Chancery Law Corp *v* Management Corporation Strata Title Plan No 1024 (Mok Wai Hoe, third parties)
[2015] SGHC 66

Case Number : Originating Summons No 399 of 2014 (Registrar's Appeal No 323 of 2014)

Decision Date : 13 March 2015

Tribunal/Court : High Court

Coram : George Wei JC

Counsel Name(s) : Tan Tian Luh and Lin Zixian (Chancery Law Corporation) for the applicant/appellant; Denis Tan (Toh Tan LLP) for the respondent.

Parties : Chancery Law Corp — Management Corporation Strata Title Plan No 1024 (Mok Wai Hoe, third parties)

Civil procedure – Third Party Proceedings

13 March 2015 Judgment reserved.

George Wei JC:

1 In Originating Summons No 399 of 2014 ("OS 399/2014"), Chancery Law Corporation ("Chancery Law") seeks to enforce agreements as to costs for contentious business against its previous client, the Management Corporation Title Plan No 1024 ("the MCST"). I shall refer to these agreements as "contentious business agreements". Provisions relating to contentious business agreements and their enforcement may be found in ss 111 and 113 of the Legal Profession Act (Cap 161, 1994 Rev Ed) ("the LPA").

2 The contentious business agreements relate to Chancery Law's representation of the MCST in Suit No 311 of 2012 ("S 311/2012"), Originating Summons No 569 of 2013 ("OS 569/2013") and Civil Appeal No 110 of 2013 ("CA 110/2013"). The latter two are concluded matters. The former is still ongoing, although Chancery Law has since ceased to act for the MCST in it. The parties dispute the date and circumstances under which Chancery Law's appointment as the MCST's legal representatives in S 311/2012 was discharged *or* terminated.

3 The MCST applied for leave to issue a third party notice to join eight current or ex-council members of the MCST ("the Council Members") as third parties to OS 399/2014. The MCST's position is that it is entitled to an indemnity and/or a contribution from the Council Members should it be liable to Chancery Law for the fees claimed.

4 On 15 September 2014, the learned assistant registrar granted the MCST leave to issue the third party notice. The matter before me is Chancery Law's appeal against that decision.

The proceedings giving rise to the contentious business agreements

5 Chancery Law's application in OS 399/2014 comes on the back of a long-standing dispute between two rival factions of subsidiary proprietors at a development managed by the MCST. I shall refer to the two factions as "the Mok faction" and "the Opposition faction". At the time when the dispute took root, the Mok faction had control of the MCST council. The Opposition faction, on the other hand, possessed a majority in share value, allowing it to pass resolutions requiring a simple

majority at general meetings.

S 311/2012

6 On 8 May 2012, the Opposition faction commenced S 311/2012 against Mr Mok Wing Chong ("MWC"), a previous chairperson of the MCST council and a member of the Mok faction.

7 The claim is for alleged breaches of MWC's duties and misuse of the MCST's funds in relation to renovation works at the development. MWC issued a third party notice in S 311/2012 and brought the MCST in as a third party to the suit.

8 Chancery Law acted for the MCST in S 311/2012. On 12 November 2012, the MCST council, which was controlled by the Mok faction, unanimously resolved to appoint Chancery Law as its legal representatives in S 311/2012. Mr Mok Wai Chung delivered a signed copy of Chancery Law's standard letter of engagement and a warrant to act to Chancery Law on 19 November 2012. [note: 1]

9 The Opposition faction was dissatisfied with this turn of events. It convened an extraordinary general ("EOGM") meeting on 5 June 2013 and passed various motions by ordinary resolution. One of the motions, "Motion 2", stipulated that "the appointment of [Chancery Law] as legal representatives of [the MCST was to] be terminated with immediate effect". [note: 2] The then-chairperson of the MCST council, Mr Mok Wai Hoe ("MWH"), who is MWC's son, rejected the votes cast in favour of Motion 2 by the Opposition faction and some other subsidiary proprietors. MWH's reason was that the contested votes were cast by the voters when they were in a position of conflict of interest.

OS 569/2013

10 About three weeks later, on 26 June 2013, the Opposition faction filed OS 569/2013. The respondents in OS 569/2013 were MWH and the MCST. The Opposition faction prayed for an invalidation of MWH's rejection of the contested votes in favour of Motion 2, amongst other reliefs.

