended to by a doctor on board and given oxygen by the cabin crew. He was subsequently taken to St George's Hospital in Sydney on 21 February 1992 in an ambulance. The plaintiff complained of blurred vision and dizziness. The doctor found sub-occipital tenderness but the x-rays taken of the skull and neck were normal. The plaintiff was discharged with his neck in a support collar.

9 Dr T K Tse examined the plaintiff in Australia on 24 February 1992 and expressed the opinion that the plaintiff was suffering from head injury. The plaintiff was warned of signs of severe headaches, vomiting and drowsiness and to seek immediate medical attention when they occur. He was told that if the giddiness persists, a CT scan may be called for.

10 Dr T K Tse examined the plaintiff again on 2 March 1992, after the plaintiff complained of pain in the neck and giddiness and was treated with a collar support.

11 Dr Said M Abderahman, a consultant neurosurgeon in Jordan, examined the plaintiff and expressed the opinion that the plaintiff was suffering from head injury post-concussional syndrome on 10 March 1991. The plaintiff was told to continue with conservative treatment and home rest and to see the consultant again two weeks after 10 March 1991. The examination on 10 March 1991 showed that the movements of the neck were limited in all directions and there was tenderness along the back of the neck and an area of tenderness on the superior aspect of his skull but no abnormal neurological signs were detected.

12 In his medical report of 12 April 1992, Dr Ali Hussein Qasem has said that he examined the plaintiff and that on examination, the movements of the neck were limited in all directions and that there was tenderness along the back of the neck. The plaintiff was treated conservatively with a support collar. Dr Ali Hussein Qasem visited the plaintiff every day during the period 12 March 1992 to 12 April 1992 when the plaintiff was resting.

13 Dr A A Abu Farheh is a neuropsychiatrist in Jordan. In his report dated 13 May 1992, the doctor reported that he reviewed the medical reports and found that the plaintiff had a head injury on 20 February 1992. The plaintiff's assistant, wife and sister-in-law confirmed the plaintiff's complaints of nervousness, bad memory and drowsiness. Dr Abu Farheh found the plaintiff to be in an anxious mood, irritable and with decreased concentration. He was of the opinion that the plaintiff was suffering from a post head injury neurosis. His diagnosis was that the plaintiff had neurotic disability and that neurotic disability may last long and that a final report about the plaintiff's condition needs close follow-up for a period of 18 months. The plaintiff was recommended to do an EEG, to take prescribed drug medication, not to travel alone or make serious decisions on his own.

14 Dr Rawya Borno is a consultant psychiatrist in Jordan and in his report dated 13 July 1992, he has stated that there was firm evidence that the plaintiff had improved during the last two months and that the symptoms were expected to improve and the treatment required was symptomatic in nature. Follow-up was required but the duration of it was difficult to predict. The prognosis of the case was good because the plaintiff had shown improvement.

15 The plaintiff alleged that the defendants had acted in breach of the contract of carriage and that the plaintiff had suffered loss and damage. The plaintiff relies on Art 17 of the Warsaw Convention as enacted in the Carriage of Air Act (Cap 32A, 1989 Ed) which provides:

> The carrier is liable for damage sustained in the event of death or wounding of a passenger, if the accident which caused the damage so sustained took place on board the aircraft or in the course of any operations of embarking or disembarking.

16 The plaintiff alleges negligence on the part of the defendants in:

(a) failing to ensure that the common aisle on board on which passengers were expected to walk was safe and free from slippery materials;

(b) dropping or allowing a piece of butter to remain on the cabin floor aisle during the flight;

(c) failing to warn or in any manner alert the plaintiff of the slippery material condition of the aisle;

(d) failing to take reasonable measures to prevent accidents of the type that occurred to the plaintiff from happening.

**Defence**

17 The defendants, *inter alia*, rely on Art 20(1) of the Warsaw Convention as amended by the Hague Protocol ("the Amended Warsaw Convention") and say that they are not liable for the damage suffered by the plaintiff as the act was caused wholly or contributed to by the negligence of the plaintiff in:

(a) his failing to keep a proper lookout and to notice the presence of the alleged butter (if any);

(b) failing to observe where he was going while walking along the aisle;

(c) stepping on the alleged butter when it was dangerous and unsafe to do so; and

(d) failing to take any steps to avoid the alleged fall.

**Security for costs**

18 On 11 April 1994, the defendants applied that the plaintiff, within 21 days, give security for the defendants' costs in the sum of $40,000 by payment into court and for the plaintiff's proceedings to be stayed pending provision of such security. The defendants' solicitor filed an affidavit in support of the application on behalf of the defendants and relied on the fact that the plaintiff was ordinarily a resident out of the jurisdiction of the court.

