Riaz LLC *v* Sharil bin Abbas (through his deputy and litigation representative, Salbeah bte Paye)
[2013] SGHC 167

Case Number	: Bill of Costs No 193 of 2012 (Summons No 3323 of 2013)
Decision Date	: 05 September 2013
Tribunal/Court	: High Court
Coram	: Choo Han Teck J
Counsel Name(s)	: Adrian Wong and Alywin Goh (Rajah & Tann LLC) for the applicant; Anthony Wee (instructed) (Lee Shergill LLP) for the respondent.
Parties	: Riaz LLC — Sharil bin Abbas (through his deputy and litigation representative, Salbeah bte Paye)

Legal Profession – Bill of Costs

5 September 2013

Choo Han Teck J:

1 The applicant, Riaz LLC ("Riaz"), is a firm of solicitors seeking a review of the Assistant Registrar's ("the AR") decision disallowing their bill of costs in relation to Suit 539 of 2009 ("S 539"). The respondent is the plaintiff in S 539. The applicant was the solicitor on record for the respondent from 22 June 2009 (when S 539 was filed) to 28 June 2010. From 28 June 2010 onwards, the conduct of S 539 was taken over by the respondent's present solicitors, Lee Shergill LLP ("Shergill"). The respondent's litigation representative objected to Riaz's bill of costs on the basis that the respondent, who is mentally incapacitated, had signed a voidable warrant to act with Riaz.

2 The respondent, Mr Sharil bin Abbas ("Sharil"), was involved in a road traffic accident on Pasir Panjang Road on 11 December 2007. He suffered brain damage as a result. While in hospital, he was approached by the applicant, who offered to act for him. The respondent and his mother, Salbeah bte Paye ("Salbeah"), saw the applicant solicitor, Mr Riaz Qayyum ("Mr Riaz") at his office twice after Sharil was discharged from the hospital. A warrant to act was executed ("the Warrant to Act") with Sharil's thumb print and Salbeah's signature. At that time, Salbeah was not appointed as Sharil's litigation representative under the Mental Capacity Act (Cap 177A, Rev Ed 2010) ("the Mental Capacity Act").

3 Mr Riaz filed S 539 on 22 June 2009. Salbeah filed an affidavit on 21 December 2012 stating that the matter did not progress under Mr Riaz. Salbeah then approached Shergill in June 2010 on Sharil's behalf. Shergill advised Salbeah that S 539 had been wrongly filed as Sharil lacked the mental capacity to have a suit started in his name. Salbeah engaged Shergill on 28 June 2010 and was appointed Sharil's litigation representative pursuant to the Mental Capacity Act on 11 November 2010. The writ in S 539 was amended to reflect this.

4 A settlement was subsequently reached in S 539. Mr Riaz sent Salbeah a list of disbursements and costs on 9 and 25 November 2011 respectively. After consulting her lawyers, Salbeah took the position that the Warrant to Act was invalid for lack of capacity and that Mr Riaz was not entitled to costs. The taxation was protracted over a period of 9 months and four and a half months in, the parties settled at $8,000 as costs payable to Mr Riaz. The AR declined to endorse the agreement and

requested for a medical report on Sharil's mental state. The doctor who gave the medical report was cross-examined. He testified that Sharil was mentally incapacitated and that that would have been obvious to any reasonable observer. The AR found that there was no reason to doubt the doctor's evidence and found that Sharil lacked the mental capacity to contract with Mr Riaz. She thus found that the Warrant to Act was voidable and that there was no contractual obligation to pay Mr Riaz any costs. The AR also found that Mr Riaz should have known that Sharil was in no condition to execute the Warrant to Act.

5 The Applicant appealed against the AR's decision. Mr Adrian Wong, counsel for Mr Riaz argued that, at the very least, Mr Riaz is entitled to reasonable costs for his conduct of S 539. He further argued that a quantum meruit is payable for work done under what purported to be a binding contract but was not so in fact; see *Foo Song Mee v Ho Kiau Seng* [2011] SGCA 45. Alternatively, Salbeah is estopped from refusing to pay as she had agreed to settle all outstanding costs with the Applicant for $8,000.

