IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2016] SGHC 121

Originating Summons No 399 of 2014

Between

CHANCERY LAW CORPORATION

… Applicant

And

MANAGEMENT CORPORATION STRATA TITLE PLAN NO 1024

… Respondent

JUDGMENT

[Legal Profession] — [Remuneration]

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Chancery Law Corp
v
Management Corporation Strata Title Plan No 1024

[2016] SGHC 121

High Court — Originating Summons No 399 of 2014
George Wei J
30 November 2015

30 June 2016 Judgment reserved.

George Wei J:

Introduction

1 This is an application under s 113 of the Legal Profession Act (Cap 161, 2009 Rev Ed) ("the Act") to enforce two contentious business agreements ("CBAs") made between Chancery Law Corporation ("Chancery Law") and the Management Corporation Title Plan No 1024 ("the MCST").

Background to the dispute

2 This matter arose out of a long-standing dispute between two rival factions of subsidiary proprietors of the MCST: the Mok Camp and the Opposition Camp. The Mok Camp was in control of the council of the MCST ("the Council") when Chancery Law was appointed to represent the MCST in earlier proceedings. The Opposition Camp is made up of the majority subsidiary proprietors by share value who are currently in control of the

Council. The Opposition Camp obtained control of the Council of the MCST and now resists Chancery Law's claim for legal fees incurred in respect of the earlier proceedings.

3 Chancery Law acted as the MCST's solicitors in respect of four matters:

(a) Strata Titles Board No 50 of 2012 ("STB 50/2012");

(b) Suit No 311 of 2012 ("S 311/2012");

(c) Originating Summons 569 of 2013 ("OS 569/2013"); and

(d) Civil Appeal No 110 of 2013 ("CA 110/2013").

4 The present dispute centres on the fees incurred in respect of S 311/2012 and CA 110/2013 (which arose from OS 569/2013). Nevertheless, as all of the aforesaid matters arose out of the same series of disagreements between the members of the MCST, it will be useful to have a broad understanding of the entire chain of events.

STB 50/2012

5 STB 50/2012 arose out of a power struggle in which each faction purported to elect its own chairperson. On 5 August 2011, Mok Wai Hoe ("MWH") was elected as the chairperson of the Council. Subsequently, the Opposition Camp purported to elect Lim Chee Yong ("LCY") as chairperson instead and proceeded to also elect new members to the Council.

6 This state of affairs culminated in two separate applications to the Strata Titles Board, with each faction seeking to *inter alia* invalidate the

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other's appointment of chairperson. MWH applied in Strata Titles No 78 of 2011 ("STB 78/2011") to invalidate the Opposition Camp's election of chairperson and council members. In response, the Opposition Camp applied in STB 50/2012 to invalidate MWH's appointment as chairperson and certain other resolutions passed by the Council in the absence of the members of the Opposition Camp. Chancery Law acted for the MCST in STB 50/2012.

7 On 18 February 2013, the Strata Titles Board delivered its decision in STB 78/2011 and ordered the invalidation of the Opposition Camp's election of chairman and council members. This decision was not appealed against and the parties agreed that the decision in STB 50/2012 was to be bound by the decision rendered in STB 78/2011.

S 311/2012

8 While the two sets of proceedings before the Strata Titles Board were still underway, the Opposition Camp commenced S 311/2012 against Mok Wing Cheong ("MWC") alleging, *inter alia*, that he had breached his duties in his capacity as the (previous) chairperson of the MCST and had acted in excess of his authority by undertaking the upgrading works and the appointment of the managing agent of the MCST. The primary remedy sought was for the restitution of monies to the MCST's maintenance and sinking funds that were spent renovating the common property maintained by the MCST. MWC engaged his own legal counsel in respect of S 311/2012.

9 MWC subsequently filed a third party notice against the MCST and the Council which was then controlled by the Mok Camp ("the Mok Council") engaged Chancery Law to represent the MCST in S 311/2012. A letter of

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engagement dated 12 November 2012 was made between the Mok Council and Chancery Law[1] ("the 12 November 2012 LOE").

OS 569/2013

10 During an EGM held on 5 June 2013 ("the 5 June 2013 EGM"), the MCST was asked to vote on, *inter alia*, the following motions:

(a) Motion 1(b): That the appointment of legal representatives be determined only by the MCST in a general meeting; and

(b) Motion 2: That the appointment of Chancery Law as legal representative of the MCST be terminated with immediate effect.

The Chairperson then, MWH, ruled that Motion 1(b) was out of order and consequently, Motion 1(b) was not put to vote. MWH rejected the votes of the Opposition Camp in respect of Motion 2, on the ground that the members of the Opposition Camp were in a position of conflict of interests. A poll was then called and Motion 2 was defeated by a majority vote.

11 Following that, the Opposition Camp filed OS 569/2013 against the MCST and MWH, seeking to invalidate *inter alia*, MWH's ruling that Motion 1(b) was out of order, as well as MWH's rejection of the Opposition Camp's votes in respect of Motion 2. Following the commencement of OS 569/2013, the Mok Council then appointed Chancery Law to represent the MCST in OS 569/2013. A letter of engagement dated 17 July 2013 was made between the Mok Council and Chancery Law[2] ("the 17 July 2013 LOE").

