Sports Connection Pte Ltd *v* Asia Law Corp and another
[2010] SGHC 206

Case Number : Originating Summons No 1076/2009/C

Decision Date : 23 July 2010

Tribunal/Court : High Court

Coram : Steven Chong J

Counsel Name(s) : Samuel Chacko & Peter Wadeley (Legis Point LLC) for Applicant; Axel Chan (Attorneys Inc LLC) for first Respondent; Kevin Lee Ming Hui (Samuel Seow Law Corporation) forsecond Respondent.

Parties : Sports Connection Pte Ltd — Asia Law Corp and another

Legal Profession – Professional Costs

23 July 2010

Steven Chong J:

Introduction

1 Sports Connection Pte Ltd ("the Applicant") applied by Originating Summons ("OS") to tax various invoices raised by two law firms, in respect of professional fees for their conduct of Suit No 630 of 1999 ("the Suit"). The two law firms are Asia Law Corporation ("the first Respondent") and Samuel Seow Law Corporation ("the second Respondent").

2 All the invoices relate to work done for the Applicant in connection with the Suit. The invoices rendered by the first Respondent were covered by the following four proforma invoices:

	Date	Amount
1	04.1.07	$49,650.41
2	08.6.07	$64,876.28
3	14.1.08	$68,199.24
4	04.5.09	$4,854.41

3 In respect of work done by the second Respondent, the fees charged were covered by the following invoices:

	Date	Amount
1	24.3.08	$27,193.66
2	26.5.08	$44,606.66
3	23.7.08	$15,108.47

4	21.8.08	$3,508.57
5	22.9.08	$3,317.00
6	16.1.09	$28,884.91
7	16.1.09	$135,715.62
8	05.2.09	$2,141.54

4 As a number of the above invoices have been paid and/or were delivered more than 12 months prior to the OS, an order for taxation can only be justified if "special circumstances" can be shown to exist. In this context, in deciding whether to order taxation of such invoices, I was mindful to strike a balance "between the need, on the one hand, to protect the client and... on the other hand, to protect the solicitor against late ambush being laid on a technical point by a client who seeks only to evade paying his debt." – per Ward LJ in *Ralph Hume Garry (a firm) v Gwillim* [2003] 1 WLR 510 at [32(4)] ("*Ralph Hume Garry")*, which was cited with approval in *Ho Cheng Lay v Low Yong Sen* [2009] 3 SLR(R) 206 at [16].

Conduct of Suit No 630 of 1999

5 In April 1999, the Applicant commenced the Suit against its former solicitors, M/s Swami & Narayan, for failing to properly register a trademark in Malaysia. The original solicitors instructed by the Applicant to commence the Suit were M/s Harry Elias & Partners. Subsequently, conduct of the Suit was taken over by M/s Netto & Magin LLC. The Suit was then stayed pending determination of the litigation against the parties who had infringed the Applicant's trademark in Malaysia. In January 2005, the Applicant succeeded in its various actions in Malaysia. Thereafter the Applicant restored the Suit and subsequently obtained interlocutory judgement against M/s Swami & Narayan by consent on or about 26 August 2005.

6 In August 2006, the conduct of the Suit was yet again transferred, this time to the first Respondent. The solicitor who had conduct of the Suit was one Anis Shahiran B Md Ibrahim ("Mr Shahiran")

7 In January 2008, Mr Shahiran left the first Respondent and joined the second Respondent. The Applicant then transferred the conduct of the Suit to the second Respondent, and Mr Shahiran continued to have charge of the matter.

8 In January 2009, Mr Shahiran left the second Respondent and rejoined the first Respondent. The Applicant then transferred the conduct of the Suit back to the first Respondent, and Mr Shahiran continued to be the lawyer in charge. It was clear that the Applicant followed Mr Shahiran to whichever firm he joined since he remained in continuous conduct of the Suit from August 2006 until 12 August 2009 when the Applicant transferred the conduct of the Suit to M/s Legis Point LLC. By the time Legis Point LLC took over, the proceedings were completed with the Applicant recovering only a fraction of the amount it had originally claimed in the assessment hearing. The present OS was filed by Legis Point LLC.