19 The defendants want a medical specialist in Singapore nominated by them to examine the plaintiff. The cost of the examination will be borne by the insurers of the defendants. The estimated total cost for air passage, accommodation and medical fee is between $5,000 and $10,000. The defendants submitted that $40,000 was a reasonable sum for the estimated costs incurred so far and prayed for an order that pending provision of such security, the plaintiff's action be stayed.

20 Initially, the only basis for the application for security for costs was because the plaintiff was ordinarily resident out of jurisdiction. It took on a different aspect later.

**Cabin crew voyage report**

21 The extract of the cabin crew voyage report for flight SQ221, Singapore to Sydney, on 20 February 1992 reads:

> 1 Thirty minutes prior to arrival into Sydney, Mr A Revai who was seated at 67G, had a fall and fainted on the cabin floor.
>
> 2 Apparently the passenger stepped on a butter pad and slipped, causing his head to hit the seat arm rest.
>
> 3 Mr Revai was then given oxygen for recovery and claimed he suffered pain in his back and on his head.
>
> 4 On arrival in Sydney, the passenger required medical attention.

**Appeal**

22 Counsel for the plaintiff argued that the defendants are liable for the plaintiff's injuries. The defendants have not denied that the plaintiff had fallen during the flight. The injuries sustained are substantiated by medical reports.

23 The plaintiff argued that the application for security for costs in the sum of $40,000 was oppressive and was bound to stifle the plaintiff's claim. The exorbitant sum was arbitrarily calculated and made the plaintiff's attempts to negotiate a settlement unsuccessful. Documents were not being made available to support the estimated figure of $5,000 to $10,000 for medical costs. The medical examination and subsequent reports by a medical specialist in Singapore would only be relevant in ascertaining the quantum of damages to be awarded to the plaintiff, and not to determine the question of liability. The plaintiff was prepared to make himself available for medical examination in Singapore, but the security asked for was oppressive and the plaintiff would not be able to proceed with this claim.

24 The defendants' solicitor, who filed the affidavit, deposed that the defendants would show at the trial that the plaintiff never had a fall in the aircraft during the flight in the manner alleged in the statement of claim. He added that the alleged fall is a complete hoax, and that the plaintiff had at no time suffered any of the injuries as alleged. No affidavit has been filed by a member of the cabin crew or a doctor.

**Amended defence**

25 On 24 May 1994, the defendants applied for leave to amend the defence on ground that on reviewing the proceedings, they found it necessary for completeness to amend the defence.

26 Paragraph 6A of the amended defence is to the effect that the plaintiff's claim that he sustained the fall and suffered injuries is a sham. Without going more than is necessary into the merits of the case, para 10 of Mr Tan Joo Thye's affidavit filed on 5 May 1994 reads:

> … the flight stewardesses noted that he was clearly conscious moaning and groaning most of the time, especially when the flight stewardesses, on the advice of the doctor, tried to move him to an upright position on the seat …

27 In the amended defence, the defendants have pleaded that the plaintiff's claim that he sustained the fall and suffered injuries is a sham and not made *bona fide*. Alternatively, "the alleged or any damage sustained by the plaintiff was caused wholly or contributed to by the negligence of the plaintiff" and rely on Arts 21 and 22(1) of the Amended Warsaw Convention to limit liability (Cap 32A, 1989 Ed) [*sic*].

**Hearing by Registrar**

28 The application for security for costs was heard on 27 May 1994 by the learned assistant registrar who ordered the plaintiff to within 28 days give security for the defendants' costs up to the stage of summons for directions for $15,000 to be furnished by way of banker's guarantee from a Singapore bank or by any other mode agreed between the parties and for the proceedings to be stayed pending the provision of such security. The defendants were given liberty to apply for further security.

**The appeals**

29 The appeals against the decisions of the learned assistant registrar were against:

(a) the orders made for security for costs (RA 118/94);

(b) leave granted to the defendants to amend their defence and to re-serve the amended defence within 14 days and with leave to the plaintiff to serve a reply within 14 days thereafter (RA 119/94).

30 I set aside the orders made by the assistant registrar for security for costs and ordered the plaintiff's action to proceed without provision of security. I made three orders on Mr Tan Joo Thye's affidavit filed on 5 May 1994:

(a) the striking out of the words, "Apparently, his doctor in Jordan had even taken the trouble to confirm these complaints with the plaintiff's assistant, sister-in-law and wife who confirmed support to the complaints" which were in para 8 of the affidavit.