11 Chancery Law acted for the MCST in OS 569/2013. On 3 July 2013, the MCST council passed a resolution appointing Chancery Law as the MCST's legal representatives in OS 569/2013. On 17 July 2013, the MCST executed Chancery Law's terms of engagement and a warrant to act. The signed documents were delivered to Chancery Law on 24 July 2013 by hand. [note: 3]

12 On 28 October 2013, a judge of the High Court gave judgment in OS 569/2013 (the decision is reported at *Fu Loong Lithographer Pte Ltd and others v Mok Wai Hoe and another* [2014] 1 SLR 218). The judge held that MWH was correct to reject the contested votes on Motion 2. Allowing the Opposition faction to terminate the appointment of Chancery Law as the MCST's counsel in proceedings where the Opposition faction's interests were adverse to those of the MCST would effectively deny the MCST its right to be heard in S 311/2012. The judge accordingly validated MWH's rejection of the contested votes.

CA 110/2013

13 In CA 110/2013, the Opposition faction appealed against, amongst others, the portion of the judge's decision validating MWH's rejection of the votes cast in support of Motion 2. Chancery Law also acted for the MCST in the appeal.

14 The Court of Appeal delivered its judgment on 23 May 2014 (the decision is reported at *Fu Loon Lithographer Pte Ltd and others v Mok Wai Hoe and another and another matter* [2014] 3 SLR 456).

The Court of Appeal allowed the Opposition faction's appeal on the Motion 2 point. The Court of Appeal held at [66] that MWH's rejection of the contested votes on Motion 2 was invalid. The appeal was allowed (at [65]) on the narrow ground that:

> [It was] difficult to see how a breach of the rules of natural justice would be occasioned if [the MCST] itself validly determines in a general meeting that its lawyers in [S 311/2012] should be discharged.

The Court of Appeal did not address the effect of its ruling on Chancery Law's status as the MCST's legal representatives.

15 Chancery Law has since ceased to be the solicitors on record for the MCST in S 311/2012, which is still ongoing. However, as noted earlier, the exact point of Chancery Law's termination is disputed.

16 The MCST's position is that the Court of Appeal's decision in CA 110/2013 invalidated Chancery Law's appointment retrospectively from 5 June 2013, [note: 4] on the basis that that was the date when Motion 2 was "deemed to have been carried". Chancery Law's position is that it ceased to be the MCST's legal representatives only when its appointment was formally terminated by the MCST on 6 August 2014. [note: 5] This is the date when Chancery Law received an email from the MCST, informing Chancery Law that its appointment as solicitors for the MCST in S 311/2012 had been terminated on the basis of votes taken at an EOGM on that day. [note: 6]

17 I note also that Chancery Law asserts that it received a letter from solicitors acting on behalf of the Opposition faction in S 311/2012 on 7 July 2014. The letter referred to the Court of Appeal's decision in CA 110/2013 and explained that the Opposition faction had made a requisition for an EOGM *to consider termination* of Chancery Law's appointment and their replacement. [note: 7] It appears that the EOGM was held on 6 August 2014. Prior to 6 August 2014, Chancery Law asserts that it had not received any instructions from the MCST terminating its (Chancery Law's) retainer. It is apparent that the Opposition faction (through their lawyers) at this point in time was also taking the position that termination of the retainer had to be considered as a result of the Court of Appeal decision.

The proceedings in OS 399/2014

18 It appears that subsequent to those events described above, the Opposition faction has come to be in control of the MCST. The MCST now refuses to pay Chancery Law's fees.

19 Chancery Law commenced OS 399/2014 against the MCST for the enforcement of contentious business agreements relating to S 311/2012, OS 569/2013 and CA 110/2013.

