Engelin Teh Practice LLC v Wee Soon Kim Anthony
[2004] SGHC 6

Case Number : OS 358/2003, NAOS 200/2003

Decision Date : 12 January 2004

Tribunal/Court : High Court

Coram : Judith Prakash J

Counsel Name(s) : Harish Kumar and Mark Yeo (Engelin Teh Practice LLC) for plaintiff; Lok Vi Ming and Henry Heng (Rodyk and Davidson) for defendant

Parties : Engelin Teh Practice LLC — Wee Soon Kim Anthony

Legal Profession – Remuneration – Law firm entering into agreement on costs with client – Firm subsequently dissolved and reconstituted as law corporation – Whether law corporation has standing to enforce agreement on costs

Legal Profession – Remuneration – Whether agreement on costs to be made between client and individual solicitors or law corporations allowed under Legal Profession Act (Cap 161, 2001 Rev Ed) – Whether term "solicitor" in Legal Profession Act (Cap 161, 2001 Rev Ed) to be read as including the plural – Section 111(1) Legal Profession Act (Cap 161, 2001 Rev Ed))

12 January
2004
Judgment reserved.

Judith Prakash J:

Introduction

1 This matter has a rather lengthy history. The defendant, Mr Anthony Wee Soon Kim, is the plaintiff in High Court Suit No 834 of 2001 ("Suit 834"), an action which he started against UBS AG ("the Bank"). Mr Wee's solicitors in the action as disclosed in the writ were M/s Engelin Teh & Partners ("the firm"), a firm comprising 18 solicitors in all, nine of whom were partners. The managing partner of the firm was Ms Engelin Teh SC and she was at all relevant times the solicitor having conduct of Suit 834 on behalf of Mr Wee. On 1 February 2002, Engelin Teh Practice LLC ("ETP"), a law corporation and the plaintiff in this originating summons, was incorporated. Ms Teh became the managing director of ETP and she continued to conduct Suit 834 on behalf of Mr Wee until 8 July 2002 when Mr Wee instructed new solicitors.

2 On 15 March 2003, ETP filed this originating summons. It seeks the following relief:

(a) a determination that the written agreement for costs dated 20 July 2001 ("the Written Agreement") is valid and binding on Mr Wee; and

(b) an order that Mr Wee pays ETP the outstanding amount due in its tax invoices nos 02/0257 and 02/0258, both dated 22 March 2002, which were rendered to Mr Wee in accordance with the Written Agreement.

Mr Wee subsequently entered an appearance by his solicitors, M/s Rodyk & Davidson, and disputed the existence of the Written Agreement.

History

3 To understand how the matter then developed, it is necessary for me to give a brief account of each party's version of what had occurred.

Affidavit of Sim Yuan Po Thomas filed on 15 March 2002

4 The originating summons was accompanied by an affidavit affirmed by one Sim Yuan Po Thomas, an advocate and solicitor who is currently practising in ETP. He stated that Mr Wee was at the material time a client of the firm. The firm was dissolved on 1 February 2002 and ETP was incorporated to take its place. All references in his affidavit to the "plaintiff" or "ETP" were stated to be references to the firm in so far as they related to matters occurring prior to 1 February 2002, and to be references to ETP in so far as they related to matters occurring after 1 February 2002.

5 In February 2001, Mr Wee held preliminary discussions with Ms Teh regarding his intended claims against the Bank. Subsequently, Mr Wee provided various documents to Ms Teh for her review and further discussions were held. Mr Sim was present at these discussions between Mr Wee and Ms Teh on the occasions when they were held in the firm's office.

6 Throughout the discussions, according to Mr Sim, it was evident that Mr Wee's claim against the Bank was going to be complicated and multifaceted. There were substantial disputes of fact, voluminous documents and numerous tape recordings of telephone conversations between Mr Wee and various officers of the Bank. At a meeting in late May 2001 or early June 2001 attended by Mr Wee, his son (Mr Richard Wee), Ms Teh and Mr Sim, the issue of the professional fees that Mr Wee would be expected to pay for pursuing his claim against the Bank was discussed. Ms Teh informed Mr Wee of her time costs and those of Mr Sim. Mr Wee asked for a "ballpark" figure and Ms Teh then advised him that she was willing to fix the professional fees in acting for him at S$250,000 (excluding disbursements) on the basis of six days of trial. Ms Teh also informed Mr Wee that the professional fees would be $12,000 for each additional day of trial should the trial go beyond six days and that the sum of $250,000 did not include work done on interlocutory matters and appeals. These would be separately billed to Mr Wee based on the time spent on such proceedings.

7 Suit 834 was commenced on 4 July 2001. On 20 July 2001, Mr Sim, acting on Ms Teh's instructions, sent a letter to Mr Wee. This letter, which was written on the letterhead of the firm, is the Written Agreement that ETP wishes to enforce. I set out below the relevant portions of the letter:

> **SUIT NO 834 of 2001R**
>
> **CLAIM AGAINST UBS AG**
>
> …
>
> Meanwhile, we take this opportunity to recapitulate the quantum and manner of payment of our legal costs which were discussed with you during our previous meetings. As a general guide, the main basis of our professional charges is the time costs expended by the solicitors working on the matter. Our professional rates are based on hourly rates which vary depending on the seniority of solicitors. The more experienced the solicitor, the higher his/her hourly rate is. The solicitors having conduct of this matter are presently as follows:
>
> Engelin Teh, SC S$800.00 per hour
>
> Thomas Sim (assisting solicitor) S$300.00 per hour

Judging by the considerable complexity and multifaceted nature of your case, our time-costs in this matter are likely to exceed the sum of $250,000 as previously discussed. However, we understand that you may be more comfortable with a "ball-park" figure and we are therefore prepared to agree that our costs for a 6-day trial will be S$250,000/-. This sum does not cover the costs of any interlocutory applications and any appeals. In the event that the trial is extended beyond 6 days, the additional costs for each additional day of trial will be S$12,000/-.

