IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2025] SGCA 25

Court of Appeal / Originating Application No 10 of 2025

Between

Clarence Lun Yaodong

… *Applicant*

And

Dentons Rodyk & Davidson LLP

… *Respondent*

JUDGMENT

[Arbitration — Agreement — Scope]
[Arbitration — Arbitrability and public policy]
[Arbitration — Stay of court proceedings]
[Civil Procedure — Appeals — Permission]
[Civil Procedure — Costs — Taxation]

Lun Yaodong Clarence
v
Dentons Rodyk & Davidson LLP

[2025] SGCA 25

Court of Appeal — Originating Application No 10 of 2025
Sundaresh Menon CJ and Steven Chong JCA
29 April 2025

11 June 2025 Judgment reserved.

Sundaresh Menon CJ (delivering the judgment of the court):

Introduction

1 The applicant, Mr Clarence Lun Yaodong ("Mr Lun"), instructed solicitors from the respondent law firm, Dentons Rodyk & Davidson LLP ("Dentons"), to act for him in disciplinary proceedings before the Court of Three Judges (the "C3J"). Mr Lun was facing charges centred around his acting as a supervising solicitor of two practice trainees when he was not qualified to do so. At the close of those proceedings, the C3J found that the charges were made out and imposed a sanction of suspension from practice for a period of 18 months: see *Law Society of Singapore v Lun Yaodong Clarence* [2023] 4 SLR 638 ("*Clarence Lun (C3J)*").

2 Although Mr Lun has since served the suspension and returned to practice as an advocate and solicitor, Dentons has not been able to obtain

payment of its professional fees. Mr Lun has raised all manner of dispute to its entitlement to fees and has also challenged the quantum thereof. Given the impasse between the parties, Dentons applied to the General Division of the High Court in HC/BC 123/2024 ("BC 123") to have its bill of costs assessed. BC 123 was filed on a "by-consent" basis under s 120(3) of the Legal Profession Act 1966 (2020 Rev Ed) ("LPA") on the basis that Mr Lun had repeatedly asked Dentons to do this. However, Mr Lun now says that BC 123 should be stayed under s 6 of the Arbitration Act 2001 (2020 Rev Ed) ("AA") because there is a dispute as to whether the Letter of Engagement ("LOE") he entered into with Dentons is valid. Mr Lun maintains that this issue should be referred to arbitration pursuant to the following dispute resolution clause found at cl 42 of Dentons' Terms of Business (which were incorporated by reference into the LOE):

> Except for disputes concerning the amount or non-payment of part or all of our bills, any dispute arising out of or in connection with this engagement, including any question regarding its existence, validity or termination, shall be referred to mediation at the Singapore Mediation Centre. If the dispute cannot be resolved within 3 months of its reference to mediation, then either party may refer the dispute to arbitration in Singapore in accordance with the Arbitration Rules of the Singapore International Arbitration Centre ("SIAC Rules") applicable at the date of reference.

3 An Assistant Registrar (the "AR") dismissed Mr Lun's application to stay BC 123 on the basis that the subject matter of BC 123 fell outside the scope of the parties' submission to arbitration and was instead within the carve-out in the clause that covered "disputes concerning the amount or non-payment of part or all of [Dentons'] bills" (the "Carve-Out"). This decision was later affirmed on Mr Lun's appeal by a Judge of the General Division of the High Court (the "Judge"). In the present application, Mr Lun seeks permission to appeal against the Judge's decision to this court on the ground that the Judge erred in law.

4 Having considered the parties' submissions, we are satisfied that the Judge did not err. In our judgment, this application turns on a construction of the dispute resolution clause that bound the parties. Notably, the parties intentionally identified different fora to which they allocated the resolution of different issues. In our judgment, on a true construction of that clause, the parties intended to have the assessment of the quantum of Dentons' bills determined by the court and, further, that this could take place independently of the resolution of any dispute over the validity of the LOE. Seen in this light, what Mr Lun seeks to do, by intermeshing the two disputes, is contrary to the parties' agreement. The Judge was correct to respect the parties' agreement and to decline to stay BC 123 based on Mr Lun's dispute over the validity of the LOE. Accordingly, we refuse permission to appeal and dismiss the application. We now explain our decision more fully.

Background to the parties' dispute

5 Sometime in June 2021, a Disciplinary Tribunal ("DT") was constituted to hear and investigate allegations against Mr Lun for, among other things, acting as a supervising solicitor of two practice trainees when he was not qualified to do so.

6 Although he was initially represented by different counsel, Mr Lun subsequently instructed a team of solicitors from Dentons, led by Mr Mark Seah ("Mr Seah"), to act for him pursuant to the LOE dated 20 September 2021.

7 Mr Lun's engagement with Dentons proceeded without incident during the proceedings before the DT. On 11 November 2021 and 14 January 2022, Dentons issued two invoices for work done in the respective periods from 27 September 2021 to 28 October 2021 and 29 October 2021 to 17 December 2021. It was communicated by Mr Seah to Mr Lun when these invoices were

issued that Dentons had significantly discounted its fees as a "gesture of goodwill", on account of the challenges Mr Lun was facing during what was a difficult period. Both these invoices were paid by Mr Lun without dispute and are not the subject of BC 123.

8 On 22 March 2022, the DT found that there was cause of sufficient gravity under s 93(1)(*c*) of the Legal Profession Act (Cap 161, 2009 Rev Ed) for Mr Lun's matter to be referred to the C3J: see *Law Society of Singapore v Clarence Lun Yaodong* [2022] SGDT 9. This gave rise to the proceedings in *Clarence Lun (C3J)*.