20 It is established law that an agreement will only be a contentious business agreement within s 111 of the LPA if it is specific in terms and signed by the client (this is considered in greater detail below at [40]). I note, however, the rather peculiar nature of the contentious business agreements before me. The contentious business agreements are said to arise from clauses in Chancery Law's letters of engagement for S 311/2012 and OS 569/2013, both of which state: [note: 8]

> If you have not asked us to tax our bill/[statement of charges] pursuant to clause 26, and do not pay our bill/[statement of charges] within 21 days of its receipt, *the bill*/[statement of charges] *in question shall then be deemed to be an agreed costs bill*/[statement of charges], *pursuant to* ... *s. 111* (in respect of contentious business) of the Legal Profession Act ... Further, if you

continue to instruct us to carry out work or accept our work product after 14 days of the receipt of a bill/[statement of charges], this act shall be taken as your unconditional acceptance (in principle and in quantum) of that bill/[statement of charges] and all bills/[statement of charges] rendered previously. If this is not the case, please inform us in writing immediately. [emphasis added]

These clauses are peculiar in that the contentious business agreement is deemed to arise from the client's non-response to a bill or statement of charges issued by the solicitors. However, since the parties have proceeded on the basis that s 111 is applicable, I will proceed on the assumption that these are contentious business agreements within the meaning of s 111.

21 In OS 399/2014, the grounds on which the MCST refuses to pay the legal fees include the assertion that Chancery Law pursued the interests of the Council Members or the Mok faction instead of those of the MCST in all the proceedings mentioned above. The details are set out in Ms Tay Lay Suan's affidavit dated 24 July 2014 filed in OS 399/2014. Ms Tay is a manager with one of the subsidiary proprietors from the Opposition faction.

22 The MCST resists payment of Chancery Law's fees for S 311/2012 on the following grounds. [note: 9]

(a) Three of the four bills issued by Chancery Law relate to work done between 4 and 21 February 2014. These fees were incurred in respect of work done after the termination of Chancery Law's warrant to act by the MCST on 5 June 2013. The fourth bill covered the period from 8 November 2012 up to 3 February 2014. Work done after 5 June 2013 was undertaken after termination of the warrant to act.

(b) Chancery Law did not act in the interest of the MCST in S 311/2012, but rather, acted in a manner that preferred the interests of the Mok faction; and

(c) Chancery Law's fees are manifestly excessive.

In the alternative, the MCST asserts that it is entitled to an indemnity and/or a contribution from the Council Members.

23 The MCST resists payment of Chancery Law's fees for OS 569/2013 and CA 110/2013 on the basis that: [note: 10]

(a) Chancery Law acted in OS 569/2013 and CA 110/2013 in a position of conflict of interest; and

(b) Chancery Law could have taken a completely neutral position in the proceedings without compromising the MCST's position. Instead, Chancery Law pursued a rigorous defence in OS 569/2013 and CA 110/2013.

In the alternative, the MCST asserts that it is entitled to an indemnity and/or a contribution from the Council Members.

24 The MCST filed Summons No 4368 of 2014 for leave to issue a third party notice against eight Council Members. In the third party notice, the MCST seeks an indemnity and/or a contribution from the Council Members on the basis that they acted in excess of power or authority by appointing Chancery Law.

25 The MCST relies on resolutions purportedly passed at its EOGMs dated 6 October 2010 and 12 December 2012. In the former, the MCST was only authorised to incur legal fees up to a limit of $500. In the latter, it was mandated that any expenditure exceeding $2,000 had to be approved at a general meeting of the MCST. The MCST argues that the effect of these resolutions is that the Council Members did not have the power or authority to appoint Chancery Law as the legal representatives of the MCST. In doing so, the Council Members have acted in breach of their duties, in bad faith, and in abuse of their position.

26 I pause to mention that prior to the issuance of the third party notice, the 6 October 2010 and 12 December 2012 meetings and resolutions were not raised or mentioned in Ms Tay's affidavits filed in OS 399/2014. Ms Tay's affidavits also never previously mentioned that the MCST council did not have the authority to appoint Chancery Law because of restrictions placed on the MCST council by resolutions made at the MCST's general meetings. [note: 11]

The issue and the arguments

27 The sole issue before me is whether leave should be granted for the MCST to issue the third party notice against the Council Members in OS 399/2014.

28 Chancery Law argues that leave should not be granted. The first point made is that a law firm cannot sue on a contentious business agreement. [note: 12] The only way to enforce such an agreement is by commencing an originating summons, and by satisfying the "fair and reasonable" test. Chancery Law argues that the inquiry is a narrow one: first, is there a contentious business agreement; and second, is it fair and reasonable between the parties? [note: 13]

29 Chancery Law argues that whether or not the Council Members had authority to appoint Chancery Law is "an indoor management issue that does not concern [Chancery Law]". [note: 14] The issues are distinct, and the Council Members should not be joined as third parties.

