

**IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

[2022] SGHC 156

Originating Summons No 1289 of 2021

Between

Rahaman Mohammad Moshiur

... Plaintiff

And

Subbiah Pillai t/a Tan & Pillai

... Defendant

GROUND OF DECISION

[Legal Profession — Bill of costs]

[Civil Procedure — Costs — Taxation]

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Rahaman Mohammad Moshiur
v
Subbiah Pillai (trading as Tan & Pillai)

[2022] SGHC 156

General Division of the High Court — Originating Summons No 1289 of 2021
Chua Lee Ming J
24 May 2022

5 July 2022

Chua Lee Ming J:

Introduction

1 The plaintiff, Mr Rahaman Mohammad Moshiur, a Bangladeshi national, suffered serious personal injuries on 4 February 2016 when he fell from a height of 11m whilst working at a worksite in Tuas, Singapore.¹

2 In December 2016, the plaintiff engaged the defendant, Mr Subbiah Pillai, the sole proprietor of the law firm known as M/s Tan & Pillai, to act for him in his claim for damages against his employer, Peng Tat Construction Pte Ltd (“PTCPL”).² The plaintiff’s main point of contact at M/s Tan & Pillai was one Mohammad Nazrul Islam (“Nazrul”) who was an employee of the law firm and acted as an interpreter for the plaintiff who could only converse in Bengali.³

Nazrul was not a lawyer although the plaintiff had mistakenly believed that he was one.

3 The plaintiff’s claim against PTCPL was settled. This was the plaintiff’s application for an order that the defendant’s bill of costs be taxed. After hearing the parties, I granted the application.

Facts

4 The plaintiff returned to Bangladesh in April 2017 after his work permit was cancelled.⁴

5 The defendant, acting as the plaintiff’s lawyer, commenced proceedings in the High Court on 4 May 2017.⁵ The action was subsequently transferred to the State Courts (the “Suit”) on 5 May 2017.⁶ The Suit was settled before trial, after going through the Court Dispute Resolution process.

6 On 19 April 2018, the plaintiff accepted PTCPL’s offer to settle at \$200,000 plus reasonable costs and disbursements.⁷ On 17 May 2018, judgment was entered in favour of the plaintiff for the sum of \$225,000 (being damages and interest) plus costs and disbursements (the “Judgment”).⁸

7 On 13 June 2018, PTCPL’s insurers paid the defendant the sum of \$251,538.70 in satisfaction of the Judgment (the “Judgment Sum”). This amount comprised: (a) the sum of \$225,000, (b) party and party costs of \$25,000 and (c) disbursements of \$1,538.70.⁹ No evidence was produced in the present proceedings of the defendant having obtained the plaintiff’s agreement to the party and party costs of \$25,000 or disbursements of \$1,538.70. The plaintiff’s allegation that the defendant had kept him in the dark about the receipt of the Judgment Sum was not disputed in any of the defendant’s affidavits.

8 In the meantime, between April 2017 and October 2019, the defendant extended interest-free loans to the plaintiff. According to the plaintiff, the total amount of the loans was \$32,000. In his affidavit, the plaintiff said he had signed the following:¹⁰

(a) An acknowledgment dated 6 April 2017 for a friendly loan of \$10,000.¹¹

(b) An acknowledgment dated 12 June 2018 for a friendly loan of \$2,000.¹²

(c) A letter dated 5 March 2019 requesting a friendly loan of \$5,000.¹³

(d) A letter dated 5 August 2019 requesting the release of \$5,000.¹⁴ This did not involve a loan and in fact was a request for payment of \$5,000 as part payment of the plaintiff's claim. The plaintiff believed that this was signed in October 2019 when he was in Singapore. The plaintiff had returned to Singapore on 16 September 2019. It appeared however that the request may have been signed on 27 September 2019. The defendant produced a copy of a request signed by the plaintiff on 27 September 2019 for \$5,000 as part payment of his claim; Nazrul signed the same document as interpreter and witness.¹⁵

(e) An acknowledgment for a loan of \$10,000 in October 2019.¹⁶ The plaintiff said that he was unable to locate a copy of the acknowledgment.