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1 Tan Tian Luh's First Affidavit dated 30 April 2014, Exhibit TTL-3

2 Tan Tian Luh's First Affidavit dated 30 April 2014, Exhibit TTL-5

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12 On 15 August 2013, Chan Seng Onn J rendered his judgment for OS 569/2013 and ordered: (a) the invalidation of the ruling by MWH that Motion 1(b) was out of order; and (b) the validation of the ruling by MWH to reject the Opposition Camp's votes in relation to Motion 2. Chan J further directed that any future and/or intended amendments to Motion 1(b) ought not to touch on the legal representatives already appointed by the MCST to defend the action in S 311/2012.

CA 110/2013

13 CA 110/2013 was the Opposition Camp's appeal against Chan J's decision. On 23 May 2014, the Court of Appeal allowed the appeal in part: (a) ordering the invalidation of the ruling by MWH to reject the Opposition Camp's votes in relation to Motion 2; and (b) setting aside Chan J's direction that the Opposition Camp was not to table any future and/or intended amendments to Motion 1(b) that touched on the lawyers already appointed to represent the MCST in S 311/2012.

14 Subsequently, on 6 August 2014, Chancery Law was informed that the MCST had passed a resolution (in accordance with the Court of Appeal's decision in CA 110/2013) to nullify/terminate the appointment of Chancery Law in S 311/2012. I pause to note that there is a dispute as to when Chancery Law's appointment was terminated. This will be considered later in more detail.

OS 399/2014

15 The present application concerns two sets of bills for work done by Chancery Law from 8 November 2012 to 25 February 2014. The ***first*** set relates to work done under the 12 November 2012 LOE *vis-à-vis* S 311/2012

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and is for the aggregate sum of S$174,244.44 which may be broken down as follows:[3]

(a) Statement of Charges (SC No 2014.1261) dated 4 February 2014 (for work done from 8 November 2012 to 3 February 2014) for S$51,221.48 (including GST);

(b) Statement of Charges (SC No 2014.1265) dated 7 February 2014 (for work done from 4 to 7 February 2014) for S$37,290.57 (including GST);

(c) Statement of Charges (SC No 2014.1266) dated 14 February 2014 (for work done from 8 to 14 February 2014) for S$42,736.69 (including GST); and

(d) Statement of Charges (SC No 2014. 1272) dated 25 February 2014 (for work done from 18 to 21 February 2014) for S$42,995.68 (including GST).

16 The ***second*** set of bills relates to work done under the 17 July 2013 LOE *vis-à-vis* CA 110/2013 and is for the sum of $28,658.37.[4] The bill is in respect of work done between 16 August 2013 and 25 February 2014. I note in passing that there is a third bill that has not been challenged. This is in respect of OS 569/2013 and is for the sum of $27,121.02.[5] This bill was paid by the MCST on 2 September 2013 and relates to work done up to 15 August 2013.

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3 Tan Tian Luh's First Affidavit dated 30 April 2014, at [21].

4 Tan Tian Luh's First Affidavit dated 30 April 2014, at [49].

5 Tan Tian Luh's First Affidavit dated 30 April 2014, at [47].

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17 Before proceeding to examine the substance of OS 399/2014, I note briefly that the dispute between Chancery Law and the MCST has been protracted by the filing of several interlocutory applications. After OS 399/2014 was commenced on 30 April 2014, the MCST applied for leave to issue a notice to join eight current or ex-council members of the MCST ("the Council Members") as third parties. The application was made on the basis that the MCST is entitled to an indemnity and/or a contribution from the Mok Council should it be found liable to Chancery Law for the fees claimed. On 13 March 2015, this court reversed the assistant registrar's order to grant the MCST leave to issue a third party notice: see *Chancery Law Corp v Management Corporation Strata Title Plan No 1024* [2015] SGHC 66 ("*Chancery Law (3P)*"). Aside from the MCST's attempt to initiate third party proceedings, there were applications for leave to file further affidavits. Consequently, OS 399/2014 only came up for hearing on 30 November 2015.

18 I note also that the trial of S 311/2012 was heard before another judge of the High Court. The first tranche was fixed for ten days from 6 to 21 February 2014 (and only nine days were used). The second and third tranches have been heard. Chancery Law acted for the MCST in the first tranche whereas a different law firm represented the MCST in the second and third tranches. At the date of this decision, the decision in S 311/2012 has not yet been rendered

OS 399/2014

19 With the factual backdrop in mind, I turn to the application proper. In *Chancery Law (3P)*, this court noted that applications to enforce a contentious business agreement ("CBA") under s 113 of the Act are usually dealt with in a summary manner. Indeed, it is not without reason that proceedings under s 113

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must be brought by way of originating summons. Nevertheless, in order to trigger the operation of s 113, there must first be a valid CBA within the meaning of s 111. Furthermore, even if s 113 is engaged, the court is tasked to determine the fairness and reasonableness of the CBA in question: s 113(4).

20 Put broadly, the substantive core of the dispute before me concerns whether the parties had concluded valid CBAs within the meaning of s 111 of the Act. Among other things, this requires the determination of the ancillary question of whether the Mok Council had the authority to appoint Chancery Law in the first place. Other issues that were raised include the reasonableness of steps taken by Chancery Law in S 311/2012. The number of issues raised and canvassed by both parties in these proceedings resulted in lengthy submissions.