We will render interim bills at the following stages of the proceedings:-

(1) Issuing of Writ of Summons (S$20,000);

(2) Close of pleadings ($20,000);

(3) Completion of discovery process ($20,000);

(4) Exchange of affidavits of Evidence-in-Chief ($50,000);

(5) Completion of 6 days of trial (S$120,000);

(6) Completion of balance days of trial (costs of each additional day of trial is $12,000)

(7) Filing of Closing Submissions ($20,000).

We will be issuing our 1st interim bill shortly. We would be grateful for prompt payment of each interim bill. The $5,000/- which you have placed with us has been deposited into our client's account and will be issued to offset our final bill in this matter.

We trust that the above have been of assistance to you. Please do not hesitate to contact us if you have any further query regarding the above. If you have no further query, we will appreciate it if you could sign on the duplicate copy of this letter and return to us thereafter.

8 As the writ of summons had been issued, the first interim bill was sent out on 27 July 2001. On 20 August 2001, the firm sent Mr Wee a copy of the Bank's Defence and asked him to arrange for payment of the first interim bill and also to return a duly signed copy of its letter dated 20 July 2001. On 28 August 2001, Mr Wee paid the first interim bill in full.

9 On 14 September 2001, as Mr Wee had still not signed and returned the copy of the letter dated 20 July 2001, the firm sent him a written reminder to do so. That same afternoon, Mr Wee sent the firm a copy of its said letter bearing his signature under the statement "I accept and agree to the above".

10 On 10 October 2001, which was after the close of the pleadings, the second interim bill was sent to Mr Wee. He paid it in full on 28 November 2001. The third interim bill was sent out on 29 November 2001 and was paid by Mr Wee on 18 January 2002. The fourth interim bill was sent to him on 8 February 2002, after the exchange of the affidavits of evidence-in-chief in Suit 834. This was paid on 27 March 2002.

11 The first four interim bills were issued on the letterhead of the firm. The fourth bill was dated 31 January 2002 but, when it was sent out to Mr Wee a few days later, it was forwarded under cover of a letter bearing the letterhead of ETP.

12 Hearing of Suit 834 commenced on 26 February 2002. Mr Wee as the plaintiff in the action was the first witness and he was on the stand from 26 February 2002 up to 15 March 2002 when Suit 834 was adjourned part-heard. On 28 March 2002, two further bills (both dated 22 March 2002) were sent to Mr Wee. Both bills were printed on the letterhead of ETP. The first of these bills related to the work done after the exchange of the affidavits of evidence-in-chief up to 5 March 2002 being the sixth day of trial. In his affidavit, Mr Sim referred to this bill as the fifth interim bill. The second bill issued on 22 March 2002 pertained to the work done for the remaining eight days of trial including the time spent in court. Mr Sim referred to this as the sixth interim bill. Subsequent to the issue of these two bills, differences arose between the firm and Mr Wee. Mr Wee then refused to pay the two bills.

13 After the foregoing account of the events that had occurred, Mr Sim's affidavit went on to set out the details of the work that Ms Teh and other solicitors in the firm had done for Mr Wee in connection with Suit 834. The affidavit ended with Mr Sim stating that, in view of the work done, the terms of the Written Agreement were extremely favourable to Mr Wee and that there could be no doubt that it was in all respects fair and reasonable in the circumstances.

Affidavits filed by Mr Wee and others

14 Four affidavits were filed in response to the originating summons but I need only recount the contents of the two made by Mr Wee and his son, Mr Richard Wee.

15 In his affidavit, Mr Wee started by saying that his signature to the letter dated 20 July 2001 was procured in circumstances that were not fair or reasonable. He also said that all his discussions pertaining to the question of legal costs were directly with Ms Teh of the firm and that Mr Sim was not present at those meetings until early May 2001 and hence had no personal knowledge of the discussions that took place before that date.

16 According to Mr Wee, he first met Ms Teh at her office some time in February 2001. He told her that he would like to engage her as his counsel in his action against the Bank. She would be assisted by his instructing solicitor, Mr Rey Foo Jong Han of M/s K S Chia Gurdeep & Param. Ms Teh quoted him the sum of $50,000 as her fees as counsel. Following this meeting, Mr Wee instructed Mr Foo to forward all the papers to Ms Teh for her perusal and for her to finalise the statement of claim. This was done on 22 February 2001.

17 In early March 2001, Ms Teh visited Mr Wee at his home. She told him that she would need the assistance of Mr Sim and in the circumstances, she would prefer that he engaged her firm as instructing solicitors. From the point of view of managing costs, this would also work out to his advantage as Mr Sim was a junior lawyer. In the course of several meetings that followed between March and May 2001, the issue of costs was brought up by Ms Teh from time to time. The sum of $50,000 was increased to $100,000 then to $150,000 and finally to a cap of not more than $200,000 for the whole case up to the end of the trial. I note here that Mr Wee referred to this purported agreement that legal costs for his case would not be more than $200,000 in all as the "Oral Agreement".

18 In about May 2001, Mr Rey Foo agreed to drop out of the case and, on 15 May 2001, Mr Wee informed Ms Teh of this. It was only then, that is from 15 May 2001, that Mr Sim came on board. Mr Wee asserted that Mr Sim was in no position to depose to matters in his affidavit that were crucial to the Oral Agreement when he was not present at the relevant meetings. Further, at no time during the meetings with Ms Teh were there any discussions that the trial be limited to six days so that the Oral Agreement would be subject to overruns at $12,000 a day excluding interlocutory applications. Mr Wee said that he would not have agreed to an open-ended contract as he wanted to know what

his liabilities were *vis-à-vis* legal fees. He repeatedly made this point in his discussions with Ms Teh.