(b) the striking out of the whole of para 13 of the same affidavit which reads:

> On 8 May 1992, the Sydney office of the defendants received a telephone call from an Australian national who said that he knew the plaintiff. According to him, the plaintiff had told him that he had planned the 'accident' on board the plane because he intended to make a substantial claim for damages against the defendants. According to him, the plaintiff stated that it was his intention to 'sue' the defendants for US$2m. The plaintiff also stated that he could get doctors in Jordan to say that he was seriously injured and that he wish to create 'bad publicity' for the defendants. This Australian national is prepared to give evidence on behalf of the defendants.

(c) the striking out of the sentence, "This is in line with the excellent service provided by the defendants to their customers which is internationally renowned," which was in para 14 of the same affidavit.

31 I ordered costs in the cause. The defendants now appeal against the above orders in RA 118/94.

32 I dismissed the plaintiff's appeal against the order granting leave to amend the defence and re-serve it (RA 119/94). I ordered costs in the cause.

**Negligence in aviation cases**

33 There may be a liability in negligence in different aviation contexts. The carrier's liability will depend upon proof of negligence. The duties owed by a carrier of passengers by air may arise from express or implied terms from the contract of carriage or may represent the duty of care owed by the carrier to all passengers whether or not they are in contractual relationship with him. The duties for the purpose of this case can be summed up briefly as being:

(a) to take and use all reasonable care and skill to provide an aircraft which is fit for the journey and the carriage of passengers in question; and

(b) to take and use reasonable care to carry the passengers safely.

34 During the period of carriage, the passengers' freedom of movement is limited in the interests of safety. He must follow the directions of the commander and the other directions conveyed to him by the cabin crew. Once on board, the passengers' departure from the aircraft is subject to the consent of the commander. A high degree of care is cast on the carrier. Its duties include the exercising of vigilance to see that whatever is required for the safe conveyance of their passengers is in a fair and proper order. The carrier will be liable if a defect existed which could have been discovered with due diligence.

**Liability for personal injury or death**

35 A convention which has been incorporated into Singapore law by the Carriage by Air Act (Cap 32A, 1989 Ed) has to be considered.

**Contributory negligence**

36 The Carriage by Air Act expressly refers to the Contributory Negligence and Personal Injuries Act (Cap 54, 1989 Ed) in s 9 of the Act. If the carrier proves that the damage so caused by or contributed to by the negligence of the injured person, the court would exonerate the carrier wholly or partly from his liability. The defence was incorporated in the text of the Warsaw Convention and is to be applied in accordance with the provision of the Contributory Negligence and Personal Injuries Act (Cap 54, 1989 Ed). The existence and extent of contributory negligence would depend on the facts of the case.

37 In *Goldman v Thai Airways International Ltd* [1983] 3 All ER 693, it was not contributory negligence for a passenger to have his seat-belt unfastened during the flight but in the California case of *Bradfield v Transworld Airlines Inc* 152 Cal Reptr 172 (Cal CA, 1979), where a tourist-class passenger, whose neck had been injured in an earlier accident, entered the upstairs first-class lounge of a Boeing 747 leaving his neck brace off and not wearing the crocheted wool booties supplied to first-class passengers, slipped down the stairs and sustained further injuries, the Californian trial court, applying the local law as to comparative negligence, found the passenger to have been guilty of contributory negligence as to 70% but the finding was reversed on appeal.

**International conventions affecting security for costs**

38 There are international conventions which expressly forbid any requirement of security for costs, *viz* Carriage of Goods by Rail (Berne) 1952 Art 55(4), Carriage of Passengers by Rail (Berne) 1961 Art 56(4), Carriage of Goods by Road (Geneva) 1956 Art 31(5) and Carriage of Passengers by Road Convention Art 41(6) (see *White Book* (1979) vol 1, O 23/1–3/16).

39 The above conventions do not have the force of law in Singapore. Article 28(2) (Cap 32A, 1989 Ed), impliedly permits the requirement of security for costs by providing that the procedure is to be governed by the law of the court seised of the case. The question is whether the best airline, which has probably foreigners as most of its passengers should, in the circumstances of this case, ask the plaintiff, who is a foreigner, to provide security for costs.

40 Courts are slow to whittle away a natural person's right to litigate despite poverty. The requirement for security for costs from a foreigner, a natural person, making on the face of things a genuine claim against a large

airline must not appear to deny him access to our courts (see *Pearson v Naydler* [1977] 3 All ER 531 at 535).