The Decision

9 I heard the OS over two days on 29 December 2009 and 29 March 2010. On 1 April 2010, I delivered my brief oral grounds and made the following orders:

(a) The first Respondent to deliver a bill of costs for taxation covering work done under the fourth proforma invoice.

(b) The second Respondent to deliver a bill of costs for taxation covering work done under the seventh and eighth invoices.

(c) That there be no order of taxation for the bill of costs covering work done under the first three proforma invoices of the first Respondent and the first six invoices of the second Respondent.

(d) Costs of this OS to be paid by the Applicant to the first and second Respondents fixed at $150 each inclusive of disbursements.

10 The Applicant being dissatisfied with my orders has since filed an appeal against my decision. I now provide the grounds for my decision.

The Issues

11 Before me, the Respondents made the following submissions to oppose the OS:

(a) There was a written agreement on costs between the Applicant and the first and second Respondents respectively.

(b) More than one year had elapsed since delivery of some of the invoices to the Applicant, and furthermore, some of them had already been paid by the Applicant.

(c) The Applicant was estopped from applying for taxation of the invoices because it had negotiated for payment by instalment and had paid most of the invoices.

Were there any written agreements on costs between the Applicant and the first and second Respondents

12 Section 111 of the Legal Profession Act (Cap 161, 2009 Rev Ed) ("LPA") provides as follows:

Agreement as to costs for contentious business

111. —(1) Subject to the provisions of any other written law, a solicitor or a law corporation or a limited liability law partnership may make an agreement in writing with any client respecting the amount and manner of payment for the whole or any part of its costs in respect of contentious business done or to be done by the solicitor or the law corporation or the limited liability law partnership, either by a gross sum or otherwise, and at either the same rate as or a greater or a lesser rate than that at which he or the law corporation or the limited liability law partnership would otherwise be entitled to be remunerated.

(2) Every such agreement shall be signed by the client and shall be subject to the provisions and conditions contained in this Part.

13 Under s 111 of the LPA, a solicitor is entitled to enter into an agreement on costs with the client at a higher rate than what he would normally charge, *ie* at a premium. The enforceability of such agreements on costs is governed by s 113(3) of the LPA which provides that an agreement on costs may be enforced "if it appears to the court or Judge that the agreement is in all respects fair

and reasonable". Agreements on costs are therefore not subject to taxation if they are "fair and reasonable". This is a different threshold for taxation of fees that are billed in the absence of an agreement on costs.

14 The second Respondent relied on two documents as evidence of a written agreement on costs. The first is a document titled "Repayment Agreement" dated on 10 February 2009 where Yee Kok Chew ("Mr Yee"), a director of the Applicant, was required to acknowledge *personal* liability for arrears of fees in the sum of $309,688.60 payable to the second Respondent. This agreement was not signed because the liability for the invoices was the Applicant's and not Mr Yee's. It was then redrafted for Mr Yee to acknowledge on behalf of the Applicant but it was not signed either.

15 In my view, the second Respondent's submission that there existed a written agreement on costs was a non-starter since neither of the two repayment agreements was actually signed by the Applicant as required under s 111 of the LPA. The fact that the repayment agreements were prepared and sent to the Applicant for signature coupled with the Applicant's refusal to sign the draft repayment agreements would in itself suggest the absence of an agreement on costs.

16 Separately, the first Respondent's claim that an agreement on costs existed between the parties was, as admitted in its affidavit, based on an agreement that is "partly oral, partly by conduct, and partly in writing". The claim was premised on a letter from the first Respondent to the Applicant dated 3 August 2006 which contained an estimate of the legal costs and disbursements. The first Respondent argued that in accordance with this letter:

(a) the first Respondent had sent invoices to the Applicant detailing the work done;

(b) the Applicant had negotiated with the first Respondent to pay the invoices in instalments;

(c) the Applicant had continued paying the invoices over a period of two and a half years without any complaints;

(d) the above therefore evidenced an agreement between the parties on costs.