19 When Mr Wee received the letter of 20 July 2001, he did not sign it. It clearly contained terms which were not agreed upon with Ms Teh and he took no action on it. Mr Wee then said that "the Plaintiff" did not raise the issue of the letter until their subsequent letter of 14 September 2001. Thereafter, some time in September 2001, whilst Mr Wee was having lunch with Mr Sim, the latter raised the subject of "the Plaintiff's" letter of 20 July. Mr Wee reiterated that he would not sign the letter because it represented a departure from the Oral Agreement. Mr Sim then assured Mr Wee that the said letter was not intended to change the Oral Agreement and persuaded Mr Wee to sign it so that it would facilitate the settlement of interim bills to be issued by "the Plaintiff". Mr Sim asked Mr Wee for his understanding and assistance upon the assurance that his agreement with Ms Teh would not be changed.

20 Under those circumstances, Mr Wee was led to believe that the costs agreement he had reached earlier with Ms Teh relating to the cap on fees would not be changed by the letter of 20 July 2001. He therefore signed and returned it, hoping that, as Mr Sim had suggested, this would help "the Plaintiff" to issue its interim bills.

21 In the paragraphs of his affidavit dealing with the 20 July 2001 letter and the subsequent discussion, Mr Wee did not distinguish between the firm and ETP. Throughout he used the term "the Plaintiff". He then went on to say that he was most disappointed that the plaintiff now sought to assert that the letter constituted an agreement for costs against him. He was most aggrieved and sought the court's assistance to deny the plaintiff's application and to refuse to enforce the same. Mr Wee then went on to make several arguments which I need not reproduce and to give the reasons why he thought that the Written Agreement was not fair and/or reasonable.

22 Mr Richard Wee supported his father's position. He stated that he was present when Ms Teh visited Mr Wee at the latter's home to discuss the case. At the end of the meeting, Richard Wee asked Ms Teh if it was true that she was doing the case for $50,000. She confirmed that that figure had been mentioned but went on to say that this sum was just for her to act as counsel. She said that after having had time to go through all the documents, she was of the view that she required a legal assistant in her own firm to assist her in the preparation. She suggested that it would be cheaper if her firm was also engaged as instructing solicitors as she could then use her junior legal assistant to assist her.

23 Richard Wee also recalled the subsequent discussions on costs between March and May 2001 ending with Ms Teh quoting $200,000 for the whole case up to the end of the trial. He and his father had sought her assurance that the conduct of the entire case would not cost more than this and she had given that assurance. His father had also made it clear that he wanted a lump sum fee arrangement and not one based on time charges as both he and Richard Wee were concerned about how much the entire litigation would cost.

Further affidavits filed on behalf of the plaintiff

24 On 16 May 2003, ETP filed two affidavits in response to those submitted by Mr Wee. First, there was an affidavit from Ms Teh. Whilst taking the position that no evidence was admissible to prove an alleged oral agreement that would contradict the terms of the Written Agreement, she set out her account of what had transpired and her meetings with Mr Wee in order to refute his "obvious lies". I will not reproduce the whole account here. The important points are:

(a) She denied she had told Mr Wee on 8 February 2001 that she would charge him $50,000.

(b) The first meeting at Mr Wee's home took place in February 2001 and not early March 2001 and, as it was held to discuss a different case rather than the claim against the Bank, no quotation would have been given then for the intended claim against the Bank.

(c) At no time between February and May 2001 did she indicate that her costs would be $50,000 nor did she thereafter increase them to $100,000 then to $150,000 and then to a cap of not more than $200,000 for the whole case.

(d) She did not at any time inform Mr Wee that she would prefer it that he engaged the firm as instructing solicitors though she did say that she required Mr Sim to assist her on the file.

(e) In late May or early June 2001, she had a meeting with Mr Wee and Richard Wee in her office at which Mr Sim was present. It was at this meeting that she explained to Mr Wee the work that had already been done as well as the work that was anticipated and informed him again of her time costs as well as those of Mr Sim. It was at this meeting too that Ms Teh gave Mr Wee the $250,000 figure for six days of trial and $12,000 for each additional day of trial. Neither Mr Wee nor Richard Wee objected to this quotation.

(f) After Ms Teh had indicated the costs to Mr Wee, she asked him whether he wanted her to go ahead to start work on amending the draft statement of claim. Mr Wee specifically instructed her to proceed.

(g) There was never any agreement, oral or otherwise, for a cap of $200,000 and the first time that Mr Wee raised it was in August 2002 after the dispute in respect of legal costs had arisen.

25 Mr Sim filed a further affidavit. In it he exhibited the notes which he had taken of the meeting in late May or early June 2001 when the fee situation was discussed. He also stated that he did not have any meeting, whether over lunch or otherwise, with Mr Wee at which the subject of costs as set out in the letter of 20 July 2001 was discussed or even raised. This lunch meeting was fabricated and Mr Wee's allegation that Mr Sim had given him false assurances was a lie. He also stated that Ms Teh had not informed him of the existence of any agreement with Mr Wee capping costs at $200,000 let alone instructed him to assure Mr Wee that the Written Agreement was not intended to change the Oral Agreement.

The first hearing

26 The matter came before me for hearing on 21 May 2003. Mr Lok, counsel for Mr Wee, asked for leave to file an affidavit in reply to the two affidavits on 16 May. Mr Wee wanted to say what had happened in the earlier meetings in more detail. Mr Harish Kumar, who appeared for ETP, objected on the basis that there had been an oral agreement that had subsequently been reduced to writing and Mr Wee now wanted to give further evidence of pre-contractual matters. Such matters were irrelevant to the issue. He considered that the matter could be decided on the affidavits as they then stood. Mr Lok then submitted that there were substantial disputes of fact and that the matter could not be decided summarily.

27 I then made the following orders:

(a) no further affidavits were to be filed by anyone;

(b) all deponents were to be cross-examined on their affidavits;

(c) the matter was to be adjourned to open court for hearing and it was to be fixed for hearing for three days initially and thereafter, if any further days were required, the hearing fees were to be borne by the parties equally without prejudice to any costs order that may be made subsequently.