9 The defendant claimed instead that the total amount loaned/paid to the plaintiff was \$40,000. However, the defendant did not produce any

acknowledgment signed by the plaintiff with respect to the disputed amount of \$8,000.

10 As stated above, on 16 September 2019, the plaintiff returned to Singapore. As he had not received payment of the Judgment Sum, he met up with Nazrul to ask about the same. Nazrul told him that he would speak to the defendant.¹⁷

11 On 11 October 2019, the plaintiff met up with the defendant to inquire about his compensation moneys and when they would be paid to him.¹⁸ As previously noted (see [7] above), the plaintiff’s allegation that the defendant did not provide details of the Judgment Sum that PTCPL’s insurers had paid in 2018, was not disputed in any of the defendant’s affidavits.

12 On 14 October 2019, the plaintiff sent the defendant a letter in which he discharged the defendant from further acting for him. He also complained about not having received his full payment of the Judgment Sum and accused the defendant of giving him “many reasons”.¹⁹

13 On 17 October 2019, the plaintiff met up with the defendant and demanded payment of the Judgment Sum as he needed money for medical treatment. The defendant produced an invoice dated 4 June 2018 for the sum of \$100,000 comprising \$80,000 being professional costs, \$18,000 being disbursements and \$2,000 being transport and incidental charges (the “Invoice”).²⁰ In one of his affidavits, the defendant claimed that the Invoice had been posted to the plaintiff while he was in Bangladesh.²¹ Notably, the Invoice was not addressed to the plaintiff or anyone else and did not state the plaintiff’s address. There was also no covering letter. The Invoice also recorded the wrong case number and misspelt the plaintiff’s name. Before me, the defendant

conceded that the Invoice was prepared on the spot when the plaintiff had visited the defendant's office at the end of 2019.

14 According to the defendant, that same day he also showed the plaintiff a Statement of Account dated 4 June 2018 (the "Statement of Account").²² The Statement of Account was similarly not addressed to the plaintiff; strangely, it was both issued by and addressed to M/s Tan & Pillai. Before me, the defendant also conceded that the Statement of Account was prepared at the end of 2019, on the same day the Invoice was prepared.

15 The Statement of Account purported to "confirm settlement of [the plaintiff's] claim" as follows:²³

| | |
|--|---------------|
| (1) Damages | \$ 225,000.00 |
| (2) Party and Party Costs | \$ 25,000.00 |
| (3) Party & party disbursements | \$ 1538.70 |
| (4) Solicitor & Client costs | \$ 80,000.00 |
| (5) Solicitor & Client disbursements | \$ 20,000.00 |
| (6) Loan/advance to Client from TAN & PILLAI | \$ 40,000.00 |
| (7) Dispute by Client on advance/loan | \$ 8,000.00 |
| (8) Lien by Tan & Pillai | \$ 40,000.00 |
| (9) Payment to Client (payment to Nazrul as instructed by client) | \$ 78,000.00 |
| (10) Advance loan as per Client (less) | \$ 32,000.00 |

Apart from setting out the above, the Statement of Account did not provide any other particulars, *eg*, what the lien was for or how the sum of \$78,000 was arrived at.

16 Upset by the amount on the Invoice, the plaintiff made a police report on 19 October 2019 in which he stated that Nazrul and he had previously agreed that the defendant would be paid 5% to 10% of the amount paid on the plaintiff's claim.²⁴

17 On 30 October 2019, the plaintiff lodged a complaint with the Law Society against Nazrul, mistakenly thinking that Nazrul was a lawyer when he was not. The plaintiff has not lodged any complaint against the defendant although he has reserved his rights to do so.²⁵

18 On 6 December 2019, the plaintiff met up with the defendant after Nazrul asked him to do so. At this meeting, the defendant showed the plaintiff a cheque for \$78,000 being payment on his claim. The cheque was made payable to Nazrul as the plaintiff did not have a bank account in Singapore. The plaintiff also signed a document titled "Instructions from Rahaman Mohammad Moshiur to Tan & Pillai" (the "Instructions") in which, among other things, he discharged the defendant from liability for paying the sum of \$78,000 to him through Nazrul. The document also stated that the defendant was "holding on lien the Sum of **S\$40,000.00** ... to be resolved between the client and the firm on the issue of cost".²⁶