17 However, even taking the first Respondent's case at its highest that there was an agreement (either orally or by conduct) between the parties on costs, it nonetheless did not satisfy the requirements under s 111 of the LPA. Section 111 of the LPA requires a written agreement on costs that is signed by the client before taxation of the bill of costs can be excluded. Any failure or omission by the law firm in satisfying these mandatory requirements would preclude it from enforcing the agreement on costs.

18 In the present case, the letter documenting the first Respondent's estimate of fees was admittedly not signed by the Applicant. Even if the Applicant had by its conduct agreed to the estimate provided by the first Respondent, this does not change the fact that the formal requirements of s 111 of the LPA have not been satisfied.

19 In *Chamberlain v Boodle & King* [1982] 1 WLR 1443 ("*Chamberlain*"), the English Court of Appeal held that an agreement could only amount to a contentious business agreement under s 59 of the

Solicitors Act 1974 (Cap 47) (UK) (which is in *pari materia* with s 111 of the Legal Profession Act) if it was specific in terms and signed by the client. In that case, the defendants had proposed to the plaintiff an hourly rate of £60 to £80 for lawyers of partner status and £30 to £45 per hour for associates. Lord Denning MR held that this proposal was not specific enough to qualify as a contentious business agreement. He stated at 1445:

> It seems to me that an agreement in writing can be contained in letters. *But the letters ought at least to be signed by the client if he is to be deprived by the agreement of his right to tax. Further the agreement must be sufficiently specific, so as to tell the client what he is letting himself in by way of costs*. It seems to me that the letters in this case do not give the client the least idea of what he is letting himself in for. As counsel for Mr Chamberlain said to us, there is a broad band of many uncertainties. Take, for instance, the rate. It certainly seems high enough to me. It is 60 to 80 an hour. What rate is to be charged? And for what partner? Of what standard? Then 30 to 45 an hour for associates who may be involved. Which legal executives? Of what standard? Which associates? Does it include the typists? That is one of the broad bands which is left completely uncertain by this agreement. Then there is the hourly rate. That must depend on the skill and expertise of the individual partner or associate. A skilled partner can do the work in half the time of a slow partner. Is the client to be charged double the rate because a slow partner has been put on the case? These rates per hour are over a pound a minute. It would seem that there must be a very good system of timing, almost by stopwatch, if that is to be the rate of payment.
>
> [emphasis added]

20 The above passage in *Chamberlain* was cited with approval by Chan Sek Keong JC (as he then was) in *Shamsudin bin Embun v PT Seah & Co* [1985–1986] SLR(R) 1108, at [20].

21 As there was no agreement in writing between the Applicant and the first and/or second Respondent in respect of fees for the conduct of the Suit within the meaning of s 111 the LPA, I found that the Applicant was not precluded from obtaining an order for taxation on this ground.

Special circumstances justifying taxation after the 12-month period

22 In the absence of any written agreement on costs within s 111 of the LPA, the issue of whether an order for taxation should be made would be governed by s 120(1) and s 122 of the LPA, which read as follows:

> **Order for taxation of delivered bill of costs**
>
> **120. —(1**) An order for the taxation of a bill of costs delivered by any solicitor may be obtained on an application made by originating summons or, where there is a pending action, by summons by the party chargeable therewith, or by any person liable to pay the bill either to the party chargeable or to the solicitor, at any time within 12 months from the delivery of the bill, or, by the solicitor, after the expiry of one calendar month and within 12 months from the delivery of the bill.
>
> **Time limit for taxation of bills of cost**
>
> **122**. After the expiration of 12 months from the delivery of a bill of costs, or after payment of the bill, no order shall be made for taxation of a solicitor's bill of costs, except upon notice to the solicitor and under special circumstances to be proved to the satisfaction of the court.

23 Under s 120(1) of the LPA, an order for taxation may be obtained on an application made by Originating Summons at any time within 12 months from the date of the delivery of the bill. Section 122 of the LPA creates a partial bar on an applicant's entitlement to obtain taxation in two circumstances, namely, after the expiration of 12 months from the delivery of a bill of costs, or after payment of the bill. If any of these two circumstances exist, an order of taxation will only be made if the applicant is able to prove the existence of special circumstances to the satisfaction of the court.