30 Chancery Law also argues that proceedings under s 113 of the LPA are "equivalent to a taxation proceeding". [note: 15] Both proceedings are in the context of solicitor-and-client costs. In both proceedings, the court considers the nature of the work done and the value to be placed on it. The "only distinction" is that the court need not assess "solicitor-and-client costs at a fixed figure". [note: 16]

31 Chancery Law relies on cases which show that at a taxation hearing, the fact that the solicitors may have been negligent, or may have acted in breach of duty is irrelevant: *Re Massey and Carey* (1884) 26 Ch D 459; *Abrahams and another v Wainwright Ryan* [1998] VSC 335; and *Nicholas Drukker & Co v Pridie Brewster & Co* [2006] 3 Costs LR 439. Chancery Law states that the substance of the MCST's allegation is that Chancery Law acted negligently or in breach of duty. Chancery Law's case is that this is irrelevant to proceedings under s 113 of the LPA, where all the court is concerned with is the fairness or reasonableness of the contentious business agreement.

32 The MCST's submissions on leave for the issuance of the third party notice are scant, and do not add anything to their position taken in OS 399/2014 described at [21]–[24] above.

33 It is apparent that many of the submissions raised by the parties before me cover the *substantive* positions which they intend to take at the hearing of OS 399/2014, rather than the question of whether leave should be granted for the MCST to issue a third party notice against the

Council Members. I will only address the arguments in so far as they are relevant to the application before me.

Analysis and decision

34 Before considering whether leave to issue the third party notice should be granted, it will be helpful to consider two points. First, the nature of an application to enforce a contentious business agreement under the LPA. Second, the purpose of the third party proceedings provisions under O 16 r 1 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("the Rules of Court"). I begin with the nature of proceedings under s 113 of the LPA.

The nature of an application to enforce a contentious business agreement under the LPA

35 Section 111 of the LPA permits a solicitor to enter into contentious business agreements with his client. Section 111 states:

> **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.

36 In *Sports Connection Pte Ltd v Asia Law Corp and another* [2010] 4 SLR 590, Steven Chong J said at [13] that this provision entitles a solicitor and client to agree to a higher rate of costs than what the solicitor would usually charge. Chong J stated that the enforceability of such agreements is nonetheless subject to the "fair and reasonable" requirement in s 113 of the LPA, which I shall come to in a moment.

37 More recently, the court of three judges in *Law Society of Singapore v Tay Choon Leng John* [2012] 3 SLR 150 held at [23] that s 111 of the LPA is a permissive rather than mandatory provision. The court adopted at [32] the comments of Professor Tan Yock Lin in *The Law of Advocates and Solicitors in Singapore and West Malaysia* (Butterworths Asia, 2nd Ed, 1998) at p 685:

> Section 111 has *nothing to do with validity but is concerned only with enforceability by the solicitor*. Being an empowering section, it does not affect the position of a client who sets up an agreement as to costs. Before the enactment of section 111, a client could enforce an oral agreement as to costs against his solicitor and that remains true after the enactment. Thus in *Clare v Joseph*, in an action brought to recover moneys received by a solicitor to the use of his client, the English Court of Appeal held that the client continued to be entitled, despite the enactment of the English equivalent of section 111, to set up an oral agreement by the solicitor to be paid less than usual costs. However, where a solicitor purports to set up an agreement as to costs, the agreement must be in writing for it to be enforceable. [emphasis added]

38 Also integral to the working of the statutory scheme for contentious business agreements is s 113, which is the section under which Chancery Law's application is made. Section 113 states:

113.—(1) *No action or suit shall be brought or instituted upon any such agreement as is referred to in section 111*.

(2) Every question respecting the *validity or effect* of the agreement may be examined and determined, and the agreement may be enforced or set aside without suit or action on the application by originating summons of any person or the representatives of any person, party to the agreement, or being or alleged to be liable to pay, or being or claiming to be entitled to be paid the costs, fees, charges or disbursements in respect of which the agreement is made, by the court in which the business or any part thereof was done or a Judge thereof, or, if the business was not done in any court, then by the High Court or a Judge thereof.