Further arguments

28 On 28 May 2003, ETP wrote in for further arguments. Its main contention was that the matter could be disposed of summarily and there was no need for cross-examination. After considering the matters raised in its letter, I acceded to its request.

29 The parties appeared before me on 6 August 2003 and presented their further arguments. I reserved my decision. Subsequently, when I was reconsidering the papers and the submissions, I realised that neither party had addressed what appeared to me to be an important point. This was, if an agreement on costs had been entered into on or before 20 July 2001, how that agreement had been affected by the dissolution of the partnership on 1 February 2002 and the incorporation of ETP on the same day. I therefore asked the parties to see me again.

30 At the third hearing which took place on 26 August 2003, I put the point to the parties and asked if they thought this was a material fact that might affect the outcome of the matter and on which they might wish to make submissions. After taking instructions, Mr Wee's counsel indicated that he wished to make further submissions on the point. I gave directions for these submissions and they were filed in September. ETP then applied for leave to file a further affidavit from Ms Teh. I granted such leave and also gave Mr Wee leave to file an affidavit in reply.

The further affidavits

31 Ms Teh stated that as it was intended for the firm to be dissolved followed by the immediate incorporation of ETP thereafter, a letter dated 13 December 2001 on the firm's letterhead setting this out was signed by her and sent to Mr Wee. The penultimate paragraph of this letter stated that as part of the transfer of the business of the firm to ETP all his matters, all documents and any moneys in the account with the firm would be transferred to ETP upon or shortly after the incorporation of ETP unless Mr Wee informed the firm of his objections to such transfer within 14 days of receipt of the letter.

32 The letter was sent to Mr Wee both by fax and by ordinary post. ETP's records contained a fax transmission report in respect of that letter. That report indicated that the letter was successfully transmitted to Mr Wee's then fax number of 358 2822 on 14 December 2001 at about 9.16am.

33 ETP's records also showed that subsequent to the transfer of Mr Wee's file from the firm to ETP, four cheques were issued by Mr Wee that were made in favour of ETP. The particulars of the four cheques were as follows:

(a) a cheque dated 18 February 2002 for the sum of $5,000 being payment of a deposit to ETP for anticipated disbursements;

(b) a cheque dated 5 March 2002 for the sum of $9,340.35 being costs due to Drew & Napier;

(c) a cheque dated 26 March 2002 for the sum of $5,391 being payment of fees payable to the mechanical recording unit of the Supreme Court; and

(d) a cheque dated 26 March 2002 for the sum of $87,000 being payment of the hearing fees for Suit 834.

Ms Teh asserted that the facts in her affidavit showed beyond a shadow of a doubt that Mr Wee had known all along that his business and account with the firm had been transferred to ETP upon ETP's incorporation.

34 In Mr Wee's affidavit in reply, he stated that after I had asked parties to consider the effect that the dissolution of the firm had had on the agreement on costs, his solicitors had requested him to check if he had received letters from the firm or from ETP informing him of the dissolution. He had checked but had found no such letters. On 17 September 2003, Mr Wee was told by his solicitors that ETP had just sent Rodyk & Davidson a copy of the firm's letter of 13 December 2001. He then informed his solicitors that he did not recall receiving the letter. At the same time he directed his secretary to check the records again. She did so but could not locate any such letter.

35 Mr Wee confirmed that he did not recall having received the letter and did not have a copy of it on file. He pointed out that the letter did not accurately communicate some basic facts in that the date of commencement of operation of ETP was inaccurate and the information given on the associate directors of ETP was not correct.

36 Mr Wee also averred that it was clear from Ms Teh's affidavit that:

(a) there was no agreement entered into between the firm, ETP and himself to assign or novate the agreement on costs to ETP and ETP had not been able to produce any such document; and

(b) the notice required to be given by ETP (not by the firm) under r 6 of the Legal Profession (Law Corporation) Rules (Cap 161, R 21, 2002 Rev Ed) ("the Rules") was not given.

37 As regards the four cheques which he had issued after the incorporation of ETP, Mr Wee's position was that this showed that the firm and ETP in fact intended to ensure that separate accounts were kept. These four cheque payments were made in respect of disbursements. As ETP was his solicitor by the time the cheques were issued, there was no issue with ETP being kept in funds for disbursements incurred. What was significant was that he had made a payment in favour of "Engelin Teh & Partners" on 25 March 2002. This payment was in the sum of $63,537.60 and was in respect of professional fees and, as far as these were concerned, the payment was made by him directly to the firm. Indeed, this payment had been duly acknowledged by the firm on 12 September 2002, more than seven months after the constitution of ETP. Mr Wee exhibited a copy of the receipt.

38 I note here that the cheque dated 25 March 2002 made in favour of the firm by Mr Wee was referred to in Mr Sim's first affidavit when he acknowledged that Mr Wee had made full payment of the fourth interim bill issued in accordance with the Written Agreement. Looking at this fourth interim bill, a copy of which is exhibited in that affidavit, I note that it was issued on the letterhead of the firm and dated 31 January 2002 (*ie* before the incorporation of ETP). The bill covered work done from 3 November 2001 to 8 January 2002 and was for a total of $53,011.42 comprising the "agreed" amount of $50,000, disbursements incurred and goods and services tax. On the same day, a further bill on the letterhead of the firm, invoice no EP020174, was issued. This was for $10,526.19 covering legal fees *etc* for work done in interlocutory applications. Mr Wee's payment of $63,537.60 covered both this bill and the fourth interim bill.