24 The Applicant filed the OS for an order for taxation on 17 September 2009. Accordingly, out of the four invoices raised by first Respondent, the first three were already out of time. As for the second Respondent, the first four of his eight invoices were already out of time.

25 Further, it was common ground between the parties that the first three proforma invoices rendered by the first Respondent have already been paid by the Applicant. As for the eight invoices rendered by the second Respondent, the Applicant has paid the first six in full. The seventh invoice has partially been paid, while the eighth invoice remains unpaid.

26 In light of s 122 of the LPA, the Applicant can only obtain an order for taxation in respect of the first three invoices rendered by the first Respondent, and first six invoices rendered by the second Respondent (since they have either been paid or were delivered outside the 12-month period), if he can satisfy the court that there are special circumstances to warrant an order for taxation.

Do the invoices rendered by the first and second Respondent constitute running accounts

27 The Applicant submitted that s 122 of the LPA did not apply because the OS was filed well within 12 months from the date of the last invoices issued by the first and second Respondents dated 4 May 2009 and 5 February 2009 respectively. The basis for this submission was grounded on the proposition that in a case where a law firm issues its bill not in a single invoice but by way of successive bills, the 12-month period should start to run only from the date of the last-issued invoice. In support of this proposition, the Applicant relied on *Chamberlain*, where the English Court of Appeal held that a series of four invoices issued by the defendant law firm were actually in relation to a single bill, and hence the time period for obtaining an order for taxation started to run only from the time the final invoice was received. In that case, Lord Denning held at 1446:

> The next point in the case is whether the bills were four separate bills or whether they were one. If they were four separate bills, the client would have to demand taxation of each within a month of receipt. If they were one bill, divided into separate parts, as long as he demands taxation within a month of the final account, then he has a right to taxation.
>
> We were referred to one or two cases on this point. First. In re Romer & Haslam [1893] 2 Q.B. 286: and the latest was a case in this court on March 6, 1980, of Davidsons v. Jones-Fenleigh, The Times, March 11, 1980. *Putting it quite shortly, as Bowen L.J. said [1893] 2 Q.B. 286, 298, it is a question of fact whether there are natural breaks in the work done by a solicitor so that each portion of it can and should be treated as a separate and distinct part in itself, capable of and rightly being charged separately and taxed separately*. Applying that simple test, it seems to me that over this short time — the end of November 1978 to the beginning of May 1979 — this was one continuous dealing and work done by a solicitor, not dividing itself naturally or otherwise into any breaks at all. When the bills were delivered, they were delivered each time as part of the running account — "account rendered" being carried on in each to the next. I agree with the judge on this point too that this should be regarded as one bill in respect of one complete piece of work, although divided into parts. As this is one bill, and the client demanded taxation within the month, he is entitled to have the whole of it taxed.

[emphasis added]

28 In my judgment, the principle of "running account" in *Chamberlain* had no application to the present case. In *Chamberlain*, all the bills were expressly stated to be part of a running account, and each successive bill referred to the preceding bill. That was the reason the English Court of Appeal regarded the four bills as actually one single bill. Furthermore, the four bills were raised over a relatively short period of about six months. In contrast, here, each invoice issued by the first and second Respondents reflected work done for a specific period. None of the invoices referred to the preceding invoices. In other words, each invoice was independent of the previous invoices. Finally, the invoices were raised over a period of 28 months in the case of the first Respondent and 11 months in the case of the second Respondent. I therefore found that time began to run from the date of each successive invoice and not from the last invoice.

29 It was therefore imperative for the Applicant to show the existence of special circumstances before it can obtain an order for taxation for the first three invoices rendered by the first Respondent, and the first six invoices rendered by the second Respondent.

What constitutes special circumstances

30 The question of what constitutes "special circumstances" under s 122 of the LPA was canvassed by the Court of Appeal in *Wee Harry Lee v Haw Par Brothers International Ltd* [1979-1980] SLR(R) 603 ("*Wee Harry Lee*"). The plaintiff in that case had retained the defendant firm as solicitors for their group of companies for the period from November 1975 to August 1976. During that period, the plaintiff paid $119,500 to account of costs excluding disbursements. The defendant firm then submitted 27 bills amounting to $610,000 exclusive of disbursements of which 24 of them were dated the same day. The plaintiff made no further payment of the bills as it was of the view that the amounts were excessive. Subsequently the plaintiff applied for an order for the bills to be referred to the Registrar for taxation. There was no dispute that s 122 applied and that the plaintiff could only obtain the order for taxation if it could prove the existence of special circumstances.