19 On 10 December 2019, the plaintiff met up with Nazrul who handed him \$78,000 in cash. The plaintiff signed a letter of acknowledgment titled "Acknowledgement Receipt of Cash S\$78,000.00" (the "Acknowledgment").²⁷

20 The plaintiff then sought help from Transient Workers Count Too ("TWC2"), a non-governmental organisation, regarding his compensation moneys. On 15 December 2019, he met with a representative from TWC2, Ms Deborah Desloge Fordyce ("Debbie"). On the same day, with Debbie's help, he

wrote to PTCPL’s insurers to inquire about the amounts paid to the defendant and the date of the payments. In the letter, he also said that TWC2 was assisting him in obtaining the information.²⁸

21 On 17 December 2019, the plaintiff returned to Bangladesh.

22 Debbie made numerous attempts to follow up with PTCPL’s insurers but to no avail. Eventually, on 6 October 2021, PTCPL’s insurers informed Debbie over the telephone that they paid the sum of \$251,538.70 comprising \$225,000 being damages, \$25,000 being legal costs and \$1,538.70 being disbursements.²⁹ The plaintiff’s allegation that this was the first time he became aware of the sums paid to the defendant was not disputed in any of the defendant’s affidavits.

23 On 14 October 2021, the plaintiff’s present lawyers, M/s Infinity Legal LLC (“Infinity Legal”) conducted a cause book search, which revealed that judgment for the Suit was entered on 17 May 2018.³⁰ According to the plaintiff, he did not know that judgment had been entered before that, and that he saw the judgment only after a copy was obtained by Infinity Legal on 19 November 2021.

24 On 5 November 2021, Infinity Legal wrote to the defendant and (a) demanded disclosure of the compensation sums that had been paid and payment of the same less the sum of \$78,000, and (b) requested that the defendant file a bill of costs for taxation. Reminders were sent on 15 and 16 November 2021. The defendant did not respond.³¹

25 On 20 December 2021, the plaintiff filed the present application pursuant to ss 120 and 122 of the Legal Profession Act (Cap 161, 2009 Rev Ed)

(“LPA”), for an order that the defendant’s bill of costs (*ie*, the Invoice) be taxed. The defendant contested the application.

“Special circumstances” under s 122 of the LPA

26 Under s 120 of the LPA, the court may order for the taxation of a bill of costs within 12 months from the delivery of the bill. This is subject to s 122 of the LPA which provides as follows:

Time limit for taxation of bills of costs

122. After the expiry 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.

27 The defendant argued that special circumstances had to be proved because the Invoice had been paid, and in any event, 12 months had expired since the delivery of the Invoice. He claimed that the Invoice was paid by way of deduction from the Judgment Sum on the plaintiff’s instructions.³² No evidence was presented by the defendant to support his claim. The plaintiff denied having given any such instructions.³³ I was satisfied that the plaintiff did not give any such instructions to the defendant. For reasons set out below, I found that the plaintiff had disputed the Invoice. Therefore, he would not have consented to the Invoice being paid, and the Invoice could not be said to have been paid for the purpose of s 122 of the LPA.

28 Nevertheless, it was common ground that more than 12 months had expired since the Invoice was delivered to the plaintiff. Although the Invoice was dated 4 June 2018, it was not disputed that the Invoice was in fact prepared in 2019 when the plaintiff visited the defendant at his office (see [13] above). More than 12 months had expired since then and, pursuant to s 122 of the LPA,

the plaintiff had to prove special circumstances to justify the making of an order for taxation of the defendant's bill of costs.