Submissions

39 The statutory provisions governing agreements on costs for contentious business are ss 111 to 115 of the Legal Profession Act (Cap 161, 2001 Rev Ed) ("the Act"). As far as is relevant these sections provide:

> Agreement as to costs for contentious business
>
> 111.—(1) Subject to the provisions of any other written law, a solicitor or a law corporation 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, 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 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.
>
> Effect of agreements with respect to contentious business
>
> 112.—(1) …
>
> (3) Such an agreement shall be deemed to exclude any further claim of the solicitor or law corporation beyond the terms of agreement in respect of any services, fees, charges or disbursements in relation to the conduct and completion of the business in reference to which the agreement is made, except such services, fees, charges or disbursements (if any) as are expressly excepted by the agreement.
>
> (4) Subject to the provisions of this Part, the costs of a solicitor or law corporation, in any case where there is such an agreement as is referred to in section 111, shall not be subject to taxation nor to the provisions of section 118.
>
> …
>
> Enforcement of agreements
>
> 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 summons, motion or petition 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 summons, motion or petition, 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 summons, motion or petition 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.

…

Death or incapability of solicitor after agreement

114.—(1) Where a solicitor has made an agreement with his client under section 111 and anything has been done by the solicitor under the agreement, and, before the agreement has been completely performed by him, the solicitor dies or become incapable to act, an application may be made to the court by any party thereto or by the representatives of that party.

(2) …

(3) The court shall thereupon have the same power to enforce or set aside the agreement, so far as it may have been acted upon, as if the death or incapacity had not happened.

(4) The court may, even if it thinks the agreement to be in all respects fair and reasonable, order the amount due in respect of the business done thereunder to be ascertained by taxation.

…

Change of solicitor after agreement

115.—(1) If, after an agreement under section 111 has been made, the client changes his solicitor before the conclusion of the business to which the agreement relates (which he may do notwithstanding the agreement) the solicitor who is a party to the agreement shall be deemed to have become incapable of acting under it within the meaning of section 114.

…

40 The original position taken by ETP was that there was a valid and binding written agreement for costs between itself and Mr Wee. Initially Mr Wee's position was simply that the Written Agreement was not binding because it was subject to the Oral Agreement which he had reached with Ms Teh. He did not take the point that ETP was not the correct party to enforce the Written Agreement. After I asked the parties to consider the impact of ETP's incorporation on the agreement, each changed position.

ETP's submissions

41 ETP's new submission was that the dissolution of the firm and its own incorporation did not have any effect on the Written Agreement. It asserted that the Written Agreement was a written contract between Mr Wee and Ms Teh, the solicitor whom Mr Wee wanted to represent him in Suit 834. It was not a written agreement for costs between Mr Wee and the firm as s 111 of the Act does not permit such a written agreement to be made between a client and a number of solicitors who practise in partnership. A written agreement for costs under this section can only be entered into between a client and a solicitor or between a client and a law corporation as the first few lines of s 111(1) state "… a solicitor or a law corporation may make an agreement in writing with any client respecting … costs in respect of contentious business done or to be done by the solicitor or the law corporation".

42 The basis of that argument was that s 2 of the Act defines the terms "advocate and solicitor", "advocate" and "solicitor" to mean "an advocate and solicitor of the Supreme Court". Thus,

the reference to "solicitor" in s 111(1) must necessarily refer to a natural person and not to a partnership of solicitors since a partnership cannot possibly be "an advocate and solicitor of the Supreme Court". Where it was considered necessary that the term "solicitor" should also mean a firm of solicitors *ie* with respect to the rules set out in the Legal Profession (Solicitors' Accounts) Rules (Cap 161, R 8, 1999 Rev Ed), a specific rule was included stating that for the purpose of those Rules, the term "solicitor" included a firm of solicitors.

43 At the time the Written Agreement was concluded, ETP did not exist. Thus, it could not have made any contract and it was Ms Teh who was the solicitor who entered into the Written Agreement with Mr Wee. Further, Mr Wee had wanted Ms Teh who is a senior counsel to represent him in his claim against the Bank. In these circumstances, there could be no doubt that the Written Agreement was between Ms Teh and Mr Wee.

44 Thus, when the partnership was dissolved, the Written Agreement was not affected at all and remained a contract which bound Mr Wee and Ms Teh. When ETP was incorporated on 1 February 2002 and Ms Teh continued to practise as an advocate and solicitor under the aegis of ETP, the Written Agreement similarly remained unaffected. There was therefore no issue of novation of the Written Agreement from the firm to ETP since the parties to it were not Mr Wee and the firm but rather Mr Wee and Ms Teh.

45 Having put forward the proposition that Ms Teh (and not the firm) was the party who had contracted with Mr Wee, ETP then had to justify its initiation of the current proceedings to enforce the Written Agreement. It did so by relying on s 113(2) of the Act. The relevant portions of this section for this purpose are:

> … the agreement may be enforced … on the summons … of any person or the representatives of any person, party to the agreement, … or being or claiming to be entitled to be paid the costs, fees, charges or disbursements in respect of which the agreement is made …

46 ETP contended that by this wording, s 113(2) clearly contemplates that the Written Agreement may be enforced by summons by other persons apart from the actual parties to the agreement namely:

> (a) any person being or alleged to be liable to pay the costs, fees, charges or disbursements in respect of which the agreement was made; or
>
> (b) any person being or claiming to be entitled to be paid such fees *etc*.

ETP further submitted that it was an implied term of the Written Agreement that the entity under which Ms Teh practised (be it sole proprietorship, partnership or law corporation) was the party that was entitled to be paid the costs *etc* in respect of which the Written Agreement was made. As such when she was practising in partnership in the firm, it was the firm that could render bills to Mr Wee. The reason for such implication was that Ms Teh was not able to hold clients' money in her own name nor open a client's account in her own name and the only entity that could deal with the client's money, by operating a client's account, was the entity under which Ms Teh practised. Accordingly it was an implied term of the Written Agreement that all bills rendered pursuant to it would be rendered by the entity under which Ms Teh practised, namely, either the firm or ETP. Now that ETP has been formed and Ms Teh is providing legal services as a director of ETP, ETP is the appropriate entity to render bills to Mr Wee. For these bills it would be ETP that would be the party "entitled to be paid the costs, fees, charges or disbursements in respect of which the agreement is made". ETP was therefore the appropriate party to enforce the Written Agreement and had been properly named as plaintiff in

this originating summons.