9 Mr Lun claims that, at this point, after the release of the DT's decision and prior to the C3J proceedings, he contemplated changing his solicitors and ending his engagement of Dentons and Mr Seah. His concerns were twofold: (a) first, the necessity of engaging Senior Counsel or more experienced practitioners to handle the C3J proceedings; and (b) second, the professional fees that Dentons would charge for acting for him in the C3J proceedings as he was "facing difficult times".

10 In a nutshell, Mr Lun accuses Mr Seah of having misrepresented the position in relation to these two areas of concern, and that the effect of these misrepresentations was to induce him to retain Dentons and Mr Seah to act for him in the C3J proceedings. As to the misrepresentations:

> (a) First, Mr Lun claims that he communicated with various members of the Bar who had advised him to engage Senior Counsel or suggested other experienced practitioners who would be willing to act for him on a pro bono or on a significantly discounted basis. After Mr Lun relayed these exchanges to Mr Seah, Mr Seah informed him that he

wished to continue acting for Mr Lun before the C3J and that he considered himself sufficiently capable to do so, having already become acquainted with Mr Lun's matter from the proceedings before the DT. Mr Lun characterises these alleged statements by Mr Seah as the "Competency Representation".

(b) Second, Mr Lun claims that he broached the issue of Dentons' estimated fees for acting for him in the C3J proceedings with Mr Seah on multiple occasions and at different stages of the C3J proceedings. On each occasion, Mr Seah assured him that Dentons' fees would not be substantial "as most of the work and research had already been undertaken during the proceedings before the [DT]". Mr Lun characterises these alleged assurances as the "Professional Fee Representation".

11 The C3J proceedings concluded on 10 October 2022 with the imposition of an 18 months' suspension on Mr Lun: *Clarence Lun (C3J)* at [97] and [103]. Mr Lun was dissatisfied with this outcome, and the relationship between Mr Lun and Mr Seah soured almost immediately. Mr Lun began criticising Mr Seah for, among other things, what he perceived to be Mr Seah's poor performance before the C3J, as well as allegedly poor strategic decisions that Mr Seah had taken in representing Mr Lun before the C3J. Furthermore, after Mr Seah raised the issue of Dentons' fees for the C3J proceedings, Mr Lun complained about the quantum of the fees and an alleged lack of transparency on Mr Seah's part given (a) Mr Seah's knowledge that Mr Lun had received offers from other practitioners to act for him without cost or at a heavily discounted rate; (b) the assurances that Mr Seah had allegedly given by way of the Professional Fee Representation; and (c) the financial difficulties that Mr Lun was facing in the aftermath of his suspension.

12 These grievances, among others, were conveyed by Mr Lun in WhatsApp messages sent to Mr Seah on 23 December 2022, in which he also requested that Dentons defer the issue of its fees until he had completed his suspension. At the same time, however, Mr Lun also said that "if [Mr Seah] really want[ed] to, [he could] go and tax the bills". Mr Lun subsequently repeated this stance when Mr Seah reached out to him yet again to discuss the issue of Dentons' fees:

(a) Between 9 October 2023 and 10 October 2023, after Mr Seah had on 3 October 2023 informed Mr Lun that he "would need to speak to [Mr Lun] about the issue of billing", the following exchange ensued between Mr Lun and Mr Seah:

> Mr Lun: Mark, I have already told you in my message to you on 23 December to proceed to tax the bill. I don't know what is unclear in my message to you. I will also proceed with any necessary action as I deem fit.
>
> Mr Seah: Thanks Clarence. I re-read your 23 Dec message to make sure that I understand correctly. I believe that you are saying that if there is friendship left between us, my firm should wait for your return to sort out the billing matters rather than exercise our right to tax the bills. I don't want to make things any more difficult for you but am myself in a difficult situation– which is why I wanted to speak with you. But let me consider, discuss internally and see what I can do.

(b) On 7 December 2023, Mr Lun responded to Mr Seah in terms which suggested that he wished to leave no ambiguity in his instructions that Dentons should proceed to have its bills assessed by the court:

> Hi Mark, I believe you interpret the message differently from what I meant and intended. I will be clear and

> unequivocal in my message to you then – please apply for taxation for your bills.

13 On 30 April 2024, Mr Lun filed a complaint against Mr Seah to the Law Society of Singapore (the "Law Society" and the "Complaint"). The Complaint was dismissed by a Review Committee of the Law Society on 30 October 2024. Mr Lun has since filed HC/OA 1212/2024 ("OA 1212") seeking permission to commence an application for judicial review of the dismissal of the Complaint. Most recently, following the dismissal of OA 1212 by the General Division of the High Court on 28 April 2025, Mr Lun has filed an appeal to this court in CA/CA 12/2025, which remains pending at the time of our decision in this application.

14 On 18 September 2024, Dentons filed BC 123 seeking the assessment of its solicitor-and-client costs which had been billed in two invoices relating to work done for Mr Lun in the C3J proceedings. As mentioned at [2] above, BC 123 was filed on a "by-consent" basis under s 120(3) of the LPA as Dentons took the position that it was following Mr Lun's instructions that it should have its bill of costs assessed by the court (see [12] above).