21 At this juncture, it is apposite to note that the MCST submissions proceeded on the basis that the LOEs signed by the Mok Council on behalf of the MCST *do not* constitute CBAs under s 111 of the Act. However, Chancery Law's position seems to be that the disputed bills of costs (as opposed to the LOEs) constitute CBAs under s 111 of the Act. To this end, Chancery Law relies primarily on the following deeming clause that appears in the LOEs:[6]

> If you have not asked us to tax our bill/[statement of charges] pursuant to clause 26, and do not pay our bill/[statement of charges] within 21 days of its receipt, the bill/[statement of charges] ***in question shall then be deemed to be an agreed costs bill/[statement of charges], pursuant to … s. 111*** (in respect of contentious business) of the Legal Profession Act … Further, if you continue to instruct us to carry out work or accept our work product after 14 days of the receipt of a bill/[statement of charges], this act shall be taken as your unconditional acceptance (in principle and in quantum) of that bill/[statement of charges] and all bills/[statement of

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6 Tan Tian Luh's First Affidavit dated 30 April 2014, pp 30 and 43

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> charges] rendered previously. If this is not the case, please inform us in writing immediately.
>
> [emphasis added in bold italics]

22 Since Chancery Law relies primarily on the deeming clause that has the purported effect of converting the disputed bills of costs into CBAs under s 111 of the Act, the first issue that arises for determination is whether the disputed bills of costs constitute CBAs. If they do not, I will consider, for completeness, whether the LOEs themselves amount to CBAs.

23 Before I turn to examine the merits of these arguments, it will be expedient to deal briefly with Chancery Law's objections to parts of the affidavit filed by Tay Lay Suan on behalf of the MCST on 24 July 2014 and 24 August 2015 ("Tay's Affidavits"). At the hearing of 19 August 2015, I indicated that the admissibility and merits of Tay's Affidavits were to be tested at the substantive hearing of OS 399/2014. Chancery Law has now set out a compendious list of objections to parts of Tay's Affidavits. These include, in particular, parts which refer to the evidence before the trial judge in the hearing of S 311/2012. For example, one disputed part of Tay's Affidavits refer to parts of the transcript in which one Mok Wai Chung (a member of the Mok Camp) allegedly conceded that he had assumed that he was empowered to appoint Chancery Law.[7] However, in my judgment, it is unnecessary to delve into each individual objection. It will become apparent later on in this judgment that I did not place any weight on the disputed parts of the affidavits in arriving at my decision.

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[7] See Affidavit of Tay Lay Suan dated 24 August 2015, para 23; Respondent's submissions, [50(e)].

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Whether the formal requirements in s 111 of the Act have been satisfied

24 It will be useful to first set out some basic principles governing CBAs. Section 111 of the Act permits an advocate and/or solicitor to enter into CBAs with his client and it provides:

> **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.

25 The agreement must satisfy the following requirements in order to constitute a valid CBA under s 111. *First*, the agreement must be put in writing: s 111(1). *Second*, the agreement must be signed by the client: s 111(2). *Third*, there must be sufficient certainty or specificity of the terms governing the fees: *Shamsudin bin Embun v P T Seah & Co* [1985–1986] SLR(R) 1108 ("*Shamsudin*") at [22].

26 The consequence of a finding that there is a contentious business agreement is that the client loses his right to ask for the bill to be taxed: s 112(4). Whilst this does not mean that the agreement is sacrosanct (since the court retains the power to declare the agreement void for setting out unfair or unreasonable terms), it stands to reason that care is needed in determining whether there is in fact an agreement with the "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,

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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": s 111(1). In the absence of such an agreement, ss 111 and 113 would not even be engaged, and the client retains his right to have the bills sent for taxation under the standard rules.

Whether the bills of costs amount to CBAs by dint of the deeming clause

27 For ease of reference, the deeming clause in the LOEs is set out again:[8]

> If you have not asked us to tax our bill/[statement of charges] pursuant to clause 26, and do not pay our bill/[statement of charges] within 21 days of its receipt, the bill/[statement of charges] ***in question shall then be deemed to be an agreed costs bill/[statement of charges], pursuant to … s. 111*** (in respect of contentious business) of the Legal Profession Act … Further, if you continue to instruct us to carry out work or accept our work product after 14 days of the receipt of a bill/[statement of charges], this act shall be taken as your unconditional acceptance (in principle and in quantum) of that bill/[statement of charges] and all bills/[statement of charges] rendered previously. If this is not the case, please inform us in writing immediately.
>
> [emphasis added in bold italics]

28 It does not appear that the MCST made a request for the bills in issue to be taxed. The question then is whether the apparent failure to do so means that the bills as rendered must be treated as embodying a CBA at all. Although there is no indication as to whether this type of deeming clause is commonplace or regularly found in letters of engagement or contentious business agreements, the question as to the validity and effect of the deeming clause merits some consideration. If valid, the effect of the deeming clause is that the client retains the right to taxation after the bill is issued. In the absence

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[8] Clause 30, 17 July 2013 LOE; Clause 26, 12 November 2012 LOE.

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of any objections from the client within 21 days of receipt, the client loses the right to taxation as the bill itself is deemed to constitute a CBA within s 111.

29 There are obvious difficulties with the effect of the deeming clause. First, the deeming provision is open to criticism as being contrary to the policy underlying s 122 of the Act which provides the client with 12 months to request for the taxation of the bill in question and if he fails to do so within that period, special circumstances must be shown before an order for taxation can be made by the court.

30 The relevant provisions of the Act envisage two distinct situations: first, where there is a valid CBA in which case the need to tax the bill is completely avoided (ss 111 and 113 of the Act); and second, where there is no valid CBA in which case the client has 12 months to request for taxation of the bill in question (s 122 of the Act). The effect of the deeming clause falls in between the two situations contemplated by the Act — instead of 12 months, the client has 21 days to request for taxation of the bill of costs in issue, failing which the bill will be deemed to be an agreed costs bill pursuant to s 111 of the Act. The question that naturally arises is whether such "in between" agreements are permitted by the statutory framework.