Submissions made on behalf of Mr Wee

47 In the final submissions presented on behalf of Mr Wee, his position was stated as being that he had had an oral fee agreement with the firm that the professional costs for the entire case would be capped at $200,000. This Oral Agreement was made with the firm, not ETP, and neither the Oral Agreement nor the Written Agreement would bind or be relevant to ETP. Mr Wee had not signed any agreement with ETP nor entered into any costs agreement with this entity. In law, the firm was a legal entity separate and distinct from ETP and therefore unless all parties concerned agreed to the transfer and assignment of the legal rights and liabilities of the firm to ETP, the affairs of the former would be of no concern whatsoever to the latter.

48 Counsel for Mr Wee did not accept ETP's submission that a partnership cannot enter into an agreement on costs. He submitted that the word "solicitor" in s 111(1) of the Act was not defined in the Act but its use in the legislation left no room for the meaning of the word to be misconstrued. The legislative intent was that the word "solicitor" in that section should refer to both a sole proprietorship and a partnership. The basis of this argument was that prior to the amendments permitting the formation of law corporations, s 111(1) referred only to agreements between "a solicitor" and the client but, as was common knowledge at that time, law firms then took the form of sole proprietorships or of partnerships and therefore logic and the clear intent of the Act were that the word "solicitor" should refer to both a sole proprietor and a partnership.

49 Secondly, while it was Ms Teh with whom Mr Wee had the Oral Agreement, Ms Teh was the managing partner of the firm and had the power to and did bind the partnership to the agreement made with Mr Wee. It was trite law that the entire partnership would be legally bound to transactions entered into by any of the partners. Further, although it was originally Mr Wee's intention to engage Ms Teh as counsel in the matter, this was subsequently changed when he acceded to Ms Teh's suggestion that his then solicitors be replaced by the firm which would provide full legal representation on the matter. The firm then came on board and provided all legal services required. ETP's argument that a partnership was legally incapable of entering a costs agreement under the Act was wrong.

50 The costs agreement (whether the Written Agreement or the Oral Agreement) was not novated or assigned. The letter dated 13 December 2001 could not in any event constitute a novation or an assignment of an existing costs agreement. Secondly, it was not the notification required under r 6 of the Rules since it was given by the firm, not ETP, and before, rather than after, the transfer of business. Finally, it could not have constituted an assignment of costs since, by ETP's own argument, the partnership could not have entered into any costs agreement in its own name.

Analysis and decision

51 Leaving aside for the time being the question of whether there was an Oral Agreement as propounded by Mr Wee, the first issue to be determined is whether the Written Agreement was made between Mr Wee and Ms Teh or between Mr Wee and the firm.

52 When the facts are scrutinised, it seems clear that the intention both on the part of Mr Wee and on the part of the firm was that the Written Agreement was to be a contract between Mr Wee and all those solicitors who practised in partnership under the firm name of Engelin Teh & Partners. Whilst Ms Teh was the partner in charge of the business and the person whom Mr Wee wanted to act as his counsel, at all times she dealt with him as a partner of the firm. She did not deal with him only

on her own behalf. All correspondence was sent out on the letterhead of the firm. The Written Agreement itself was on the letterhead of the firm and it was not signed by Ms Teh but by Mr Sim who was an employee of the firm and not an employee solely of Ms Teh. In signing the letter, he was acting as an agent of the firm and not as an agent of Ms Teh. The first four interim bills were issued by the firm, not by Ms Teh. At all times the intention of the Written Agreement was that the firm would be Mr Wee's solicitors in Suit 834 and that while the actual solicitors handling the matter would be Ms Teh as leading counsel and Mr Sim as assistant counsel, other necessary work related to it would be handled by the staff of the firm. This intention was carried into effect as is clear from the description in Mr Sim's affidavits of the work that was done in respect of Suit 834. Further, all court documents filed on behalf of Mr Wee in relation to Suit 834 bore the name of the firm, not the name of Ms Teh alone, as his solicitors. Finally, after ETP was incorporated, all bills sent out were on the letterhead of ETP and were not in the name of Ms Teh. Had the intention been that the Written Agreement was to take effect between Mr Wee and Ms Teh, then once it was no longer possible to send out bills in the name of a partnership in which she was a partner, further bills should have been sent out in her own name instead of in the name of ETP which, indubitably, is a separate legal entity from Ms Teh.

53 The argument made by ETP that the Written Agreement was between Ms Teh and Mr Wee is based on its misconception that s 111(1) of the Act only allows agreements for costs relating to contentious business to be made between individual solicitors and the client or between law corporations and the client. I consider this interpretation to be a misreading of the legislation. It is true that s 111(1) and the other sections of Part VIII of the Act which I have reproduced in [39] above, employ the term "a solicitor" which implies the singular only and that the word "solicitor" is defined as meaning an advocate and solicitor of the Supreme Court. It is, however, common in statutory interpretation to construe a word that appears in the singular form as including the plural and *vice versa* as long as this is appropriate in the context of the legislation. If the word "solicitor" includes "solicitors" then it must necessarily include a partnership as a partnership is not a legal entity like a law corporation which is separate from the individual solicitors but is a group of solicitors who practise together. That would mean that s 111(1) would permit an agreement for costs to be made between a firm of solicitors and their client. The word "solicitor" in s 111(1) of the Act, in the other sections cited and in other parts of the Act must, in my view, be interpreted as including the plural "solicitors" when necessary, as to insist that it means only the singular would lead to ridiculous results.

54 For example, Part IX of the Act deals with the recovery and taxation of costs. Whilst in s 118(2), which deals with how a bill of costs should be signed, separate provision is made for signing of bills issued by sole practitioners, partnerships and law corporations, no such distinction is drawn between sole practitioners and partnerships in any of the other sections which deal with taxation of bills and actions taken to enforce payment. Instead, almost invariably the reference is to "a solicitor" or "the solicitor". If I was to accept ETP's submission that such references had to be interpreted as referring to individual solicitors only and could not include solicitors practising in partnership, it would mean that most law firms in Singapore would not be able to avail themselves of the procedures and rights set out in these sections. It would mean that s 120, which gives a solicitor a right to obtain an order for the taxation of a bill of costs by filing a petition of course, could only be utilised by sole practitioners. The very many partnerships who have, to my knowledge, filed petitions of course over the years would be extremely surprised to learn this and so would the judges who had granted such petitions.