15 On 24 October 2024, Mr Lun filed his Notice of Dispute in BC 123 in which he took the position that Dentons should be awarded no costs at all for the work done for him in the C3J proceedings. The stated basis for this position was that the Competency Representation and Professional Fee Representation rendered the retainer void for misrepresentation. Mr Lun also indicated his intention to seek a stay of BC 123 in favour of arbitration based on the dispute resolution clause at cl 42 of Dentons' Terms of Business.

16 On 27 October 2024, Mr Lun filed HC/SUM 3129/2024 seeking a stay of BC 123. The AR dismissed Mr Lun's application. Mr Lun subsequently

appealed against the AR's decision in HC/RA 18/2025, which was dismissed by the Judge. The application before us arises out of the Judge's decision.

Decision below

17 The primary basis for the AR's refusal to stay the proceedings in BC 123 was her conclusion that the subject matter of BC 123 fell within the scope of the Carve-Out in that it was a dispute "concerning the amount or non-payment of part or all of [Dentons'] bills". It was therefore not subject to the parties' agreement to arbitrate. The AR elaborated that, even if Mr Lun were to succeed in any arbitration in his allegations on the Competency Representation and the Professional Fee Representation, "there [was] no question that the parties had a solicitor-and-client relationship and work was done". Thus, the AR considered that the dispute in BC 123 related to the proportionality of costs claimed by Dentons, and this was a matter of taxation or assessment falling within the scope of the Carve-Out.

18 The AR also observed in passing that there was a "broader, public policy element at play" in refusing to stay BC 123. She noted that the assessment of costs procedure constituted a form of judicial control over or oversight of the professional fees charged by a solicitor giving rise to "ethical issues". Although it is not entirely clear what followed from this, it seems to us that the AR may have considered that disputes over the taxation or assessment of solicitor-and-client costs were not arbitrable.

19 Finally, the AR noted that Mr Lun had instructed Mr Seah to have Dentons' bills assessed by the court, and doubted his explanation that he had done so because he was unaware of the dispute resolution clause in Dentons' Terms of Business until he reviewed the papers filed in BC 123. While it is not quite clear what followed from this, it seems from our review of the submissions

made before the AR that she may have agreed with Dentons' submission that Mr Lun had waived any right to rely on the dispute resolution clause by repeatedly directing Dentons to have its costs assessed.

20 In her brief oral remarks delivered at the hearing, the Judge agreed with the AR that Mr Lun could not bring himself within the scope of s 6 of the AA because BC 123 fell within the Carve-Out.

The parties' submissions

21 In this application, Mr Lun seeks permission to appeal against the Judge's decision on the sole ground that there is a *prima facie* case of error in the Judge's decision. According to Mr Lun, the Judge failed to identify the matters arising in BC 123 in accordance with the approach set out in our recent decision in *COSCO Shipping Specialized Carriers Co, Ltd v PT OKI Pulp & Paper Mills and others and another matter* [2024] 2 SLR 516 ("*COSCO*"). If the Judge had correctly applied the principles, she should have appreciated that (a) Mr Lun was disputing the validity of the LOE on grounds of misrepresentation based on the Competency Representation and Professional Fee Representation; and (b) this dispute fell within the scope of the parties' agreement to arbitrate as a dispute relating to the "existence, validity or termination" of the LOE. This should have justified a stay of BC 123.

22 To buttress his position, Mr Lun also raises the following points:

(a) First, the Carve-Out should be interpreted as being limited to "straightforward disputes about quantum or non-payment where there is no challenge to the validity, existence or termination of the retainer" and thus would not cover the sort of dispute he has raised, which goes to the validity of the LOE.

(b) Second, a refusal of a stay of BC 123 would result in a multiplicity of proceedings if the validity of the LOE were to be determined in BC 123 and separately in arbitration.

(c) Third, a stay of BC 123 would be consistent with the pro-arbitration policy of the Singapore courts, which weighs in favour of enforcing arbitration agreements and staying court proceedings in favour of arbitration.

23 Dentons, on the other hand, submits that the Judge did not commit any error of law. On the contrary, the Judge was correct to keep the assessment proceedings in BC 123 separate from Mr Lun's challenge to the validity of the LOE. BC 123 concerns the amount of fees which Dentons is entitled to bill Mr Lun for its services; this clearly falls within the Carve-Out being a dispute over the amount of Dentons' fees. The fact that Mr Lun has chosen to raise a dispute on the validity of the LOE in BC 123 cannot change the nature of the dispute in BC 123 and bring it within the scope of the arbitration agreement.

Our decision

24 The principles governing applications for permission to appeal based on a *prima facie* case of error are well-established. Given that the crux of Mr Lun's case is that the Judge failed to follow the approach laid down in *COSCO*, his case seems to be centred on an alleged error of law. In such a case, an applicant would succeed in making out a *prima facie* case of error if two things are established: (a) the appeal is likely to succeed (this being a standard that goes beyond presenting what is merely an arguable case); and (b) there is a likelihood of substantial injustice if permission was not to be granted: *Zhou Wenjing v Shun Heng Credit Pte Ltd* [2023] 4 SLR 1599 at [37].

25 The court's power to stay court proceedings in so far as they relate to a matter that is subject to an arbitration agreement is set out in s 6(1) of the AA. An important difference between s 6 of the AA, which applies to domestic arbitration, and s 6 of the International Arbitration Act 1994 (2020 Rev Ed), which applies to international arbitration, is that the court retains some discretion under s 6(2) of the AA to refuse a stay of proceedings even if they engage a matter that is subject to an arbitration agreement: *CSY v CSZ* [2022] 2 SLR 622 at [1]. In *Moveon Technologies Pte Ltd v Crystal-Moveon Technologies Pte Ltd* [2024] 6 SLR 653, the court helpfully set out the analytical framework for considering whether to grant a stay of proceedings under s 6 of the AA, which we would articulate as follows (at [8]):

(a) First, is there a valid arbitration agreement between the parties to the court proceedings?