31 I note also that the law is complex on the issue of whether a term that *appears* to contravene a statutory provision is void or unenforceable, especially so where the prohibition is implied rather than express: Andrew Phang, *The Law of Contract in Singapore*, (Academy Publishing, 2012) at para 13.027. Is the term in fact a *breach* of the statutory provision and if so, what is the effect on the term and contract as a whole? Other questions may also arise. Whilst these are important questions, the MCST has not raised any such objections to the deeming clauses. Indeed, neither party's submissions

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addressed the legality of the deeming clauses in the context of s 122. I therefore make no further comment on this matter.

32 Leaving aside the possible objections on policy grounds, the second and more fundamental difficulty is that the bill of costs, unlike the LOEs themselves, were not signed by the client (here, the MCST). It will be recalled that s 111(2) requires every CBA to be signed by the client. In my judgment, the lack of signature suffices to dispose of the issue and the disputed bills of costs cannot constitute CBAs within the meaning of s 111 of the Act.

33 For completeness, I note that the MCST has made substantial arguments on whether the bills rendered were unreasonable. In respect of the bills rendered under the 12 November 2012 LOE *vis-à-vis* work done for S 311/2012, the core of the MCST's argument, at its most basic, is that the bills are excessive in the sense that unnecessary work was performed. The assertion is that certain arguments raised were unnecessary and that there was no need for Chancery Law to be present for much of first tranche of evidence. The objection hits out at the necessity and reasonableness of some (possibly many) of the steps taken by Chancery Law resulting in a substantial bill.

34 In relation to the bills rendered under the 17 July 2013 LOE *vis-à-vis* work done for OS 569/2013 (which concerned the rejection of the Opposition Camp's votes on, *inter alia,* Chancery Law's appointment), the assertion is that the MCST was a nominal party and that it should have taken a backseat in the proceedings. The battle was in substance and reality between the Opposition Camp and the Mok Camp. Instead of taking a neutral position, Chancery Law was appointed to act for the MCST when they themselves had an interest by virtue of their retainer for S 311/2012. The MCST submits that it was in these circumstances that Chancery Law took a "very active and

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expensive role" in the proceedings. Again, it is argued that the legal expenses incurred were unreasonable and unnecessary; the MCST should have taken a neutral position in the subject-matter of the OS 569/2013 dispute. By acting for the MCST in OS 569/2013 when it had a financial interest in retaining its engagement for S 311/2012, Chancery Law was not acting in the best interests of the MCST.

35 Given my finding that the bills of costs are not CBAs within the meaning of s 111, it is unnecessary to make any findings on the complaint over the manner in which Chancery Law conducted the matters. Further, I note that reasonableness is a factor that is taken into consideration where a bill of costs payable to a solicitor by his own client is sent for taxation. This is apparent from the three limbs of O 59 r 28(2) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed). In any case, it is not necessary to make any findings as to whether Chancery Law's conduct of the case for the MCST has breached any duty or that they had acted without due care in the conduct of the case. It bears repeating that whilst the evidence has been heard in S 311/2012, judgment has yet to be delivered. If the position of the MCST is that Chancery Law has breached its duty of reasonable care, this is a matter that could have been taken up in proceedings for breach of duty and negligence. Where such a broad attack is launched against the solicitor's entire conduct of the proceedings, such issues can only be dealt with in proceedings by the client against the solicitors.

Whether the LOEs amount to CBAs

36 I turn now to the question of whether the LOEs themselves amount to CBAs. The MCST does not deny that the LOEs were signed. The dispute centres on whether the LOEs were signed by the client, *ie*, the MCST. The

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central plank of the MCST's argument is that the Mok Council lacked authority to sign the LOEs on behalf of the MCST. Aside from that, the parties have also raised further issues as to the specificity and certainty of the terms of the alleged CBAs as well as the fairness and reasonableness of the terms of the CBAs. I will address each argument in turn.

Whether Chancery Law is entitled to rely on the ostensible authority of the Mok Council to appoint legal representatives on behalf of the MCST

37 This issue revolves around the authority of the Mok Council to engage legal representatives on behalf of the MCST and whether Chancery Law had actual or constructive knowledge of any lack of authority on the part of the Mok Council. During the hearing, the MCST made much of the assertion that the execution of the LOEs exceeded the authority of the Mok Council and that Chancery Law had notice (actual or constructive) of such lack of authority. First, the MCST argued that Chancery Law was put on notice of the Mok Council's lack of authority by the circumstances surrounding the disputes for which Chancery Law was appointed to act. Second, the MCST appeared to suggest that Chancery Law's appointment was retroactively terminated by the decision of the Court of Appeal in CA 110/2013. On the other hand, Chancery Law takes the position that it is entitled to rely on the apparent or ostensible authority of the Mok Council to appoint legal representatives on behalf of the MCST.

38 It is apposite to note that a CBA will only be enforced "in the absence of there being any vitiating factors": *Wee Soon Kim Anthony v Chor Pee & Partners* [2006] 1 SLR(R) 518 at [26]. For example, in *Shamsudin*, Chan Sek Keong JC (as he then was) resolved a plea of *non est factum* in determining whether to enforce a contentious business agreement under s 113 of the LPA.