55 To say that advocates and solicitors of the Supreme Court have been practising in partnership with each other since the reception of English law (including the law of partnership) into the Colony of Singapore may be an exaggeration but, if so, it would only be a slight one. Partnership

firms like Donaldson & Burkinshaw, Drew & Napier, Allen & Gledhill and Rodyk & Davidson were all in existence prior to 1900. This legal practice environment was the context in which the Act and all preceding legislation were enacted including Ordinance XXX of 1907, the Courts Ordinance.

56 The Courts Ordinance not only constituted the Civil and Criminal Courts of the Colony of Singapore but also regulated the practice of lawyers in the Colony. Section 126 of the Ordinance was the first piece of local legislation permitting solicitors to make contracts in relation to their remuneration. It provided that it was lawful for "a solicitor" to make an agreement in writing with his client in relation to the costs of contentious business. It is notable that the wording of s 126 of the Ordinance (appearing in Chapter XIV entitled "Remuneration of Solicitors by Agreement") is not too different from that of s 111(1) of the Act as far as is material to this discussion. It reads:

> 126. It shall be lawful for a solicitor to make an agreement in writing with his client respecting the amount and manner of payment for the whole or any part of his costs in respect of business done or to be done by such solicitor, either by a gross sum, or by commission, or percentage, or by salary, or otherwise, and either at the same or at a greater or at a less rate as or than the rate at which he would otherwise be entitled to be remunerated; but every such agreement shall be subject to the provisions and conditions contained in this Chapter.

All references there are to "a solicitor" and the pronouns used are "he", "him" and "his" not "they", "them" and "their".

57 The Ordinance also contained a chapter (Chapter XVI) entitled "Recovery of and Taxation of Costs" and many of the sections in that chapter still exist in substantially the same form in Part IX of the Act. The legislators in 1907 would have been fully aware of the legal practice environment in which the Ordinance was to operate. They intended to pass legislation to regulate all advocates and solicitors no matter whether such persons chose to practise in partnership or as sole practitioners. In 1934, the Advocates and Solicitors Ordinance (Ordinance 32 of 1934), which was the first statute dealing solely with advocates and solicitors, was enacted and it contained chapters entitled "Remuneration of Solicitors by Agreement" and "Recovery of and Taxation of Costs" which in substance re-enacted the regimes established in the 1907 Ordinance. Since then all succeeding legislation dealing with the legal profession has contained broadly similar provisions in relation to the remuneration of solicitors in respect of contentious matters by agreement. In all these statutes, the word "solicitor" in the singular is used in the section that empowers solicitors to make agreements for costs with their clients and those that deal with taxation and recovery of costs. The purpose of all these statutes (including the Act) would not have been served by restricting the interpretation of the word "solicitor" as it appeared in such provisions as to insist that it applied only to a single person and did not apply to two or more solicitors who practised in partnership.

58 I was not cited nor have I been able to find any authority which states directly that the "solicitor" referred to in s 111(1) has to be one person or, on the other hand, that the word "solicitor" incorporates the plural form. There is, however, an English case which has been of some assistance in this interpretation exercise. In *Chamberlain v Boodle & King (a firm)* [1982] 3 All ER 188, the issue was whether there was a contentious business agreement between the plaintiff, Mr Chamberlain, and the defendant solicitors M/s Boodle & King, such as to satisfy s 59 of the English Solicitors Act 1974 ("the 1974 Act"). As far as it is relevant, s 59 reads:

> … a solicitor may make an agreement in writing with his client as to his remuneration in respect of any contentious business done, or to be done, by him … providing he shall be remunerated by a gross sum, or by a salary, or otherwise, and whether at a higher or lower rate than that at which he would otherwise have been entitled to be remunerated.

Mr Chamberlain was an American who was in litigation with certain persons both in the United States of America and Britain. Mr Chamberlain instructed the firm of M/s Boodle & King in regard to the English proceedings. In particular, he instructed Mr Joseph Jaworski, an employee of M/s Boodle & King. There were two letters that were said by the solicitors to amount to a contentious business agreement. The first was dated 4 January 1979 and it was from M/s Boodle & King to Mr Chamberlain. In part it read:

> Boodle & King will bill you for its services rendered on the basis of the standard hourly rates applicable to the particular attorneys or solicitors involved in the litigation. These rates range from £60 to £80 per hour for lawyers of partner status and from £30 to £45 per hour for associates who may be involved.

The second letter was Mr Chamberlain's reply of 24 January 1979. Subsequently, the solicitors sent three bills to Mr Chamberlain totalling some £30,000 and, being dissatisfied with them, he applied for taxation by way of originating summons. In answer to the application, the solicitors set up the two letters as constituting an agreement in writing for costs in respect of contentious business falling within s 59 of the 1974 Act. The Master found that a contentious business agreement existed between the parties and gave the solicitors liberty to enter judgment for the amount of their bills. Mr Chamberlain appealed. His position that there was no valid agreement was accepted by the judge who made an order for taxation of the bills. The solicitors then appealed to the Court of Appeal.