31 The Court of Appeal in *Wee Harry Lee* observed that it would not be expedient to provide an exhaustive list of what could constitute special circumstances under s 122 of the LPA. It referred (at [15]) to the decision in *In Re Cheeseman* [1891] 2 Ch 289 for the proposition that:

> There is no rigid rule as to what kind of circumstances will justify the taxation of a solicitor's bill after payment, but the judge has in each case to determine whether there are special circumstances which make it right to refer the bill for taxation, and if there are special circumstances in the case, the Court of Appeal will not readily interfere with the decision of the Court below that they are sufficient to justify taxation.

32 The Court of Appeal held that there were two aspects of the case that constituted special circumstances under s 122 of the LPA. The first was that the parties had engaged in prolonged negotiations over the size of the bill, and it was only when these negotiations failed that the plaintiff decided to file the application to obtain an order for taxation. The Court of Appeal stated that this fact alone was sufficient to constitute special circumstances "which could have justified the court in exercising its discretion to order taxation" (*Wee Harry Lee* at [14]). The fact that negotiation took place demonstrated that the plaintiff was at all material times dissatisfied with the quantum of the fees charged.

33 Second, the Court of Appeal found that the defendants' failure to attribute the individual costs to each particular item in the bill of costs also constituted special circumstances under s 122 of the

LPA. It stated at [13]:

> We did not agree that there are no special circumstances justifying the learned Chief Justice to exercise his discretion to order taxation. To begin with the quantum and the size of the main bill number 67/77 with its detailed itemisation and narration of the work done without any sum being shown against each such item but a final lump sum figure shown to represent the costs of all the items are in themselves, in our view, special circumstances for the exercise of the court's discretion here.

34 Before me, Mr Axel Chan ("Mr Chan"), counsel for the first Respondent, submitted that for overcharging to constitute special circumstances, the excessive fees must amount to either fraud or tainted by misconduct or pressure from the solicitor. In support, he relied on *Supreme Court Practice 2009* (Jeffrey Pinsler Gen Ed) (Lexis Nexis, 2009) at para 59/28/12 which in turn referred to *Re Boycott* (1885) 29 Ch D 571 ("*Re Boycott*"). On close scrutiny of the decision in *Re Boycott*, it was clear that it did not support Mr Chan's submission. Cotton LJ's remark that the phrase "special circumstances" should be restricted to "pressure and overcharge, or overcharge amounting to fraud" (at 576) was rejected by the other two members of the Court of Appeal, who held that such a narrow interpretation was neither desirable nor necessary. Fry LJ held at 582 that:

> That misconduct or fraud on the part of solicitors, or pressure accompanied by overcharge or overcharges so gross as to amount to fraud, are special circumstances within the Act has been firmly established. I do not desire to preclude myself from saying that there may be other special circumstances which would justify taxation

In a similar vein, Bowen LJ stated at 579 that:

> Now Judges who sit in Courts of first instance find it no doubt very convenient to let the public know the lines upon which they mean to exercise their discretion, and I think it very well that they should do so, and they have in many cases proceeded on the principle that pressure and overcharge combined constitute the special circumstances mentioned in the Act. The rule, though not exhaustive, is probably a good working rule, sufficient for most cases; but if you press that rule too far and lay down as a definition that special circumstances are not to be considered to exist unless there be pressure and overcharge, it seems to me you are making an Act of Parliament. If the Legislature had meant that only these things should constitute special circumstances it could have said so. Special circumstances, I think, are those which appear to the Judge so special and exceptional as to justify taxation.