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(1) Whether Chancery Law was aware of the fee restrictions placed on the Council of the MCST

39 The MCST relies primarily on resolutions which limited the power of the Council to incur legal fees. These resolutions were passed at the MCST's extraordinary general meetings dated 6 October 2010 and 12 December 2012. In the former, it was resolved that the Council was only authorised to incur legal fees up to a limit of $500.00. In the latter, it was resolved that any expenditure exceeding $2,000.00 had to be approved at a general meeting of the MCST. For ease of reference, I will refer to these as the "fee restriction resolutions". The MCST asserts further that Chancery Law had sufficient knowledge or notice of this lack of the authority because of:

(a) The long-standing and bitter dispute between the Mok Camp and Opposition Camp over the appointment of council members as well as the manner in which the Mok Camp had discharged its duties;

(b) The time sheet report of Chancery Law which shows that Chancery Law had reviewed documents attached to the extraordinary general meetings in which the fee restriction resolutions were passed;and

(c) Clauses 6–8 of the 17 July 2013 LOE which provided that the fees and disbursements of Chancery Law were not to be paid by the MCST until OS 569/2013 was decided, and until then the fees and disbursements would be paid by one of the MCST's subsidiary proprietors.

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(A) THE LONGSTANDING DISPUTE BETWEEN THE TWO CAMPS

40 Before delving into the merits of the MCST's assertion, it will be useful to set out some brief background. In *Chancery Law (3P)*, while the MCST placed reliance on a letter written by Messrs Infinitus Law Corporation ("Infinitus") informing Chancery Law that the Mok Council which had supposedly appointed Chancery Law in S 311/2012 had no authority to do so, there was no mention of the fee restriction resolutions (at [26]). The key paragraphs in the letter from Infinitus simply stated that it is understood from clients that Chancery Law had been appointed by the Mok Council to act for the MCST in S 311/2012 and that the Opposition Camp was challenging the appointment. There was also a bare statement that the "purported Council who had supposedly appointed you has no authority to do so." Chancery Law responded by attaching its warrant to act and stated that it was premature for Infinitus to assume that the Mok Council had no authority since the matter was at that time before the Strata Titles Board in STB 78/2011. It was in this context that I commented that there was no suggestion in the affidavits filed on behalf of the MCST that Chancery Law had constructive knowledge of the Mok Council's lack of authority (at [58]).

41 The same point remains in the present application. Even though Chancery Law was aware of the general position of the Opposition Camp (that the Mok Council had no authority to appoint Chancery Law), there was no suggestion that Chancery Law was aware of the fee restriction resolutions which restricted the Mok Council's authority to engage lawyers on behalf of the MCST where the fees in question exceeded S$500. Chancery Law's knowledge of the power struggle between the Mok Camp and the Opposition Camp and the Opposition Camp's challenge to the appointment of Chancery Law does not amount to notice of the fee restriction resolutions.

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(B) CHANCERY LAW'S REVIEW OF DOCUMENTS ATTACHED TO MINUTE SHEETS

42 The MCST also points out that the time sheet report of Chancery Law shows that Chancery Law had reviewed documents attached to the minute sheets of the extraordinary general meetings in which the fee restriction resolutions were passed. On this basis, the MCST asserts that Chancery Law would presumably have been "thorough" and gone through the minutes and was therefore made aware of the S$500 cap on legal fees. In response, Chancery Law explains that only the audited financial statements were reviewed and that in any case, this was after the 12 November 2012 LOE was executed. In short, Chancery Law denies having any knowledge of the fee restriction resolutions.[9] I accept Chancery Law's explanation and am inclined towards the view that the review of the audited financial statements attached to the minute sheets of the aforesaid extraordinary general meetings did not place Chancery Law on notice of the fee restriction resolutions.

(C) CLAUSES 6 TO 8 OF THE 17 JULY 2013 LOE

43 Clauses 6 to 8 of the 17 July 2013 LOE provide as follows:

> 6. We have been provided a copy of the Originating Summons and supporting affidavit made by Ms Sarah Tham. The Originating Summons concerns motions to restrict the Council's authority to appoint legal representatives. We are of the view that the MCST, and the Council acting on its behalf, have a duty to appoint legal representation to defend the MCST in legal proceedings.
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> 7. In the interest of caution, our fees and disbursements in respect of this matter should not be paid by the MCST until such time as the Court resolves the issue of the Council's authority to appoint legal representatives and our authority to act for the MCST.

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9 Applicant's Submissions, at [144].

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> 8. In view of this, payment of our bills should be made directly by Mun Hean Technology Pte Ltd … on behalf of the MCST. We would also require a second letter of indemnity to be executed by Mun Hean Technology Pte Ltd in favour of our firm in respect of our continued representation of the MCST 1024 in this originating summons.

44 In essence, the above clauses provide that the fees and disbursements of Chancery Law were not to be paid by the MCST until OS 569/2013 was decided, and until then the fees and disbursements would be paid by Mun Hean Technology Pte Ltd. According to the MCST, it may be inferred from these clauses that Chancery Law had actual or constructive notice of the lack of authority; that is why Chancery Law needed a "guarantee" that the fees would be paid. In response, Chancery Law asserts (amongst other points) that there is nothing wrong with a third party offering to pay legal fees on behalf of another party.