59 Thus, in the Court of Appeal, the main issue was whether a valid contentious business agreement existed between Mr Chamberlain and the firm of Boodle & King, a firm of solicitors practising in partnership, although the solicitor in charge of the work had been the employee Mr Jaworski who presumably had written the letter on costs to Mr Chamberlain. The Court of Appeal dismissed the solicitors' appeal, the main judgment being delivered by Lord Denning MR. They held that an agreement by letter could only amount to a contentious business agreement if it was specific in its terms and signed by the client. Here, the solicitors' letter to Mr Chamberlain and his reply could not constitute such an agreement because the solicitors' letter was imprecise as to the amount for which Mr Chamberlain might expect to be liable and Mr Chamberlain in his reply did not expressly assent to the rate of charging which they proposed. What I find significant about this authority is that nowhere in Lord Denning's judgment nor in the very much shorter one of O'Connor LJ was there any suggestion that the firm of Boodle & King was not entitled to enter into an agreement for costs with Mr Chamberlain because it was a partnership and not an individual solicitor. Nor did Mr Chamberlain argue that the alleged agreement was invalid because it had been made by a partnership. Obviously it was not considered that this was a point that could be made to contest the existence of the agreement notwithstanding that the language of s 59 specifically mentioned "a solicitor" and "his client" and "business done, or to be done, by him" all of which language might suggest that only an individual solicitor was legally entitled to enter such agreement with a client. The only reason for such an attitude would be that it was accepted by all concerned in the case that the term "a solicitor" in s 59 had to be read as including the plural "solicitors".

60 I therefore hold that the Written Agreement constituted an agreement for costs in respect of contentious business, in this case Suit 834, between Mr Wee and the firm, Engelin Teh & Partners. Having scrutinised the evidence more carefully, I am also satisfied that this agreement was at all material times after it was signed by Mr Wee the only agreement on costs in relation to the suit. The Written Agreement superseded any previously existing agreement on costs and by signing it (not to mention acting in accordance with it by making payment of not only the four interim bills issued before 1 February 2002 but also invoice EP020174 which was for the separate costs incurred for an interlocutory application), Mr Wee bound himself to it and agreed to the termination or discharge of any previously existing agreement. In any case, as pointed out by ETP, strictly speaking, Mr Wee's

evidence on the Oral Agreement is not admissible as he is seeking to rely on parol evidence to vary or contradict the terms of a written contract. Further, I do not accept Mr Wee's assertion that he signed the Written Agreement on the basis of a representation from Mr Sim that the Written Agreement was intended only to make it administratively convenient to issue interim bills and that it was not intended to vary the terms of the Oral Agreement. Mr Wee is a knowledgeable and very experienced senior lawyer. He could not have believed that his signing the Written Agreement would not impinge on the validity of the Oral Agreement (assuming it existed). Mr Wee is also a man who is very conscious of his rights and it does not seem probable that if he had had an agreement from the firm that it would not charge him more than $200,000 for what he knew was a complicated and lengthy case, he would have signed the Written Agreement. It is much more likely that upon receipt of the firm's letter of 20 July 2001 he would have immediately written to the firm to contest the terms of the letter.

61 The second issue is whether the Written Agreement can be enforced by ETP. ETP has not argued that the Written Agreement was assigned to it by the partners of the firm or that there was a novation of the contract between the partners, itself and Mr Wee so as to enable it to enforce the contract on its own behalf. Instead, it sought to argue that it was entitled to enforce the contract as Ms Teh's representative. Even if I had found the contract to be between Ms Teh and Mr Wee, I would not have accepted that ETP was her representative. The two are separate legal persons and ETP is not her trustee in bankruptcy or the administrator or executor of her estate. As such it cannot be her representative for the purposes of s 111. Neither can it be the representative of the firm. Either the former partners of the firm acting together, or its receiver, if any, could, I suppose, represent it for the purposes of enforcing the contract since the firm has now been dissolved. In any event, ETP has not submitted that it represents the firm for this purpose. It follows that ETP had no legal right to initiate the summons.

62 For completeness I should also refer to ss 114(1) and 115(1). At the time that the transfer of the conduct of Suit 834 from the firm to ETP took place, the firm had not carried out all the work covered by the Written Agreement. A substantial amount of work was done thereafter. Under s 115, if after an agreement on costs has been made, the client changes his solicitors before the conclusion of the business to which the agreement relates, the solicitor who is a party to the agreement shall be deemed to have become incapable to act under it within the meaning of s 114. Section 114 provides that where the solicitor becomes incapable to act before the agreement has been completely performed, an application may be made to the court by any party to the agreement or by the representatives of that party. Under sub-s (3) the court has the same power to enforce or set aside the agreement, so far as it may have been acted upon as if the incapacity had not happened and under sub-s (5) the court may order the amount due in respect of the business done thereunder to be ascertained by taxation. In my view, s 114 would apply to this case even if s 115(1) was inapplicable because the change of solicitor was initiated by the firm rather than by Mr Wee. This is because once the partnership was dissolved, it became incapable of acting and of completing the work contemplated by the agreement.

63 My view therefore is that in respect of work done under the Written Agreement prior to 1 February 2002, the firm or its representatives would be entitled to apply for enforcement by the court under s 114 to the extent that the agreement had not been complied with, in which case the court may possibly order taxation since the firm had not completed all the work contemplated by the agreement. As far as work done after 1 February 2002 is concerned, this work was done by ETP and ETP would be the party who would have to bill Mr Wee and take action if necessary to enforce payment. I suppose that if there were to be a taxation in respect of the work done by ETP, it would be entitled to ask the taxing master to have some regard to the Written Agreement in considering a reasonable fee for the work done, though of course the Written Agreement is not binding on the

taxing master in relation to work done by ETP. I should also state here that in view of the way in which the matter has turned out I do not feel it necessary to express any views on whether the Written Agreement is fair and reasonable.

Conclusion

64 As I have found that ETP is not a party to the Written Agreement, this summons must be dismissed. As far as costs are concerned, the parties did not make any submissions on the point that has proved to be determinative of this case until I drew it to their attention. Further, Mr Wee's main argument up to that point was that the Written Agreement was not valid because it was subject to the Oral Agreement. I have found against him on that argument. Accordingly, although ETP must pay Mr Wee costs, such costs shall not include any costs incurred before the hearing of 26 August 2003 when I raised the point of the effect on the Written Agreement of the dissolution of the firm and transfer of the conduct of the suit to ETP.

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