(b) Second, does the dispute in the court proceedings (or any part thereof) fall within the scope of the arbitration agreement?

(c) Third, has the applicant for the stay of the court proceedings taken any step in those proceedings?

(d) Fourth, does the stay applicant remain ready and willing to arbitrate the dispute?

(e) Fifth, is there "sufficient reason" why the matter should not be referred to arbitration in accordance with the arbitration agreement?

26 The present case centres around the second of these requirements. In this regard, we clarified in *COSCO* that a two-stage test should be applied to determine whether the court proceedings implicate any matter falling within the scope of an arbitration agreement between the parties (at [68]):

(a) at the first stage, the court should determine the matter(s) or dispute(s) which the parties have raised or foreseeably will raise in the court proceedings; and

(b) at the second stage, the court should ascertain whether such matter(s) or dispute(s) fall within the scope and ambit of the arbitration clause.

27 Mr Lun's complaint focuses on the first of the two stages above. In essence, he contends that the Judge glossed over the first stage of the analysis and failed to identify the validity of the LOE as a matter that necessarily arose in BC 123, and that the question of the validity of the LOE was the subject of the parties' arbitration agreement.

Whether the dispute over the validity of the LOE is a matter arising in BC 123

The applicable law

28 It is useful to start with a few basic propositions which are of particular importance in this case.

29 First, the determination of whether a court proceeding engages a matter that is subject to an arbitration agreement between the parties calls for a focus on the substance of the matter over its form. As Foxton J observed in *Riverrock Securities Ltd v International Bank of St Petersburg (Joint Stock Co)* [2021] 2 All ER (Comm) 1121 ("*Riverrock*"), "whether the dispute [falls] within the arbitration agreement involve[s] looking at the *substance* of the dispute, rather than the *particular legal vehicle* through which it [is] being advanced" [emphasis added] (at [64]). In *COSCO*, we similarly emphasised that the court's focus is on "the substance of the controversy between the parties", and this

question was not appropriately resolved by a formalistic review of the parties' pleadings (at [71]–[72]). Given this, it would not suffice for the court to simply look at BC 123 at the highest level of abstraction as a dispute over the assessment of Dentons' solicitor-and-client costs. To borrow the words of Foxton J, that would be to allow the "legal vehicle" through which the parties' dispute has come before the court to obfuscate the "substance of the controversy".

30 Second, the mere assertion of a dispute that comes within the scope of an arbitration agreement does not inexorably and automatically trigger the operation of s 6 of the AA. In *Tomolugen Holdings Ltd and another v Silica Investors Ltd and other appeals* [2016] 1 SLR 373 ("*Tomolugen*"), we observed that whether there is a "matter" covered by an arbitration clause that would necessitate a stay calls for "a practical and common-sense inquiry in relation to any reasonably substantial issue that is *not merely peripherally or tangentially connected to the dispute in the court proceedings*" [emphasis added] (at [113]). In a pair of recent decisions handed down respectively by the UK Supreme Court and the Judicial Committee of the Privy Council ("Privy Council") in *Republic of Mozambique v Privinvest Shipbuilding SAL (Holding) and others* [2023] Bus LR 1359 ("*Mozambique*") (at [75]) and *FamilyMart China Holding Co Ltd v Ting Chuan (Cayman Islands) Holding Corpn* [2024] Bus LR 190 ("*FamilyMart*") (at [61]), Lord Hodge DPSC cited with approval the aforesaid extract from *Tomolugen*, and noted that "[i]f the 'matter' is not an essential element of the claim or of a relevant defence to that claim, it is not a matter in respect of which the legal proceedings are brought". His Lordship went on to say, and with which we respectfully agree, that (*Mozambique* at [77]; *FamilyMart* at [65]):

> … the exercise involving a judicial evaluation of the substance and relevance of the "matter" entails a question of judgment

> and the application of common sense rather than a mechanistic exercise. *It is not sufficient merely to identify that an issue is capable of constituting a dispute or difference within the scope of an arbitration agreement without carrying out an evaluation of whether the issue is reasonably substantial and whether it is relevant to the outcome of the legal proceedings of which a party seeks a stay whether in whole or in part.* … [emphasis added]

It follows from this that if the resolution of an issue that the parties have agreed to submit to arbitration is not an essential step in the resolution of the dispute in the court proceedings, the issue in question will not constitute a matter that arises in the court proceedings and there will thus generally be no warrant for staying the court proceedings.