45 I am unable to see how cll 6–8 of the 17 July 2013 LOE could demonstrate Chancery Law's notice of the fee restriction resolutions It is clear from the events at the material time that cll 6 – 8 were inserted "[i]n the interest of caution" to protect Chancery Law against eventualities that could possibly stem from OS 569/2013, not because there were fee restrictions in place that curtailed the Mok Council's authority to appoint legal representatives on behalf of the MCST. At this point, it bears recalling that OS 569/2013 concerned two motions that were tabled at the 5 June 2013 EGM. The first motion was that the appointment of legal representatives was to be determined only by the MCST at a general meeting. The second was that the appointment of Chancery Law was to be terminated with immediate effect. The first motion was ruled to be out of order whereas the second motion was defeated by a majority vote because the votes of the Opposition Camp were rejected by MWH on the basis of a perceived conflict of interest. OS 569/2013

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was then brought by the Opposition Camp to invalidate the rulings of MWH during the 5 June 2013 EGM.

46 Further, the events surrounding OS 569/2013 (as well as CA 110/2013, the appeal against the decision in OS 569/2013) could not have put Chancery Law on notice of the Mok Council's lack of authority since the parties (especially the Opposition Camp) had proceeded on the basis that Chancery Law's appointment was valid. In the first place, OS 569/2013 did not concern Chancery Law's authority to act for the MCST. Instead, it concerned matters pertaining to the *termination* of Chancery Law as well as the future appointment of legal representatives for the MCST. Termination of Chancery Law's appointment could only be sought if the appointment was valid in the first place.

47 *Secondly*, at the hearing of CA 110/2013, VK Rajah JA asked then counsel for the Opposition Camp whether they were challenging Chancery Law's appointment as solicitors. Then counsel for the Opposition confirmed that they were not making such a challenge. Indeed, whilst there is nothing in the judgment of the Court of Appeal to substantiate the point, I note that Eldan Law LLP which represented MWH in CA 110/2013 confirmed that the counsel for the Opposition Camp had indeed stated that they were not challenging Chancery Law's appointment as solicitors.[10]

48 *Thirdly*, the conduct of the Opposition Camp subsequent to the Court of Appeal's decision in CA 110/2013 showed that members of the Opposition Camp had thought Chancery Law's appointment to be valid. Reference may

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[10] See second affidavit of Tan Tian Luh dated 21 August 2014 at TTL-15 Annex 2 (p 46 of the affidavit).

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first be made to a letter from Infinitus to Chancery Law dated 7 July 2014.[11] The letter states that following the Court of Appeal's decision in CA 110/2013, the Opposition Camp had made a request for an EGM to consider the *termination* of Chancery Law's appointment and the appointment of new legal representatives for S 311/2012. The letter concludes with the request that Chancery Law "hold your hands on all further work" as their clients "are likely to take issue with any further work done for Suit 311/2012." On 6 August 2014, the MCST passed a resolution to terminate Chancery Law's appointment and Chancery Law was informed of the same on the same day. The purpose of the motion passed during the EGM on 6 August 2014 was to "***nullify***/terminate the appointment of Chancery Law Corporation for MCST No. 1024 in S-311 of 2012" [emphasis added in bold italics]. Although the resolution makes express reference to "nullify", I am of the view that this adds nothing to "terminate." Again, the MCST could only properly terminate Chancery Law's appointment if the original appointment was valid in the first place. Furthermore, the letter from Infinitus to Chancery Law merely stated that the Opposition Camp would take issue with all further work done for S 311/2012; there was no indication that the Opposition Camp had serious objections to the work done prior to 7 July 2014.

49 For the above reasons, I am not convinced that Chancery Law had been put on notice of the Mok Council's lack of authority to appoint legal representatives. For completeness, I see no merit in the MCST's submission that the decision in CA 110/2013 effectively meant that Chancery Law's appointment was automatically terminated since Motion 2 at the 5 June 2013 EGM *was deemed* to have been carried out with a majority of votes. If that

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[11] See second affidavit of Tan Tian Luh dated 21 August 2014 at TTL-13 (p 29 of the affidavit).

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were indeed the case, it would be illogical for the MCST to have to formally terminate Chancery Law's appointment by passing a resolution to that effect. Instead, a more logical effect of the Court of Appeal's decision in CA 110/2013 was that a fresh EGM would have to be held and Motion 2 (or its equivalent) presented again with the votes this time to be counted in accordance with the Court of Appeal's decision. Therefore, I am of the view that Chancery Law's appointment as the MCST's solicitors was only validly terminated on 6 August 2014 when the resolution was passed in accordance with the Court of Appeal's decision in CA 110/2013.

50 I pause here to note that Chancery Law's submission that the Opposition Camp cannot approbate and reprobate the judgment in CA 110/2013 by asserting that Chancery Law had no authority to represent the MCST in OS 569/2013 and CA 110/2013. In CA 110/2013, the Court of Appeal ordered MWH to pay costs fixed at $3000 to the MCST. The Opposition Camp thus accepted the benefit of the judgment by accepting the costs awarded to them pursuant to judgment in CA 110/2013. What is unclear, however, is why the fact that the MCST accepted costs awarded to them adds anything to the point discussed above: namely that the initial appointment of Chancery Law was not challenged.