41 The inability to pay the costs of the proceedings was considered by Lawton LJ in *Sir Lindsay Parkinson & Co Ltd v Triplan Ltd* [1973] 2 All ER 273. Lawton LJ said (at 287):

> … the court has a discretion, and that discretion ought not to be hampered by any special rules or regulations, nor ought it to be put into a straitjacket by considerations of burden of proof. It is a discretion which the court will exercise having regard to all the circumstances of the case.

42 In this case, the solicitor for the plaintiff said that the plaintiff would not be able to proceed with the case if he was ordered to pay security for costs. In the first instance, the defendants wanted $40,000 as security for costs. The learned registrar reduced it by more than 50% to $15,000.

43 Under O 23 of the Rules of the Supreme Court 1990 ("RSC"), the court has discretionary power to order security for costs. Order 23 provides that where, on the application of the defendant, it appears to the court:

> that the plaintiff is ordinarily resident out of the jurisdiction, … then, *if, having regard to all the circumstances of the case, the court thinks it just to do so* the court may order the plaintiff to give such security for the defendant's costs of the action or other proceeding as it thinks just. [emphasis added]

44 In exercising the discretion under O 23 r 1(1) the court must have regard to all the circumstances of the case. It is no longer an inflexible and rigid rule that a resident abroad should provide security for costs and security cannot now be ordered as a matter of course from a foreign plaintiff but only if the court thinks it just to order such security in the circumstances of the case.

45 A major matter for consideration is the likelihood of the plaintiff succeeding. Where the chances of the plaintiff succeeding and the defendant failing is strong, the court may refuse the defendant any security for costs: where it may be a denial of justice to order a plaintiff to give security for the costs of the defendant who has no defence to the claim. Where the defendant admits to so much of the claim as would be equal to the amount of which security would have been ordered, the court may again refuse the defendant security for the defendant can secure himself by paying the admitted amount into court (see *Hogan v Hogan, No 2* [1924] 2 IR 14). The defendants have not admitted liability but there is an alternative defence.

46 The question before me was whether in the circumstances of this case it would have been just to order the plaintiff to give security.

47 In the English case of *De St Martin v Davis & Co* [1884] WN 86, the plaintiff appealed from the order of the Master that he should give security for the costs of the action on the ground that he was a foreigner resident abroad. Security had been ordered with liberty to defendants to apply for increase of amount.

48 Field J, allowing the appeal with costs to the plaintiff in any event, said:

> It is an equitable rule that where a plaintiff who resides out of jurisdiction sues a defendant within the jurisdiction, in as much as the party who is within the jurisdiction may succeed in the action and would have to go abroad to recover his costs, the plaintiff shall give security for the costs before they are incurred. But in the present case, it is said that it is impossible that the plaintiff can have to pay costs, because a direct admission by the defendants of their liability is produced. The reason for the rule does not therefore apply here; and the only question is whether I have any discretion as to making an order. I think that I have, and that I ought to exercise it in this case by relieving the plaintiff from giving security.

49 In this case, there is no direct admission of liability, but there is the defendants' evidence of attention given to the plaintiff whilst he was on board the plane as set out in the cabin crew voyage report.

50 In *Aeronave SPA v Westland Charters Ltd* [1971] 3 All ER 531, the defendants sought and obtained an order that the plaintiffs were to give security for costs under RSC O 23 r 1. The plaintiffs appealed. Lord Denning MR gave the judgment of the court said (at 532):

> … RSC O 23 r 1 provides:
>
> > (1) Where, on the application of a defendant to an action or other proceeding in the High Court, it appears to the Court —
> >
> > > (a) that the plaintiff is ordinarily resident out of the jurisdiction … then if, having regard to all the circumstances of the case, the Court thinks it just to do so, it may order the plaintiff to give such security for the defendant's costs of the action or other proceedings as it thinks just.
>
> I agree with the note in the *Supreme Court Practice* that the rule does give a discretion to the court. In 1894 in *Crozat v Brogden* [1894] 2 QB 30 at p 35, [1891–94] All ER Rep 686 at p 687, Lopes LJ said that there was an inflexible rule that if a foreigner sued he should give security for costs. But that is putting it too high. It is the usual practice of the courts to make a foreign plaintiff give security for costs. But it does so, as a matter of discretion, because it is just to do so. After all, if the defendant succeeds and gets an order for his costs, it is not right that he should have to go to a foreign country to enforce the order … But even if it were, *Kohn v Rinson Stafford (Broad) Ltd* [1947] 2 All

> ER 839, [1948] 1 KB 327 shows that is not a ground for refusing security. The ordinary rule still remains, that it is a matter of discretion … So it comes to this: in this particular case, is it just or not to order security?