29 The relevant legal principles were not disputed. There is no rigid rule as to what kind of circumstances will justify the taxation of a solicitor's bill and what amounts to special circumstances depends on the facts of each case: *Wee Harry Lee v Haw Par Brothers International Ltd* [1979-1980] SLR(R) 603 at [15], citing the headnote to *Re Cheeseman* [1891] 2 Ch 289. It would thus not be expedient to provide an exhaustive list of what could constitute special circumstances under s 122: *Sports Connection Pte Ltd v Asia Corp and another* [2010] 4 SLR 590 at [31]. What is clear is that the special circumstances must address the fundamental question which s 122 poses, *ie*, why it is right to refer the solicitor's bill for taxation even though the client has allowed one or both of the disqualifying events under s 122 to be triggered: *Kosui Singapore Pte Ltd v Thangavelu* [2015] 5 SLR 722 ("*Kosui*") at [62].

30 I was satisfied that the plaintiff had shown special circumstances in the present case.

31 First, the fact that a solicitor's bill of costs does not provide sufficient information to enable the client to take an informed decision on whether or not to seek taxation, is a relevant factor: *Kosui* at [61(d)]. In the present case, the Invoice³⁴ clearly lacked sufficient particulars of the work done. According to the defendant's affidavit, the work done included filing a claim under the Work Injury Compensation Act (Cap 354, 2009 Rev Ed) ("*WICA*"). However, the Invoice did not refer to any such work. For completeness, the plaintiff eventually withdrew his claim under the WICA and proceeded with his claim under common law.³⁵ The Invoice also referred to work done in issuing "Summons in High Court and attending Court on more [than] 17 occasions". It

made no mention of the fact that the proceedings had been transferred to the State Courts or that in fact, 11 attendances were in the State Courts for Court Dispute Resolution, and the last of which was to enter judgment based on the settlement reached. Neither did it state the stage at which the case was settled. The Invoice also did not provide any details of the disbursements. The defendant patently failed to itemise the work done for the plaintiff in respect of the Suit leading up to the settlement and the corresponding cost breakdown for each item. The result was an Invoice containing a list of vaguely described items and unexplained lump sum costs.

32 Second, I rejected the defendant's allegation that the plaintiff was advised that he had the option to request that the bill of costs be taxed but the plaintiff had agreed with the Invoice.³⁶ The plaintiff denied the defendant's allegation.³⁷ I accepted the plaintiff's evidence that he had disputed the Invoice. The plaintiff's position was corroborated by the fact that he was so upset by the Invoice (and the sums stated therein) that he had filed a police report on 19 October 2019, two days after he was shown the Invoice (see [16] above) and had filed a complaint to the Law Society on 30 October 2019 (see [17] above).

33 In this connection, I accepted the plaintiff's explanation that he had decided to take the \$78,000 that was offered to him because he had known that that sum was part payment of his claim, and his intention was to follow up with the defendant to recover the balance.³⁸ The plaintiff was in a difficult and vulnerable position. He had had to borrow moneys from the defendant and had been waiting for full payment of his claim. His acceptance of this sum as part payment was therefore not inconsistent with his dispute of the bill.

34 Further, r 17(5) of the Legal Profession (Professional Conduct) Rules 2015 ("PCR") requires a legal practitioner to inform the client of his right to

taxation where the client disputes or raises a query about the bill. The defendant had breached his obligations under PCR r 17(5), and this is a relevant factor in finding special circumstances: *Tan Yi Ling Cheryl v Tan Yew Fai (trading as Y F Tan & Co)* [2022] SGHC 47 at [53(c)].

35 Third, the defendant did not inform the plaintiff that he received payment of the Judgment Sum by PTCPL’s insurers in June 2018. The request letter signed by the plaintiff in August/September 2019 (see [8(d)] above) stated that his claim had been settled and that the “compensation monies” had been received by M/s Tan & Pillai. However, the request letter did not state what was the amount received by M/s Tan & Pillai or when it was received. The plaintiff acted timeously in seeking help from TWC2/Debbie. Despite numerous attempts by Debbie to follow up with PTCPL’s insurers by way of telephone and/or email, it was not until 6 October 2021 that PTCPL’s insurers informed Debbie that the Judgment Sum had been paid to the defendant on 13 June 2018.³⁹ It was thus not unreasonable for the plaintiff to file the present application only after learning about this fact.