51 Chancery Law also argues that its representation of the MCST in S 311/2012 was cloaked with the protection accorded by Chan J's decision in OS 569/2013. In this regard reference was made to the UK Court of Appeal's decision in *Hillgate House Ltd v Expert Clothing Services & Sales Ltd* [1986] 1 Ch 340 ("*Expert Clothing*"). In that case the plaintiff obtained an order for possession on the basis of forfeiture of a lease. The plaintiff took possession. The order was subsequently reversed by the Court of Appeal. The defendant (tenants) brought an action for damages for alleged wrongful possession. The

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Court of Appeal held that since the plaintiff was acting under an order of court, the interruption to possession was lawful at the time it occurred and could not retrospectively be made unlawful. I note in passing that the rule in *Expert Clothing* was applied by Belinda Ang J in *Thode Gerd Walter v Mintwell Industry Pte Ltd and Others* [2009] SGHC 44 at [37].

52 Chancery Law submits that since it was acting in accordance with Chan J's orders in OS 569/2013 by continuing to act for the MCST in S 311/2012 and that in itself cloaked Chancery Law with immunity against all allegations made by the MCST. Until the judgment of Chan J was reversed by the Court of Appeal, Chancery Law was entitled to act as solicitors for the MCST. Further, whilst the decision of Chan J was reversed by the Court of Appeal on 23 May 2014, it did not follow that Chancery Law's retainer was retrospectively terminated on 5 June 2013. Chancery Law was not a party to CA 110/2013 and Chancery Law's right to represent the MCST was not decided by the Court of Appeal in CA 110/2013. The judgment in CA 110/2013 only dealt with the rights of the parties to the proceedings. Chancery Law also submits that even if the motion (to terminate its appointment) had been passed by the EGM of the MCST on 5 June 2015, it would not automatically mean that the retainer was terminated immediately. Motion 2 if passed was an internal decision of the MCST and merely sets out the policy or principle intended to be followed by the MCST in its dealings with Chancery Law.

53 Indeed, *Expert Clothing* may not even be relevant. *Expert Clothing* was concerned with a situation where an act done under an order given by the court below was alleged to have become unlawful when a higher court reversed the order of the court below. Given the finding that CA 110/2013 and OS 569/2013 did not touch on Chancery's authority to act (but instead

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concerned the termination of Chancery's appointment), it cannot be said that Chan J's order in OS 569/2013 had cloaked Chancery with authority to act. Chancery Law's authority to act derived from its appointment.

(2) Whether Chancery Law may rely on the ostensible authority of the Mok Council to appoint legal representatives on behalf of the MCST

54 In the absence of actual/constructive notice of the fee restrictions that were placed on the Mok Council, I am further of the view that Chancery Law was, on balance, entitled to rely on the ostensible authority of the Mok Council in accepting its appointment as the MCST's solicitors. The Council of an MCST is akin to a board of directors of a company. It is statutorily provided that the decision of the Council shall be the decision of the MCST except insofar as restricted matters are concerned: s 58(1) of the Building Maintenance and Strata Management Act (Cap 30C, 2008 Rev Ed)("BMSMA"). Restricted matters are matters that may "only be made by the management corporation pursuant to a unanimous resolution, special resolution, 90% resolution, comprehensive resolution, resolution by consensus or in a general meeting of the MCST, or only by the council at a meeting" (see s 58(4)(*a*) of the BMSMA), as well as restrictions imposed on the Council by the MCST (see s 58(4)(*b*) read with s 59 of the BMSMA).

55 Here, we are concerned with restrictions imposed on the council by the MCST under s 58(4)(*b*) read with s 59 of the BMSMA. The fee restrictions were passed at general meetings prior to Chancery Law's appointment and in this regard, I agree with Chancery Law that such matters are issues of internal management which it would not be in a position to know. This is supported by the indoor management rule that is well established at common law in the case of *Royal British Bank v Turquand* (1856) 6 E&B 327 in which the court allowed the outsider to make the assumption that company officers had duly

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complied with the company's rules. The directors of the company gave a guarantee to their bankers for borrowing without complying with their company's usual requirement of a shareholders' general resolution of approval and the company sought to rely on the absence of shareholder approval to avoid payment. The court rejected this argument and held that the bank was entitled to assume that the borrowings were duly authorised.

56 In the case at hand, I am persuaded that Chancery Law was unaware of the fee restrictions that had been placed on the Council and was also entitled to rely on the ostensible authority of the Mok Council in its dealings with the MCST. Accordingly, the MCST is therefore bound by the Mok Council's acts/decisions. In these circumstances, it is unnecessary to deal with Chancery Law's many submissions on waiver, estoppel and ratification of their appointment as the MCST's solicitors.

Whether the terms of the LOEs are sufficiently specific and certain

57 I shall turn now to the issue as to whether the terms of the LOEs are sufficiently specific and certain. In *Chamberlain v Boodle & King* [1982] 1 WLR 1443 ("*Chamberlain*"), the English Court of Appeal had the occasion to consider whether an agreement by letter constituted a CBA under s 59 of the English Solicitors Act 1974 ("the 1974 Act") which is *in pari materia* with s 111(1) of our Act. Section 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.

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58 The "agreements" merely stipulated the various hourly rates charged by different categories of members of the firm. For convenient reference, the contents of one of the "agreements" in question is set out in full :

> 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. These standard rates are reviewed for adjustment on a regular basis, ordinarily at the conclusion of the firm's fiscal year.
>
> Statements will be rendered by the firm to you on a regular basis, either monthly or quarterly, depending upon the activity generated during the applicable period.
>
> At this time we would appreciate your sending to us a check [*sic*] representing a retainer in the amount of £2,000 in accordance with our prior telephone conversation. This will be treated as an advance payment; our fees in accordance with the foregoing schedule will be applied against this retainer. We would appreciate your always remitting to us in pounds sterling if that is convenient.