31 Third, as much as it has become common place for courts dealing with questions on the scope of arbitration agreements to recite the so-called "one-stop shop" presumption articulated by Lord Hoffmann in *Fiona Trust & Holding Corporation and others v Privalov and others* [2008] 1 Lloyd's Rep 254 ("*Fiona Trust*") – that is, that "the parties, as rational businessmen, are likely to have intended any dispute arising out of the relationship into which they have entered or purported to enter to be decided by the same tribunal" (at [13]) – that cannot be applied indiscriminately. The *Fiona Trust* principle is simply a presumption of *the parties' intentions*. If, therefore, the language of the parties' dispute resolution agreement(s) and the relevant circumstances as a whole reveal a contrary intention, there is no basis for superimposing a different intention. In *Asiana Airlines, Inc v Gate Gourmet Korea Co, Ltd and others* [2024] 2 SLR 279, we cautioned against ascribing undue weight to the risk of forum fragmentation, especially in the context of arbitration agreements, because such disputes are inherently prone to forum fragmentation (at [88]). This was reiterated, shortly after that, at the outset of our grounds of decision in *COSCO* (at [4]–[5]). To put the point differently, the *objective* risk of forum fragmentation is a *neutral factor* in the analysis of whether a dispute falls within

the scope of an arbitration agreement, because what actually matters is *whether the parties did or did not intend the fragmentation*. It might be that the court considers it a matter of regret that the parties' dispute may be resolved less efficiently than if it were centralised, and it could on occasion intervene through the judicious use of its case management powers, but otherwise, fragmentation must be accepted as "the inevitable result of upholding the parties' bargain": *Sodzawiczny v Ruhan and others* [2018] 2 Lloyd's Rep 280 at [44].

The validity of the LOE is not a matter in BC 123

32 Turning to identify the substance of the controversy in this case, it is apparent from the Notice of Dispute filed by Mr Lun that there are broadly two areas of dispute between the parties: (a) first, whether the LOE is invalid due to misrepresentation; and (b) second, whether the fees claimed by Dentons are fair, reasonable and proportionate to the work done. It is indisputable that the second of these is a matter arising in BC 123 and that it falls within the scope of the Carve-Out. It is also not disputed by Dentons that the validity of the LOE is an issue that falls within the scope of the agreement to arbitrate in cl 42 of Dentons' Terms of Business. The narrow question that we are concerned with, and which this application turns on, is whether the validity of the LOE is a matter which is an essential element of the dispute in BC 123 so as to warrant staying the latter.

33 As a starting point, although Mr Lun has not referred us to any authority, we are willing to accept that a dispute over the validity of a retainer can arise in the context of a proceeding for the assessment of solicitor-and-client costs. *Riaz LLC v Sharil bin Abbas (through his deputy and litigation representative, Salbeah bte Paye)* [2013] SGHCR 18 ("*Riaz (HCR)*") illustrates the point. In that case, a solicitor entered into a contract with a client who had suffered a severe brain injury. In subsequent taxation proceedings initiated by the solicitor,

the client's litigation representative asserted that the solicitor was not entitled to any costs as the contract was voidable due to the client's lack of capacity at the material time. The court held that it had the jurisdiction to determine the validity of the contract as an issue in the taxation proceedings on the ground that "where the determination of an issue is of utmost importance to and fundamental to the taxation proceeding, a taxing Registrar undoubtedly has the discretionary power to make that determination" (at [33]).

34 The same view has been taken by the English courts. In *Jones v Richard Slade and Co Ltd* [2023] 1 WLR 383 ("*Jones*"), the English High Court considered whether it had the jurisdiction in an assessment of costs proceeding to set aside an agreement between a solicitor and client on grounds of undue influence or economic duress. Although the court answered this in the negative, this was on the basis that it considered this to be a "freestanding enquiry" that involved "the exercise of a distinct equitable jurisdiction which form[ed] no part of an assessment of costs" (at [46]). The court was, however, substantially of the same mind as the court in *Riaz (HCR)* that a question of the validity of the retainer could be determined within the assessment of costs if "it [was] necessary to do so as part of the process of assessing costs" (at [43]).

35 Although *Riaz (HCR)* and *Jones* at first blush might appear to lend support to Mr Lun's position that the alleged invalidity of the LOE is a matter arising in BC 123, we do not think this is so. These cases establish that a court that is engaged in assessing a solicitor's bill of costs may deal with the question of the validity or existence of the retainer if it is necessary to do so. But in neither of these cases were the courts faced with a situation where the parties had *specifically* hived off disputes over the validity of the retainer to arbitration, while keeping any dispute over the quantum of costs as a matter within the court's jurisdiction. The statement in *Riaz (HCR)* that the court could determine

the validity of the retainer if it was "of utmost importance to and fundamental to the taxation proceeding" must be seen in that context; it did not speak to the possibility of assessing costs *on the basis of certain assumptions as to the existence of the retainer* while leaving the determination of the validity of the retainer to a different forum.

36 In our judgment, there is no reason why the determination of the validity of the retainer must necessarily occur *before* the court undertakes an assessment of solicitor-and-client costs. In an assessment (or taxation) proceeding, the court is primarily concerned with the *quantum* of costs that a solicitor should be entitled to based on the work done, rather than the *liability* of a particular person to pay the solicitor's costs. As Scott LJ noted in *Gomba Holdings (UK) Ltd and others v Minories Finance Ltd and others (No 2)* [1993] Ch 171, "'taxation' is no more than the name given to the quantification process whereby the amount of recoverable costs and disbursements is ascertained" (at 189). In the decision of this court in *Kosui Singapore Pte Ltd v Thangavelu* [2016] 2 SLR 105, Judith Prakash J (as she then was) made the following observations on the nature of taxation proceedings (at [36]):

> Taxation is a specific remedy for fixing the quantum of costs that are payable by a litigant/client whether on a party-and-party basis or to his own solicitor. The statutory regime of taxation in the LPA and the ROC has been instituted to create a process to enable a party to get the court to fix a reasonable quantum of costs. That process has nothing to do with private law rights in tort or contract.