36 Fourth, the defendant had plainly taken advantage of the plaintiff’s circumstances and vulnerability by not informing the plaintiff of the receipt of the Judgment Sum or providing the plaintiff a particularised bill of costs or informing the plaintiff of his right to taxation. This was further supported by the following:

- (a) The plaintiff had to take loans from the defendant. Clearly, the plaintiff was in need of funds. The defendant should have informed the plaintiff of the receipt of the Judgment Sum, presented his bill of costs within a reasonable time thereafter, settled accounts with the plaintiff (with respect to payment of his bill and the loans), and paid the plaintiff

the balance that was due. The defendant did none of these things. Instead, despite having received the Judgment Sum, he had made a loan of \$5,000 to the plaintiff on 5 *March 2019* (see [8(c)] above), paid the plaintiff \$5,000 as “part-payment” of the plaintiff’s claim on 27 *September 2019* (see [8(d)] above) and made another loan of \$10,000 to the plaintiff in *October 2019* (see [8(e)] above).

(b) Deducting \$100,000 (the amount of the Invoice) and \$40,000 (the loans taken by the plaintiff, including the disputed amount of \$8,000) from the amount of \$251,538.70 (the Judgment Sum) leaves a balance of \$111,538.70. However, the defendant withheld \$40,000 in purported exercise of a lien and paid the plaintiff \$78,000. The defendant did not explain in any of his affidavits how the sum of \$78,000 was arrived at. Leaving that aside, the defendant gave conflicting explanations for the lien. The Instructions (see [18] above) stated that M/s Tan & Pillai was holding \$40,000 “on lien” pending resolution of “the issue of cost”. The defendant did not offer any explanation as to why there was an outstanding issue of costs when he had invoiced the plaintiff a total sum of \$100,000 as costs and disbursements. Before me, the defendant alleged that he held back \$40,000 because it was not clear what was the total amount of loans given to the plaintiff. This allegation was not mentioned in any of the defendant’s affidavits. It was also contrary to what was stated in the Instructions. Further, in one of his affidavits, Nazrul said that the disputed amount with respect to the loans was \$8,000.⁴⁰ The defendant himself said, in one of his affidavits, that the \$40,000 comprised “\$8,000 dispute on the loan to client and \$32,000 being the balance due to the client”.⁴¹ It was only after the defendant’s attention was drawn to this statement in his affidavit that the defendant conceded that of the \$40,000, the sum of \$32,000 belonged to the

plaintiff. The defendant then tried to explain that he had not returned the sum of \$32,000 to the plaintiff because he was waiting for the present proceedings to be over. In the light of the evidence, the defendant's explanation could only be described as contrived.

Conclusion

37 For the above reasons, I granted the plaintiff's application and ordered the defendant's bill to be taxed. I also ordered the defendant to pay costs to the plaintiff fixed at \$7,000 (inclusive of disbursements).

Chua Lee Ming
Judge of the High Court

Yow Choon Seng (Infinity Legal LLC) for the plaintiff;
Subbiah Pillai (Tan & Pillai) for the defendant.

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- ¹ Rahaman Mohammad Moshiur's Affidavit dated 19 December 2021 ("Rahaman's Affidavit") at p 2, para 2.
² Warrant to Act dated 21 December 2016, Exhibit "SP-1" of Subbiah Pillai's 3rd affidavit dated 29 March 2022 ("Subbiah's 3rd Affidavit") at p 13.
³ Rahaman's Affidavit at p 2, para 4.
⁴ Rahaman's Affidavit at p 2, para 5.
⁵ Rahaman's Affidavit at p 2, para 3.
⁶ Rahaman's submissions dated 17 May 2022 ("RS") at p 6, para 11; e-Litigation Cause Book search, Exhibit A Tab 11 of Rahaman's Affidavit, at pp 48–50.
⁷ Rahaman's Affidavit at p 3, para 8; Offer to Settle, Exhibit A Tab 1 of Rahaman's Affidavit, at p 13.
⁸ Final Judgment dated 17 May 2018, Exhibit A Tab 12 of Rahaman's Affidavit at p 73.
⁹ Rahaman's Affidavit at p 8, para 28; Deborah Desloge Fordyce's Affidavit dated 23 February 2022 ("Debbie's Affidavit") at p 2, para 6.