35 The non-exhaustive list of "special circumstances" has repeatedly been emphasized in several subsequent English cases. In *Norman, Re* (1885–86) LR 16 QBD 673 ("*Re Norman*"), the defendant law firm raised the point that "special circumstances" justifying an order for taxation could not be found in the absence of pressure and overcharge, or overcharge amounting to fraud. This argument was firmly rejected by the English Court of Appeal which adopted the reasoning of Bowen LJ in *Re Boycott*, and held at 677 that it was not for judges to "impose upon Courts greater fetters than the legislature has thought fit to impose on them" by "limit[ing] the expression "special circumstances," as to exclude from it unforeseen combinations of facts." Finally, in *Hirst & Capes v Fox* [1908] 1 KB 982, the English Court of Appeal agreed at 996 that:

> [S]pecial circumstances are not confined to duress, pressure, overcharge, or fraud; and the discretion of a judge as to what facts constitute "special circumstances" ought not to be overruled except where he has not exercised his discretion judicially.

From my review of the authorities including *Re Boycott*, fraud and pressure *can* amount to special circumstances. However contrary to Mr Chan's submission, the existence of "special circumstances" is not restricted *only* to cases involving fraud, duress or pressure.

Are there special circumstances

Overcharging

36 The main argument raised by the Applicant that there were special circumstances justifying taxation was that it had been grossly overcharged by the first and second Respondents. In support, the Applicant pointed out that the total fees charged by both the first and second Respondents for a three-day assessment hearing and an aborted appeal came up to a total of $448,056.38. This, according to the Applicant, had to be contrasted with the first Respondent's indication of fees for a three day trial (albeit for a different case) of about $155,000. On the face of this comparison, the Applicant submitted that overcharging was manifest.

37 In my view, an allegation of overcharging by reference to the quantum of the total fees is generally not sufficient to amount to special circumstances *per se*. Typically a client seeks an order for taxation of the solicitor's fees because he is dissatisfied with the quantum charged, *ie* he believes he has been overcharged. The law allows such a client the right to tax any bill raised within 12 months from the delivery of the bill provided it has not been paid. Outside the 12-month window or after payment, the law requires the client to demonstrate special circumstances. It seems to me that to treat a general allegation as opposed to a specific allegation of overcharging as special circumstances would almost invariably lead to an order for taxation even if it is applied for outside the 12-month period or after payment. Such an approach would have the effect of rendering the restriction to tax such bills outside the 12-month window or after payment otiose. Clearly the objective behind s 122 of the LPA is to cut down the client's entitlement to tax the bill as of right.

38 As stated above at [35], there is no exhaustive list of what can constitute "special circumstances". Where an applicant relies on overcharging as "special circumstances", it is incumbent for such an applicant to adduce evidence to enable the court to draw the inference of overcharging. Such evidence may include, in a non exhaustive manner:

(a) Failure to itemise a bill of costs, or failure to properly allocate the costs to the various items on the bill (*Wee Harry Lee)*.

(b) Evidence that particular items on an itemised bill have been overcharged (*Re Boycott*).

(c) Charges for items that are non-existent (In *Re Norman*, the bill of costs included a charge for shorthand notes of the proceedings at a reference where no professional shorthand writer had been employed, but the clerk to the solicitor had taken the notes, and it did not appear that the solicitor had given his clerk any part of the amount charged).

(d) Charges for items already paid by the client (In *Re Norman*, the bill of costs included a charge for witnesses' expenses which had been paid by the client).

39 It would be neither productive nor appropriate for the court hearing the application to determine whether the bill taken as a whole is excessive. Otherwise, every application for taxation under s 122 of the LPA, on the basis that there has been overcharging, would effectively and necessarily require the court to conduct a taxation of the bill. That is the role of taxation and not the court hearing the application on whether to grant the order for taxation. Mr Samuel Chacko

("Mr Chacko"), counsel for the Applicant, referred to Bowen LJ's dissenting judgment in *Re Boycott* for the proposition that there was no need for the Applicant to point out any specific items of overcharge as long as the bill itself was "redolent of overcharge". The learned judge in that case observed (at 582):

> As to the overcharges, it is said that special items of overcharge must be shewn before taxation can be ordered. This is a good general rule from which I should be loth to depart, but if I find a bill which is redolent of overcharge, I do not think that I ought to require proof of particular items of overcharge.