37 Accordingly, we see no objection in principle to having the court assess the quantum of fees that a solicitor may be entitled to independent of a determination of whether a particular person should be liable to the solicitor for those costs. Seen in this light, the determination of the validity of the LOE is

not an "essential element" of resolving the dispute over the quantum of Dentons' fees (see [30] above).

38 Given that the validity of the LOE is not a matter which arises in BC 123, that issue, along with Mr Lun's allegations of misrepresentation based on the Competency Representation and the Professional Fee Representation, should not be dealt with by the taxing registrar when assessing Dentons' costs. If Mr Lun is desirous of pursuing the issue of the alleged invalidity of the LOE, he is at liberty to do so within the terms of the parties' agreement under cl 42 of Dentons' Terms of Business, by initiating a claim to this end and seeking what remedies may be available to him if he were to succeed in his claim. This might include, for example, the repayment of any sums(s) that he may have paid to Dentons by that time.

39 It is true that this result will lead to the fragmentation of the parties' dispute in that the validity of the LOE would be determined in arbitration while the quantum of Dentons' fees will be dealt with in BC 123. This may be inconvenient, but as mentioned at [31] above, that is not a reason for the court to resist enforcing the parties' agreement. This is especially so where, as in the present case, the parties have *specifically* carved-out certain disputes to be resolved in a different forum from others. In such a case, the fragmentation of the parties' dispute is not only an inherent vice of the parties' arrangement, but precisely what they intended. The parties agreed, by cl 42 of Dentons' Terms of Business, that disputes over the validity of the LOE would be resolved separately from a dispute over the quantum or non-payment of Dentons' fees. It would defeat the purpose of the Carve-Out if Mr Lun were permitted to seek a stay of the latter dispute in BC 123 by rolling up allegations concerning the former dispute into BC 123 as he has sought to do in the Notice of Dispute.

40 We therefore consider that the Judge and the AR did not err in concluding that the proceedings in BC 123 did not touch on any matter which the parties had agreed to resolve by arbitration. As Mr Lun has failed to establish a *prima facie* case of error on the Judge's part, we refuse permission to appeal and dismiss the application. However, we will, for completeness, go on to address two more matters.

Whether a case management stay should be ordered

41 Although Mr Lun has not applied for a case management stay, we have considered the appropriateness of making such an order in the present case. It is well-established that the power to order a case management stay flows from a different source and serves a different purpose than the statutory power to stay proceedings under s 6 of the AA. In brief, the former arises from the court's inherent power to manage its own internal processes, and is concerned with the facilitation of the fair and efficient administration of justice; the latter, on the other hand, arises from statute, and is concerned with the enforcement of the parties' agreement: *Gulf Hibiscus Ltd v Rex International Holding Ltd and another* [2017] SGHC 210 at [59]; *DJA v DJB* [2024] 5 SLR 815 at [43]–[46].

42 In our judgment, it is unnecessary and indeed would be inappropriate for us to order a case management stay for the following reasons.

43 First, Mr Lun has not sought a case management stay. We therefore do not think we should intervene in the absence of grounds for thinking that the AR's and the Judge's decision was erroneous.

44 Second, we do not think that the vice to which the case management stay is directed features in this case. In *Rex International Holding Ltd and another v Gulf Hibiscus Ltd* [2019] 2 SLR 682, we observed that "in order for case

management concerns to be relevant at all, there must first be the existence or at least the imminence of separate legal proceedings giving rise to a real risk of overlapping issues" (at [11]).

45 However, it seems to us that any dispute over the validity of the LOE can be avoided by the court when determining the quantum of Dentons' fees. Specifically, we think that the assessment of Dentons' bills could proceed on alternate bases: (a) first, on the basis that the LOE is valid; and (b) second, on the alternative basis that the LOE is invalid, in case there is any difference, which may or may not be the case, as can be seen at [48] below.

46 Although unorthodox, we do not see any insurmountable difficulty in a taxing registrar proceeding in this way. It is clear from the AR's decision that she thought Mr Lun's challenge to the validity of the LOE posed no difficulty to the assessment of Dentons' bills, because even if he were to succeed, there was no question that work was done by Dentons for Mr Lun (see [17] above). It appears that the AR considered that Dentons could, for instance, claim its costs based on *quantum meruit* even if the LOE was found to be invalid. In our view, the assessment of Dentons' costs in BC 123 on the alternative basis outlined above could proceed in this way.

47 The courts are accustomed to assessing solicitors' costs even in the absence of an agreement between the parties on a specified rate or basis on which the client will be charged. For example, in a case of an implied retainer where the hourly rates or other charges are not discussed or agreed, the law will imply an agreement to pay a reasonable rate, and the solicitors' costs will be assessed on a *quantum meruit* basis: see the decision of the Privy Council in *Kellar and Carib West Ltd v Williams* [2005] 4 Costs LR 559 at [18]–[19]. This is also consistent with the holding of the High Court in *Tommy Choo, Mark Go*

& Partners v Kuntjoro Wibawa [2014] 3 SLR 225, that a client's challenge to the rates stated in a warrant to act on the basis that these had been subsequently superseded by an oral agreement, was no impediment to proceeding with taxation of the solicitor's bill because, in the final analysis, the taxing registrar "[would] have to decide whether the amounts claimed were fair and equitable … irrespective of the rates stated in the warrant to act" (at [10]).