(3) Upon any such application, if it appears to the court or Judge that the agreement is in all respects fair and reasonable between the parties, it may be enforced by the court or Judge by rule or order, in such manner and subject to such conditions (if any) as to the costs of the application as the court or Judge thinks fit.

(4) If the *terms of the agreement are deemed by the court or Judge to be unfair or unreasonable, the agreement may be declared void*.

...

[emphasis added]

39 An application to enforce a contentious business agreement must be made by originating summons under s 113(2) of the LPA. In an application to enforce a contentious business agreement under s 113, the court is concerned with three questions: form, validity and effect.

40 The first preliminary question is whether the agreement satisfies the *formal requirements* of a contentious business agreement in s 111 of the LPA. These include the need for the agreement to be in writing (s 111(1) of the LPA) and signed by the client (s 111(2) of the LPA). There is also a need for sufficient certainty or specificity of the terms governing the fees: *Shamsudin bin Embun v P T Seah & Co* [1985–1986] SLR(R) 1108 ("*Shamsudin v Seah*") at [22], citing the English Court of Appeal decision of *Chamberlain v Boodle & King* [1982] 3 All ER 188 at 191*a*. Only agreements satisfying the requirements in s 111 fall within the remit of s 113 of the LPA.

41 The second question concerns the contractual *validity* of the contentious business agreement. It will only be enforced "in the absence of there being any vitiating factors": *Wee Soon Kim Anthony v Chor Pee & Partners* [2006] 1 SLR(R) 518 at [26]. In *Shamsudin v Seah*, Chan Sek Keong JC (as he then was) resolved a plea of *non est factum* in determining whether to enforce a contentious business agreement under s 113 of the LPA.

42 The third question concerns the *effect* of the agreement. This is underpinned by the principle stated by Andrew Phang Boon Leong JC (as he then was) in *Wong Foong Chai v Lin Kuo Hao* [2005] 3 SLR(R) 74 at [31] that:

> [N]o agreement for the payment of costs between client and solicitor is sacrosanct in the sense that it is conclusive and immune to, as well as impervious from, any investigation by the court itself.

Even if the contentious business agreement overcomes the hurdles of form and validity, the court must be satisfied that the terms of the agreement are fair and reasonable before the court will

enforce it: ss 113(3) and 113(4) of the LPA.

43 This is a convenient point to deal with Chancery Law's submission that an application under s 113 of the LPA is "equivalent to a taxation proceeding". [note: 17] The discussion above shows that the court is not concerned only with "the nature of the work done and the value to be placed on it" as is the case in taxation proceedings. Proceedings under s 113 of the LPA are broader than that. They may necessitate an examination of the circumstances under which the agreement is formed to determine whether it was validly entered into and whether the terms of the bargain were fairly struck and reasonable: see *In re Stuart, ex parte Cathcart* [1893] 2 QB 201 ("*In re Stuart*") at 205, cited with approval in *Shamsudin v Seah* at [31]. Indeed, in *In re Stuart*, the English Court of Appeal noted in passing arguments that the agreement under consideration was void as against public policy (on the grounds of champerty). I therefore reject this submission of Chancery Law.

44 I recognise, however, that an application under s 113 of the LPA is usually "dealt with in a summary manner": *Shamsudin v Seah* at [3]. It is commenced by originating summons and not by writ (indeed, s 113(1) of the LPA prohibits a suit on a contentious business agreement). There may, however, be a need for the court to take oral testimony to resolve the narrow issue of the circumstances under which the contentious business agreement was entered into. This was done in *Shamsudin v Seah*, in relation to a plea of *non est factum* by the client.

The purpose of third party proceedings

45 The provisions governing the issuance of a third party notice are found in O 16 r 1 of the Rules of Court. The defendant in a proceeding may issue a third party notice in three situations. First, where he seeks a contribution or indemnity from a person who is not a party to the action: O 16 r 1(1)(*a*). Second, where he seeks relief relating to the original subject-matter of the action or seeks relief substantially similar to relief claimed by the plaintiff: O 16 r 1(1)(*b*). Third, where any issue relating to the original subject-matter of the action should be determined between a person not already party to the action: O 16 r 1(1)(*c*). The MCST relies on all three grounds to join the Council Members as third parties to OS 399/2014. [note: 18] The learned assistant registrar granted leave on the basis that the MCST was seeking an indemnity or contribution, and because the factual bases upon which the liability to indemnify arose were (in his view) related to the validity of the agreement and the limits of the MCST council's authority.