40 I did not think that Bowen LJ's statement in *Re Boycott* should be taken to stand for the proposition that the mere size of a bill of costs is sufficient to constitute "special circumstances" justifying an order for taxation under s 122 of the LPA. Every case differs in complexity, and the amount of preparation required for each case can vary widely. Similarly, the number of days which a trial takes may not always be indicative of the effort and time spent by the lawyers on the case, since they may have spent considerable time on the getting up, discovery, and legal research. In the final analysis, the size of a bill *per se* can rarely be indicative of overcharging, except for truly routine cases of which there is some form of accepted industry benchmark for the fees.

41 In the present case, the first Respondent's indication of $155,000 for a three day trial related to a completely different matter from the Suit. As such, I did not accept that it would be a useful or fair benchmark to compare the indicative fees of a separate matter with the total fees charged by the first and second Respondents for their conduct of the Suit. While the total fees of $448,056.38 for a three-day assessment and an aborted appeal may appear excessive at first blush, I took note that the work was done over a two and a half year period from August 2006 to January 2009. I had also taken note that when Mr Shahiran left the first Respondent to join the second Respondent, the matter followed him even though by that time the first Respondent had already charged the Applicant a sum of about $187,000. If the Applicant genuinely believed that the total fees for the conduct of the Suit was in the ballpark figure of $155,000, then it was indeed curious, to say the least, that he would have agreed to transfer the matter to the second Respondent so that Mr Shahiran could continue to have conduct of the Suit given that by that time, the total fees charged, *ie* about $187,000, had already exceeded the indicative fees. It was apparent that the Applicant did not regard the fees as exorbitant, otherwise the matter would not have moved with Mr Shahiran. Furthermore, each invoice issued by the first and second Respondents carried sufficient detail of the work done and how much the Applicant was charged for each piece of work. Indeed, the Applicant admitted through the affidavit of Mr Yee that the invoices issued by the first Respondent "listed out in some detail the work that was undertaken" (paragraph 41 of Yee Kok Chew's affidavit dated 17 September 2009). It was telling that the first indication from the Applicant that it wished to tax the Respondents' invoices was through a letter from the Applicant's present solicitors dated 24 July 2009. At no point in time (prior to the filing of the OS) did the Applicant dispute the charges, or claim that the details of the invoices were deficient in any respect. In fact, the Applicant was happy to make payment, and it even negotiated payment of some of the invoices by instalments. The first three invoices of the first Respondent have been paid while the first six invoices of the second Respondents have also been paid. The fact of payment, coupled with the lack of any prior protest on the fees, suggested to me that the Applicant did not believe that it had been overcharged. This was to be contrasted with *Wee Harry Lee* where there was prolonged negotiation over the quantum of the bills. Here, the only "*negotiation*" was to permit the Applicant to pay the fees charged under the various invoices by instalments which the Respondents had agreed to.

42 Ultimately as aptly observed in *Ralph Hume Garry* at [32(3)], the test is "not whether the bill on its face is objectively sufficient, but whether the information in the bill supplemented by what is

subjectively known to the client enables the client with advice to take an informed decision whether or not to exercise the only right *then* open to him, *viz*, to seek taxation reasonably free from the risk of having to pay for the costs of that taxation." Evidently there was sufficient information to enable the Applicant to make an informed decision to pay the bulk of the invoices raised by the Respondents. In fact from the evidence before me, in particular the conduct of the Applicant, it was clear that it did not believe that there was overcharging by the first and second Respondents as and when each of the successive invoices was raised. It was not without significance that the dispute over the fees only emerged after the outcome of the assessment. Obviously the Applicant was not entirely pleased with the end result but this, in my view, does not amount to special circumstances.

43 It did not escape my attention that the Applicant similarly applied to tax the costs of its Malaysian solicitors in respect of work done for the litigation against the parties who had infringed the Applicant's trademark in Malaysia long after the bills were paid or, in any event, outside the prescribed period (in Malaysia, the period is six months). It was no coincidence that alleged overcharging by the solicitors was the principal ground relied on by the Applicant for leave to tax the bills. The application was dismissed by the Malaysian court in March 2008 more than 18 months prior to the filing of the present OS. Although this dismissal is strictly irrelevant as to whether there was overcharging by the first and/or second Respondents for their conduct of the Suit, it served to highlight the fact that the Applicant was, on all accounts, a sophisticated litigant who is adequately familiar with solicitors' costs and access to taxation. The fact that five sets of solicitors were altogether instructed in relation to the Suit merely reinforced the point.