6 The Applicant made much of the contractual aspect of this dispute and in particular on Salbeah's contractual or quasi-contractual obligation to pay. However, the basis of taxation of a bill of costs is not whether there is a separate contractual basis for payment but whether the solicitor seeking payment has been authorised to conduct the matter in question. A solicitor cannot get costs from someone who is not his client in a matter which he has not been authorised to prosecute or defend. Section 117(1)(b) of the Legal Profession Act (Cap 161, Rev Ed 2009) ("LPA") states that "any court in which a solicitor has been employed to prosecute or defend any suit, matter or proceedings may" make an order for taxation of costs. This assumes that the solicitor had authority to commence or defend his client in that matter.

7 The absence of a warrant to act is prima facie evidence that no such authority exists and an action commenced without such authority is liable to be struck out; see O 54 r 7 of the Rules of Court and *Tung Hui Mannequin Industries v Tenet Insurance Co. Ltd. & Ors* [2005] 3 SLR(R) 184 at [41] and [43]. A challenge to the validity of a warrant to act is similarly a challenge to the solicitor's authority to represent his "client" in that matter. In this case, there would be no authority if Sharil had no mental capacity to endorse the Warrant to Act. There is no reason for me to doubt the expert evidence of the doctor, particularly as it was tested under cross-examination and the Applicant has not raised any contrary evidence other than Mr Riaz's non-expert opinion that he thought that Sharil was of sound mind. I find that Sharil did not have the mental capacity to endorse the Warrant to Act and that this would have been obvious to Mr Riaz as a reasonable observer. Accordingly, the Applicant had no authority to represent Sharil in S 539. S 539 had to be amended and taken over by Shergill (who did have such authority through Sharil's litigation representative) in order for it to be continued. That should have been the end of the matter. If the Court's power to tax a bill of costs derives from a validly authorised and commenced action, then the Court cannot tax a bill of costs for an action which had not been authorised by the purported client. The issue is not whether the contract was void or voidable but whether Sharil had authorised Mr Riaz to represent him in this matter. There was thus no question that there could be a contract to avoid or a claim on *quantum meruit* because such claims are based on the existence of a contract. In this case, Sharil was in no position to contract with or give authority to Mr Riaz.

8 Salbeah was not an agent of Sharil in order to have given consent on his behalf. Salbeah was only appointed Sharil's litigation representative on 11 November 2010, after the Applicant had been removed as the solicitors on file for the conduct of S 539. Although Salbeah's signature was on the Warrant to Act, it is Sharil's thumbprint that appears above the signature line and it is Sharil's name that is stated as the contracting party. It is the Applicant's own case that Mr Riaz took instructions *from Sharil* and not from Salbeah. This was confirmed by Salbeah in her own affidavit where she

claimed to have given Mr Riaz no instructions except to tell him of her concern that Sharil was not of sound mind. The Warrant to Act was ostensibly endorsed by Sharil. On the Applicant's own version of the facts, it could not have derived authority to commence S 539 from Salbeah as a duly authorised agent of Sharil.

9 The Applicant relies on O 59 r 28 and O 59 r 29 of the Rules of Court which permits recovery of costs from a litigation representative in lieu of the client. This does not help the Applicant. Order 59 r 28 and O 59 r 29 deals with a situation where there is no dispute that the mentally incapacitated person is the solicitor's client. Order 59 r 28(3)(a) makes it clear that the client must have been represented by a person acting as his litigation representative *at the material time*. There is no dispute that Salbeah was not his litigation representative at the material time.

10 Both O 59 and Part IX of the LPA (which deals with solicitor's costs) assume that a bill of costs taxable is between a solicitor and his client; see, for e.g., ss 126 and 127 of the LPA. An application for an order for taxation may also be made by the solicitor himself or "by any person liable to pay the bill either to the party chargeable or to the solicitor"; see s 120(1) of the LPA. A "party chargeable" may refer to the litigation representative of the client or his duly authorised agent who must have had authority to contract on behalf of the client when the solicitor was given authority to act for the client in the matter.

11 Taxation of a bill of costs is an inappropriate procedure to enforce a settlement agreement or to claim quantum meruit on a quasi-contract with a person who is not the solicitor's client and on a matter in which the solicitor is not authorised to act. This may not preclude the solicitor from suing on the settlement agreement itself or on some other grounds. For the reasons above, the appeal is dismissed. I will hear the question of costs at a later date.

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