46 In the present case, pursuant to O 16 r 1(2) of the Rules of Court, leave of court is required to issue the third party notice since the proceedings were commenced by originating summons. Order 16 r 2 of the Rules of Court sets out the procedure governing leave applications. Jeffrey Pinsler SC, *Singapore Court Practice 2014* (Lexis Nexis, 2014) ("*Singapore Court Practice*") explains at paragraph 16/2/5 that the court enjoys a general discretion in all cases whether or not to allow the issuance of a third party notice. I note in passing that in cases where a third party notice can be issued without leave, any objections by the plaintiff or the third party are considered at the hearing of the defendant's summons for third party directions: *Singapore Court Practice* at paragraph 16/4/5. Factors relevant to the exercise of the court's discretion are considered below at [51].

47 Regardless of which limb of O 16 r 1 of the Rules of Court is relied on, the objective of third party proceedings is twofold: *Singapore Court Practice* at paragraph 16/1/1. First, to enable parties to raise all issues relating to the subject-matter of the hearing in one set of proceedings. This avoids delay and unnecessary costs resulting from multiple actions. The second related objective is to avoid inconsistency between judicial decisions if common issues are litigated in separate proceedings.

Whether leave should be granted for the MCST to issue the third party notice

48 In its third party notice (see [24]–[26] above), the MCST pleads that it is entitled to an indemnity and/or a contribution from the Council Members who appointed Chancery Law as its legal representatives. The third party notice was filed on 18 September 2014. Shortly after, the learned assistant registrar granted the leave that is now being appealed.

49 The learned assistant registrar's decision was based primarily on the assessment that the MCST's claim fell within the contribution or indemnity ground articulated in O 16 r 1(1)(*a*) of the Rules of Court. The learned assistant registrar may also have been of the view that O 16 r 1(1)(*c*) applied, given his holding that the factual bases of the indemnity claim were related to the validity of the agreement.

50 Before I set out my reasons for deciding that leave should not have been given for the MCST to issue the third party notice, I should note that neither party in the submissions touched on the question of law as to when a right to an indemnity arises, particularly between the MCST and the Council Members. This is understandable given that at this stage, what is in issue is whether a *prima facie* case has been made that the matter falls with a limb of O 16 r 1 of the Rules of Court. It is not necessary to go into the substantive merits as such. Nevertheless, I mention in passing that in *Singapore Civil Procedure* at paragraph 16/1/3, it is stated that the right to an indemnity can be based on a principle of law or equity. Cases where the right has been recognised include a situation where the third party was the managing director of the defendant-company, and his breach of duty to the company caused losses: *Eastern Shipping Co v Quah Beng Kee* [1924] AC 177, cited in *Goh Sin Huat Electrical Pte Ltd v Ho See Jui (trading as Xuanhua Art Gallery) and another* [2012] 3 SLR 1038. However, even if there is a *prima facie* basis for the claim to an indemnity, it is my view that leave should not be granted.

51 The court has the discretion to set aside, or to refuse to grant leave to issue a third party notice, where there may be nothing to be gained from determining all matters at once (*Singapore Court Practice* at paragraph 16/4/4), or where the plaintiff would "be embarrassed by the desire of the defendants to have the whole question of [the third party's] liability decided at once" (*Carshore v North Eastern Railway Company* (1885) 29 Ch D 344 at 346). In cases where the defendant needs leave to issue a third party notice, as in the present case, it does not follow that leave must be granted whenever a *prima facie* case is made out which would bring the matter within any limb of O 16 r 1(1). The court retains the discretion to refuse leave in the circumstances outlined above: *Singapore Court Practice* at paragraph 16/2/5.