51 The question before me was whether it would be just to order security having regard to all the circumstances in this particular case.

52 I do not have to enter into a detailed examination of the merits of the case. On the face of the material before me, the plaintiff has a good chance of succeeding (see *Sembawang Engineering Pte Ltd v Priser Asia Engineering Pte Ltd* [1992] 2 SLR(R) 358 at [25]–[27]). The poverty of the plaintiff is not a basis on which the court will require security (see *Cowell v Taylor* (1885) 31 Ch D 34).

53 In *Gateway Land Pte Ltd v Turner (East Asia) Pte Ltd* [1987] SLR(R) 746, the respondents claimed, as the plaintiff did in this case, that they would not be able to proceed with the action if security had to be provided, arguing that they had a *bona fide* and strong case against the applicants. The court accepted the arguments and dismissed the application for security.

54 In *Sembawang Engineering Pte Ltd v Priser Asia Engineering Pte Ltd*, the plaintiffs applied to court for an order for Priser to provide security for costs. Lim Teong Qwee JC dismissed the application with costs. The application was made pursuant to s 27 of the Arbitration Act (Cap 10) and s 388 of the Companies Act (Cap 50, 1990 Ed). It was argued that on the evidence, Priser would be unable to pay the costs of Sembawang if Sembawang was successful in the arbitration and that therefore there should be an order for security for costs.

**Conclusion**

55 Singapore Airlines Ltd is an international air carrier with a good name. The then Minister for Communications and Information, Dr Yeo Ning Hong, when moving for the Carriage by Air Bill 1988 be read a second time said, *inter alia*:

> … Our national airline, Singapore Airlines, is also considered the best airline in the world. … It is important for us as a major participant in the civil aviation industry that our legislation should enable us to keep pace with the latest international conventions. This Bill illustrates the Government's approach of planning for the future in order to stay at the forefront of the civil aviation industry.
>
> … This will enable us to meet future developments in the international civil aviation industry expeditiously.

(See also Charles Lim, "The Warsaw System and the Carriage by Air Act 1988 – A Guide and Short Commentary" [1988] 3 MLJ lxxxv.)

56 Articles 28(1) and 28(2) of the Carriage by Air Act (Cap 32A, 1989 Ed) read:

> (1) An action for damages must be brought, at the option of the plaintiff, in the territory of one of the High Contracting Parties, either before the court having jurisdiction where the carrier is ordinarily resident, or has his principal place of business, or has an establishment by which the contract has been made or before the court having jurisdiction at the place of destination.
>
> (2) Questions of procedure shall be governed by the law of the court seised of the case.

57 The defendants do not admit that the plaintiff sustained the alleged or any injuries, loss or damage. There is a further or alternative defence which is to the effect that any damage sustained by the plaintiff was caused wholly or contributed to by the negligence of the plaintiff but the cabin crew voyage report and the reports on medical examinations carried out in Australia and Jordan are not consistent with the defendants' allegation of a hoax. Their reliance on a mystery voice without setting out the circumstances is unsatisfactory.

58 SQ221 was approaching Sydney. Meals would have been served after it took off from Singapore. It is for the trial judge to decide whether there was anything on the floor. It is enough for me to say that at this stage of the proceedings the plaintiff's claim cannot be dismissed out of hand as being far-fetched and a hoax, and he should not be shut out.

59 The defendants asked for $40,000. The learned assistant registrar cut it down to $15,000. Access to justice should not, to quote the Master of the Rolls Sir Thomas:

> My main anxiety is the problem of access to justice, the sheer difficulty of anybody finding the resources to litigate, unless they are multinational or legally aided … The civil court system … has become a 'very, very expensive' anachronism … the cost of civil litigation has become 'a cancer' …

60 In the exercise of my discretion, I took into account the possibility of the plaintiff's inability to pay security and pay costs as it was a circumstance that fell within the ambit of O 23 r 1 but inability to pay does not fetter the discretion of the court. There is a strong possibility of the plaintiff succeeding and I, as a judge, must do right:

> to all manner of people, not just the legally-aided and the very rich. It is no use having the best jurisprudence in the world if those who need it cannot afford to tap into it. (Sir Thomas, Master of the Rolls.)

Headnoted by Paul Quan Kaih Shiuh.