48 Something of a contrary view was expressed in *Riaz LLC v Sharil bin Abbas (through his deputy and litigation representative, Salbeah bte Paye)* [2013] 4 SLR 736 where it was noted that "[t]axation of a bill of costs is an inappropriate procedure … to claim *quantum meruit*" (at [11]). We respectfully disagree. As Millett LJ observed in *Otieno v Payne Hicks Beach (a firm)* [1996] Lexis Citation 3850, "an untaxed bill of costs is in essence a claim in quantum meruit for work done". Taxation is, in a sense, a process for the quantification of a solicitor's claim for *quantum meruit*. Seen from this perspective, there ought to be no difficulty with a taxing registrar assessing Dentons' costs on a *quantum meruit* basis. To similar effect is the decision of the Hong Kong Court of First Instance in *Sutherland v CRB (a firm)* [2023] 1 HKLRD 1, where the court considered that, if it was wrong in its primary finding that there was a retainer and an agreement based on the rates found in an unsigned retainer, the solicitors could nonetheless "still recover costs on a *quantum meruit* basis", which the court would have assessed at the same rates found in the unsigned retainer as these were not demonstrated to be excessive (at [37]).

49 Third, we do not see any risk of prejudice to Mr Lun in allowing the assessment of Dentons' costs in BC 123 to proceed. In so far as Mr Lun may subsequently succeed in establishing his allegations of misrepresentation in arbitration or if the outcome of any arbitration may otherwise have an impact on the amount of fees that Mr Lun should pay (or should not have paid) to

Dentons, there is no reason to think that Dentons, being a large law firm, would not be able to repay such sum(s) that it may have been overpaid.

50 Fourth, although we do not rely on this as a basis for refusing a stay in and of itself, in our view there is a reasonable basis for believing that Mr Lun's allegations of misrepresentation and his ill-conceived attempt to stay the proceedings in BC 123 are a ploy to delay settling Dentons' fees.

51 It is striking that, despite having previously (and repeatedly) instructed Mr Seah and Dentons to have their bill of costs assessed by the court (see [12] above), Mr Lun has now done an about-turn by raising a rather belated challenge to the validity of the LOE as a ground for postponing the assessment in BC 123. The impression one gets from Mr Lun's conduct is that, despite Dentons having effectively acceded to his request to postpone the issue of fees until his return from his suspension by waiting for close to two years after *Clarence Lun (C3J)*, before it filed BC 123, Mr Lun has now decided that he does not wish to pay any fees at all or, at the very least, that he will drag the matter for as long as possible. It is also regrettable that, despite having attracted the C3J's criticism that he had displayed a lack of remorse (*Clarence Lun (C3J)* at [71]) and despite receiving what was observed by the court to be "a lenient sentence in all the circumstances" (*Clarence Lun (C3J)* at [102]), Mr Lun has chosen to shift the blame to Mr Seah instead of coming to terms with his own misconduct. Be that as it may, regardless of what Mr Lun's intentions are, we consider it appropriate for the assessment of Dentons' costs in BC 123 to proceed such that some progress may finally be made in the resolution of the parties' dispute.

52 For these reasons, we do not think it necessary or appropriate to impose a case management stay of BC 123.

The arbitrability of taxation or assessment disputes

53 Finally, although the point does not strictly arise given the Carve-Out, we briefly address the question of the arbitrability of a dispute over the taxation or assessment of a solicitor's bill of costs given the AR's intimation of her view that such a dispute was not arbitrable.

54 It is trite that, while there is a strong presumption in favour of upholding the parties' agreement, there are certain matters which, even if they fall within the scope of an arbitration agreement, will be treated under the relevant law as being incapable of being submitted to arbitration for reasons of public policy: *Riverrock* at [67]; *Tomolugen* at [75]; *Anupam Mittal v Westbridge Ventures II Investment Holdings* [2023] 1 SLR 349 at [45]–[47].

55 In *FamilyMart*, the Privy Council conveniently set out two categories of non-arbitrability (at [70]):

> (a) subject matter non-arbitrability: where certain types of dispute are excluded by statute or public policy from determination by an arbitral tribunal; and
>
> (b) remedial non-arbitrability: where the award of certain remedies is beyond the jurisdiction which the parties can confer on an arbitral tribunal.

This dichotomy is consistent with the approach we have taken in previous cases: *Tomolugen* at [98]. Thus, where it is only remedial non-arbitrability that is implicated, there might well be no objection to the underlying dispute being resolved by an arbitral tribunal, with the parties remaining free to apply to the

court for the grant of remedies that are beyond the power of the tribunal to award: *Tomolugen* at [100].

56 The issue of the arbitrability of disputes over the taxation or assessment of solicitors' costs has been considered by foreign courts. In *Assaubayev and others v Michael Wilson & Partners Ltd* [2014] 6 Costs LR 1058 ("*Assaubayev*"), the English Court of Appeal had occasion to consider the point in the context of an application for a stay of proceedings in which a client of a putative firm of solicitors sought the setting aside of a retainer, an order for the delivery of a bill of costs, and an assessment of the bill of costs so delivered (at [13]–[14]). Christopher Clarke LJ, delivering the judgment of the court, considered that this was at best an issue of remedial non-arbitrability. In terms of subject matter non-arbitrability, his Lordship saw no reason why an arbitrator could not decide on questions such as the reasonableness of the costs claimed. The fact that the arbitrator could not exercise the court's supervisory jurisdiction over solicitors was seen as no reason to refuse a stay (at [68]–[69]).