- ¹⁰ Rahaman’s Affidavit at pp 6–7, para 21; Acknowledgments and loan request documents, Exhibit A Tab 6 of Rahaman’s Affidavit at pp 29–33.
- ¹¹ Exhibit A Tab 6 of Rahaman’s Affidavit at p 29.
- ¹² Exhibit A Tab 6 of Rahaman’s Affidavit at p 30.
- ¹³ Exhibit A Tab 6 of Rahaman’s Affidavit at p 31.
- ¹⁴ Exhibit A Tab 6 of Rahaman’s Affidavit at p 32.
- ¹⁵ Exhibit “SP-1” of Subbiah Pillai’s 2nd Affidavit dated 28 February 2022 (“Subbiah’s 2nd Affidavit”) at p 5.
- ¹⁶ Rahaman’s Affidavit at p 7, para 21(v).
- ¹⁷ Rahaman’s Affidavit at p 4, para 10.
- ¹⁸ Rahaman’s Affidavit at p 4, para 12.
- ¹⁹ Rahaman’s Affidavit at p 4, para 13; Exhibit A Tab 2 of Rahaman’s Affidavit at p 15.
- ²⁰ Exhibit A Tab 3 of Rahaman’s Affidavit at p 17.
- ²¹ Subbiah’s 2nd Affidavit at p 4, para 31.
- ²² Exhibit SP-6 of Subbiah Pillai’s 3rd Affidavit dated 29 March 2022 (“Subbiah’s 3rd Affidavit”) at p 31.
- ²³ Exhibit SP-1 of Subbiah’s 2nd Affidavit at p 6.
- ²⁴ Exhibit A Tab 4 of Rahaman’s Affidavit at p 19.
- ²⁵ Rahaman’s Affidavit at p 6, para 19; Exhibit A Tab 5 of Rahaman’s Affidavit at p 21.
- ²⁶ Rahaman’s Affidavit at pp 6–7, paras 20–22; Exhibit A Tab 7 of Rahaman’s Affidavit at p 35.
- ²⁷ Rahaman’s Affidavit at p 7, para 24; Exhibit A Tab 8 of Rahaman’s Affidavit at p 38.
- ²⁸ Rahaman’s Affidavit at p 8, para 25–27; Exhibit A Tab 9 of Rahaman’s Affidavit at p 40.
- ²⁹ Debbie’s Affidavit at pp 2–3, para 6.
- ³⁰ Rahaman’s Affidavit at p 9, para 30; Exhibit A Tab 11 of Rahaman’s Affidavit at pp 48–50.
- ³¹ Rahaman’s Affidavit at pp 8–9, para 29; Exhibit A Tab 10 of Rahaman’s Affidavit at pp 42–46.
- ³² Subbiah’s 3rd Affidavit at p 10, para 74.
- ³³ Rahaman’s Affidavit at p 11, para 39.
- ³⁴ Exhibit A Tab 3 of Rahaman’s Affidavit at p 17.
- ³⁵ Subbiah’s 3rd Affidavit at pp 1–2, paras 6–8.
- ³⁶ Subbiah Pillai’s 1st Affidavit dated 25 January 2022 (“Subbiah’s 1st Affidavit”) at p 2, paras 20–22.
- ³⁷ Rahaman’s Affidavit at p 10, para 33 and para 38.
- ³⁸ Rahaman’s Affidavit at p 7, para 23.
- ³⁹ Debbie’s Affidavit at pp 2–3, para 6.
- ⁴⁰ Mohammad Nazrul Islam’s Affidavit dated 28 February 2022, at p 2, para 8.
- ⁴¹ Subbiah’s 2nd Affidavit at p 2, para 9.