52 In *Bower v Hartley and another* (1876) 1 QB 652, the defendant insurance brokers were approached by the plaintiff shipper to effect insurance for cargoes that the plaintiff was shipping abroad. The cargoes were lost at sea but the underwriters refused to make payment to the plaintiff. The plaintiff brought a claim against the defendants in negligence. The defendants issued a third party notice to join a second insurance broker ("Leyland & Co"). The defendants' position was that they effected one of the insurance policies through Leyland & Co and the latter was responsible for indemnifying the former. The plaintiff resisted the joining of Leyland & Co as a third party.

53 The English Court of Appeal upheld the decision of the Queen's Bench Division to set aside the third party notice. Mellish LJ took into account the fact that the defendant's claim against Leyland & Co "would be distinct" (at 657) from the plaintiff's claim against the defendant. The issue of negligence between the plaintiff and the defendant was distinct from the negligence between the defendant and third party. He also said that the inclusion of Leyland & Co might delay the trial. Mellish LJ concluded that the court should exercise its discretion to refuse to make the order to serve the third parties. James LJ also said at 656 that "the convenience of having this question determined

once for all in this action is not enough to outweigh the injury to the plaintiff which may result from the introduction of the third party".

54 It is my view that to allow the third party notice to be issued in this case will cause substantial prejudice to Chancery Law. Further, there would be little to be gained from determining all at once Chancery Law's claim for fees under the agreement and the MCST's claim for an indemnity against the Council Members.

55 Joining the Council Members as third parties would deprive Chancery Law of what is in essence a summary procedure for a solicitor to enforce a contentious business agreement against his client. The enforcement of a contentious business agreement hangs on the resolution of the three narrow questions of form, validity and effect discussed above. Proceedings under s 113 of the LPA are commenced by originating summons. The provisions do not envisage the resolution of substantial disputes of fact.

56 The issue of whether the Council Members had authority to appoint Chancery Law, on the other hand, raises disputed factual and legal questions. Chancery Law will be put through the expense of having to participate in a factually intensive dispute with little relation, if any at all, to Chancery Law's claim for fees. Further, an action commenced by originating summons is a blunt tool to resolve contested facts. A conversion of OS 399/2013 to a writ action is not possible because s 113(1) of the LPA prohibits a contentious business agreement from being the subject of a suit.

57 While oral evidence can be heard in cases commenced by originating summons, this is not the norm. The fact that Parliament saw fit to mandate that proceedings under s 113 of the LPA must be by way of originating summons supports the view that a summary procedure is intended. *Shamsudin v Seah*, referred to earlier, was a case where the court heard oral evidence on the issue of whether the client understood the nature of the contentious fee agreement in the context of his assertion that the agreement was void for *non est factum*. *Shamsudin v Seah* was not a case where third party proceedings were in issue.

58 It also seems to me that there is little to be gained from resolving the issue of the Council Members' authority to engage Chancery Law (and therefore whether the MCST is entitled to an indemnity from them for Chancery Law's fees) together with whether Chancery Law should be entitled to enforce the contentious business agreements against the MCST. There is no suggestion in Ms Tay's affidavit that Chancery Law had actual or constructive notice of the Council Members' alleged lack of authority, which would have affected the validity of Chancery Law's retainer.

59 Chancery Law relies on letters of engagement and warrants to act that were signed in accordance with and pursuant to what appeared to be valid resolutions of the MCST's council. It may be said (without deciding) that the MCST council had, at the very least, apparent or ostensible authority to engage Chancery Law. At the substantive hearing of OS 399/2014, the issues to be decided between Chancery Law and the MCST are: (a) whether the contentious business agreements are valid (in particular whether Chancery Law can rely on the apparent or ostensible authority); (b) whether the agreement is fair; and (c) whether the terms are reasonable. Issues as to whether the fees are excessive or whether Chancery Law did not act in the best interests of the MCST, *etc*, are relevant to (b) and (c). But those matters are not before me and must ultimately be resolved at the substantive hearing of OS 399/2014.

60 The issue of whether the Council Members had actual authority when they appointed Chancery Law and whether they had breached any duty owed to the MCST is a distinct question from Chancery Law's application under s 113 of the LPA. There is no need for them to be resolved together.