44 In the circumstances, I found that the Applicant had failed to adduce any evidence that would permit me to draw the inference that there had been overcharging by the first and second Respondents.

Confusion over the proforma/tax invoices

45 In relation to the invoices issued by the first Respondent, the Applicant raised a further argument that there were special circumstances justifying taxation because the manner in which the invoices were issued caused the Applicant confusion in determining how much it was being charged. The root cause of this alleged confusion was that apart from the four proforma invoices, the first Respondent also issued a number of tax invoices to the Applicant. The Applicant thus claimed that it had no idea which of the invoices it was paying for.

46 I did not agree with the Applicant that the first Respondent's practice of issuing proforma and tax invoices caused it any confusion. Mr Shahiran had explained in his affidavit that the proforma invoices were issued to inform the Applicant of the outstanding charges, and the tax invoices were only issued after payment has been received. In the present case, the tax invoices issued by the first Respondent did not correspond exactly with the proforma invoices because the Applicant had requested to pay the sums stated on the Proforma invoices by instalments. While there may be some issue as to the propriety of the issuance of the first Respondent's tax invoices against each instalment payment by the Applicant, it was clear to me that the Applicant was not at all confused by this mode of invoicing. If indeed the Applicant was labouring under some confusion between the proforma and tax invoices, it was hard to believe that it would have continued making payments over two and a half years without raising any question or complaint.

Potential missing funds

47 The Applicant further claimed that there were special circumstances to justify an order for taxation because some funds may not have been accounted for by the first Respondent. In short, the

Applicant claimed that M/s Rajah & Tann (who acted for the defendant in the Suit) had made two payments to the first Respondent of $9,074.67 and $1,073.91 on 20 July 2007 and 10 January 2008 respectively, as payment for photocopies of documents. The Applicant alleged that although the photocopying charges have been paid by Rajah & Tann on behalf of the defendant in the Suit, the first Respondent nonetheless charged the Applicant for the same or have not accounted for them. This point was raised in the Applicant's affidavits but was not pursued. This allegation was specifically denied by the first Respondent (see paras 43–45 of Mr Shahiran's 1st Affidavit filed on 21 October 2009). During the appeal before me, other than stating that this was one of the grounds sufficient to give rise to special circumstances, no submission was made by Mr Chacko. Consequently no submission was made by Mr Chan to address this point either.

48 For the above reasons, I found that the Applicant had failed to adduce any evidence to cross the threshold in proving the existence of special circumstances under s 122 of the LPA.

Estoppel

49 In light of my findings above, it was not necessary for me to deal with the alternative estoppel argument raised by the Respondents. Suffice to say that the Respondents' claim on estoppel was entirely grounded on the fact that the Applicant had negotiated for payment by instalments and had paid most of the invoices. However, under s 122 of the LPA, an order for taxation can be made even after payment provided that special circumstances exist. If the Respondents were right that payment through negotiated instalments is sufficient to create an estoppel to preclude an order for taxation, this will render the second limb of s 122 of the LPA inoperative since the fact of payment will by their submission *ipso facto* preclude a taxation order. Therefore, even if there are facts that would amount to an estoppel at common law, this would not necessarily displace the court's discretion to order taxation under s 122 of the LPA if special circumstances can otherwise be shown to exist. Much will depend on the facts giving rise to the estoppel. In the present case, the fact of payment through instalments would not be sufficient.

Conclusion

50 In the absence of special circumstances, I only ordered taxation of the invoices which were raised by the Respondents within the 12-month period and which remained outstanding when the OS was filed. Accordingly I ordered the first Respondent to deliver a bill of costs for taxation covering work done under the fourth proforma invoice and for the second Respondent to deliver a bill of costs for taxation covering work done under the seventh and eighth invoices since these invoices were raised within the 12-month period and remained unpaid.

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