57 *Assaubayev* was subsequently cited with approval and followed in Hong Kong in *Fung Hing Chiu Cyril & Anor v Henry Wai & Co (a firm)* [2018] 3 HKC 375, the facts of which are essentially a mirror image of the present case. In that case, a firm of solicitors commenced arbitration against former clients ("CF" and "GA") for outstanding fees due under bills which the firm had issued. The terms of appointment attached to the firm's letter of appointment included an arbitration agreement providing for "[a]ny dispute, controversy or claim arising out of or relating to the contract between you and our firm, including the validity, invalidity, breach or termination thereof and any claim for any sum payable thereunder" to be resolved by arbitration in Hong Kong. CF and GA applied to the Hong Kong Court of First Instance for a declaration that the

arbitration clause was unenforceable on public policy grounds and for the bills issued by the firm to be referred to a taxing master for taxation.

58 The court disagreed with CF and GA's contention. Mimmie Chan J opined that there was nothing in the Hong Kong legislation on arbitration or the legal profession which prohibited solicitor-and-client fee disputes from being referred to arbitration (at [22] and [26]). There was no reason why an arbitrator could not apply the principles of taxation that a taxing master would in a court taxation (at [28]). Furthermore, although taxation was one method for assessing the reasonableness of the fees payable by a client to his or her solicitor, the existence of such a procedure did not mean that disputes between a client and solicitor over the latter's fees could not be resolved by arbitration (at [30]).

59 Although it is not necessary for us to decide the issue in the present case and we do not do so, we wish to note some potential reservations over the subject matter arbitrability of disputes that are in the nature of the taxation or assessment of solicitor-and-client costs. Even if the parties could submit certain issues concerning the quantum of a solicitor's costs to arbitration, it is not clear that this would extend to the *exclusion* of the court's jurisdiction to assess a solicitor's costs and a client's right of recourse to the courts for this purpose.

60 The court's jurisdiction to ensure that solicitors do not claim excessive remuneration for work done through the assessment of costs procedure is well-established: *Menzies v Oakwood Solicitors Ltd* [2024] 1 WLR 4745 ("*Menzies*") at [1]. The primary rationale for the court's power to intervene in the charging practices of solicitors and a client's correlative right to refer a solicitor's bills to assessment is the protection of the client: *Menzies* at [43]; *Kosui Singapore Pte Ltd v Thangavelu* [2015] 5 SLR 722 at [56]; *Koh Kim Teck v Shook Lin & Bok LLP* [2021] 1 SLR 596 at [64]. As See Kee Oon JAD observed in the recent

decision of the Appellate Division of the High Court in *Arbiters Inc Law Corp v Arokiasamy Steven Joseph and another* [2024] 2 SLR 844, the power to assess a solicitor's costs arises out of "the court's recognition of the unequal relationship between the solicitor and client, and the influence of a solicitor over his client" (at [50]). The costs charged by solicitors would, in turn, have a knock-on effect on access to justice (at [51]).

61 There is also a secondary purpose to the assessment of costs procedure. As the AR noted, disputes over the fees charged by a solicitor may raise ethical issues in that an allegation that a solicitor's fees are excessive may often carry an allegation of professional misconduct (see [18] above). Thus, not only does the assessment of costs procedure protect the client, it also exists for the advantage of the solicitor; where an allegation of overcharging is made, "[t]axation provides the best means for an aggrieved client to determine what the proper fee is for the actual work done by his lawyer, and for the lawyer to avoid having to face a disciplinary charge for overcharging": *Law Society of Singapore v Andre Ravindran Saravanapavan Arul* [2011] 4 SLR 1184 ("*Andre Arul*") at [32]. It is for this reason that it has been said that solicitors have an obligation to inform their clients of their right to have their solicitors' bills assessed, and they fail or omit to do so at their peril: *Andre Arul* at [33]; *Marisol Llenos Foley v Harry Elias Partnership LLP* [2022] 3 SLR 585 at [48].

62 We therefore leave open the question whether these purposes, which concern the court's supervisory jurisdiction over solicitors, can be subordinated to the private interests of the parties. Simply put, the imperative of client protection may not be adequately served if the objectivity of the court's assessment is displaced in favour of that of an arbitrator. Indeed, the objectivity of the court was emphasised by the C3J in *Andre Arul* when it suggested that the first port of call where an allegation of overcharging was made ought to be

to have the solicitors' bills taxed by the court rather than investigated by the Law Society itself because "[t]he opinion of another solicitor … on the matter, regardless of how eminent he may be, would ultimately still be a personal opinion and, thus, would not have the same degree of objectivity as a taxation done by the court" (at [41]).

63 Nevertheless, we reiterate that the point has not been fully argued, and we therefore say no more on the issue and will leave this to be resolved in an appropriate future case. We should add that as the present case concerns fees charged by a solicitor for work done in court proceedings, the observations we have made on the potential difficulties with subjecting disputes over the quantification of a solicitor's permissible fees to the exclusive jurisdiction of an arbitral tribunal are confined to this context. These observations may or may not apply in the context of other types of work undertaken by a solicitor such as in arbitral proceedings. We have also not considered this since it was not in issue before us.

Conclusion

64 For these reasons, we refuse permission to appeal and dismiss the application. The costs of the application are fixed in the aggregate sum of $8,000, to be paid by Mr Lun to Dentons. There will be the usual consequential orders.

Sundaresh Menon
Chief Justice

Steven Chong
Justice of the Court of Appeal

Clarence Lun Yaodong and Wan Kok Tang William (Fervent Chambers LLC) for the applicant;
Mark Jerome Seah Wei Hsien, Lau Wen Jin and Lim Chor Yin Aaron (Dentons Rodyk & Davidson LLP) for the respondent.