61 In coming to this decision, I have noted the comment of the Court of Appeal in *CIMB Bank Bhd v Dresdner Kleinwort Ltd* [2008] 4 SLR(R) 543 ("*CIMB Bank v Dresdner Kleinwort*") at [82] that:

> We must emphasise, and this seemed to have been overlooked by CIMB, that the real test to determine whether a third-party action should be heard together with the main action is not that of connection alone but whether they are inextricably linked and the third party action is an integral and inseparable part of the main action …

62 I accept that the Court of Appeal's remarks in *CIMB Bank v Dresdner Kleinwort* appear to relate only to O 16 r 1(1)(*b*) and (*c*) of the Rules of Court (there did not appear to be any issue of indemnity and/or contribution before the Court of Appeal in that case).

63 Nevertheless, these comments are of some relevance given that the MCST relies on all the limbs of O 16 r 1(1) of the Rules of Court. Further, whilst the learned assistant registrar decided the application primarily on the basis of the indemnity claim, it appears that he also accepted the applicability of the limb in O 16 r 1(1)(*c*).

64 It will be recalled that the position taken by the MCST in resisting payment of Chancery Law's fees for S 311/2012 is rooted in the claim that much of the work claimed in the four bills rendered by Chancery Law (see [22] above) related to work done after Chancery Law's warrant to act had been terminated on 5 June 2013. [note: 19] Leaving aside the apparent inconsistency between this and the position taken by the Opposition faction in their lawyer's letter referred to at [17] above, Chancery Law's position is that as a matter of law, their appointment was only terminated on 6 August 2014. The question as to when Chancery Law's appointment was terminated is indeed a matter of law. The possible dates are 5 June 2013, 23 May 2014 (the date when the Court of Appeal allowed the Opposition faction's appeal in CA 110/2013) or 6 August 2014. This is quite different from the main issue raised in the third party proceedings against the Council Members: namely that they had appointed Chancery Law in breach of the resolutions.

65 The other grounds of attack relied on by the MCST in resisting fees for S 311/2012 is the allegation that Chancery Law did not act in the interest of the MCST in S 311/2012, and that the fees are manifestly excessive. The latter bears no connection with the claim against the third party. The former is only loosely connected with the third party claim.

66 The position taken by the MCST in resisting payment of Chancery Law's fees for OS 569/2013 and CA 110/2013 [note: 20] rests on the assertion that Chancery Law acted in a position of conflict of interest. In addition, it is claimed that Chancery Law could have taken a completely neutral position in the proceedings without compromising the MCST's position. In my view, there are no good reasons for these issues and the third party claim to be resolved in the same set of proceedings.

67 In the circumstances, leave to issue the third party notice should not have been granted. The third party notice is set aside. I will hear the parties on costs.

[note: 1] Tan Tian Luh's 1st Affidavit for the applicant, Chancery Law, at paragraphs 9–11.

[note: 2] Tay Lay Suan's 1st Affidavit for the respondent, the MCST, at paragraph 17.

[note: 3] Tan Tian Luh's 1st Affidavit at paragraphs 14–16.

[note: 4] Tay Lay Suan's 1st Affidavit at paragraph 22.

[note: 5] Tan Tian Luh's 2nd Affidavit at paragraphs 17–19.

[note: 6] Tan Tian Luh's 2nd Affidavit at p 31.

[note: 7] Tan Tian Luh's 2nd Affidavit at paragraph 14.

[note: 8] Tan Tian Luh's 1st Affidavit at paragraphs 55 and 66.

[note: 9] Affidavit of Tay Lay Suan dated 24 July 2014 at paragraphs 23–26.

[note: 10] Affidavit of Tay Lay Suan dated 24 July 2014 at paragraphs 12–16 and 73.

[note: 11] Chancery Law's submissions at paragraph 54.

[note: 12] Chancery Law's submissions at paragraph 6.

[note: 13] Chancery Law's submissions at paragraph 10.

[note: 14] Chancery Law's submissions at paragraph 24.

[note: 15] Chancery Law's supplemental submissions at paragraph 4.

[note: 16] Chancery Law's supplemental submissions at paragraph 5.

[note: 17] Chancery Law's supplementary written submissions at paragraph 4.

[note: 18] The MCST's submissions at paragraph 10.

[note: 19] Affidavit of Tay Lay Suan dated 24 July 2014 at paragraphs 23–26.

[note: 20] Affidavit of Tay Lay Suan dated 24 July 2014 at paragraphs 12–16 and 73.