59 The plaintiff claimed that the bills should have been taxed but the solicitors said that he had no right to have them taxed because there had been an agreement in writing. Lord Denning held (at 1445):

> … *Further the agreement must be sufficiently specific – so as to tell the client what he is letting himself in for by way of costs.* It seems to me that the letters in this case do not give the client the least idea of what he is letting himself in for. … Take, for instance, the rate. It certain seems high enough to me. It is £60 to £80 an hour. What rate is to be charged? And for what partner? Of what standard? Then £30 to £45 an hour for associates who may be involved. Which legal executives? Of what standard? Which associates? Does it include the typists? That is one of the broad bands which is left completely uncertain by this agreement. ***Then there is the hourly rate. That must depend upon the skill and expertise of the individual partner or associate. A skilled partner can do the work in half the time of a slow partner. Is the client to be charged double the rate because a slow partner has been put on the case?*** These rates per hour are over a pound a minute. It would seem that there must be a very good

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> system of timing – almost by stopwatch – if that is to be the rate of payment.
>
> I only make those observations because it seems to me that this is not an agreement as to remuneration at all. ***It is simply an indication of the rate of charging on which the solicitors propose to make up their bill. It is by no means an agreement in writing as to the remuneration.*** …
>
> [emphasis added in bold italics]

60 O'Connor LJ added his brief views (at 1446):

> I agree. I only wish to add that in coming to the decision that [the agreements] do not constitute a contentious business agreement, they are entirely silent as to how disbursements are to be dealt with and ***they do not set out any plan by which the client could make any reasoned calculation as to what his monthly or quarterly liability might be***.
>
> [emphasis added in bold italics]

61 It is clear from the above that Lord Denning did not consider the agreement before him to be an agreement as to remuneration. In his view, the agreement simply set out an *indication* of the charging rate. The client by enclosing a deposit on account did not state in writing that "he agreed to the terms." That said, I note that the English Court of Appeal declined to say what sort of method of remuneration would be covered by a CBA (for example, whether the agreement must set out an hourly rate or indicate whether that rate is higher or lower than the standard *etc*). On the facts the English Court of Appeal was satisfied that it was not a contentious business agreement as to remuneration. There was no doubt the solicitor had been *engaged* or *retained* by the client. Since there was no contentious agreement on remuneration, the client retained the right to have the bills in question taxed.

62 The decision in *Chamberlain* was cited with approval by Chan Sek Keong JC (as he then was) in *Shamsudin*. Applying the test in *Chamberlain*, Chan JC held that an agreement for lump sum costs of $15,000 was not

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sufficiently specific, by reason of its uncertain scope and its failure to contain the full terms of the bargain between the respondent and the applicant. The remarks of Lord Denning reproduced earlier at [59] was also endorsed by Steven Chong J in *Sports Connection Pte Ltd v Asia Law Corp and another* [2010] 4 SLR 590 ("*Sports Connection*") at [19].

63 There is also a Canadian case that is instructive in this regard (although I note that neither party cited this decision in argument). In *Nash v Swann* 1994 CarswellBC 2764, the issue was whether a letter agreement constituted a "contract for remuneration to be paid" per s 78 of the Canadian Legal Profession Act such that fees were beyond taxation unless the contract was set aside as unfair or unreasonable. In its review of the general principles, the court cited with approval (at 30) the following statement made in *D.M. Davidson v Seltzer*, Vancouver Registry No. J820268 wherein it was held that an agreement whereby the lawyer would be paid a specific figure per hour did not constitute an agreement "as to remuneration" because:

> There is nothing in the document which suggests that the parties had agreed about which of them, if either of them, would decide how much of [the lawyer's] time would be spent. Without agreement on that point, or the number of hours that would be spent it could not be said that an agreement bout remuneration to be charged had been made. This is so because, on the basis of [the lawyer's] own document, no amount of fees was calculable at the time the agreement was signed.

64 It is clear from the above cases that the fee agreements specifying only the rate of charging such as hourly rates run the risk of being found to be insufficiently certain and specific to constitute valid CBAs. The CBA in question must make it clear to the client what he is letting himself in for in respect of legal fees. Merely setting out an *indication or guide* as to the rate of charging upon which the bill is to be drawn may not be enough to constitute a

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CBAthat would fall within s 111. As O'Connor LJ commented or impliedly queried in the *Chamberlain* case, how is the agreement to be construed as a CBA if it does not set out any plan by which the client can make a reasoned calculation as to what his monthly or quarterly liability might be?

65 In the present case, the LOEs provide for hourly rates of the lawyers in charge. The LOEs further provide that the professional fees charged may take account of a range of factors including the complexity of the matter, the urgency and importance of the matter and the skill or specialized knowledge expended by the lawyer. In addition to pre-trial and post-trial work, the LOEs set out what was described as the "minimum" court attendance fees. The LOEs made further provision for chargeable disbursements.

66 Although the issue was not raised by the MCST, I am satisfied that the LOEs themselves are not sufficiently specific or certain to constitute CBAs under s 111 of the Act. Whilst the LOEs identified the charging rates of the lawyers involved (in contrast with the case of *Chamberlain* where it appears that the rates mentioned were not those of any specific lawyer), I do not think that the terms of the LOEs were sufficient to allow the MCST to make a reasoned forecast as to what it was letting itself in for in respect of fees and disbursements; they merely set out the relevant rates of charging.

67 For the sake of completeness, while the MCST submitted that there was insufficient certainty or specificity *vis-à-vis* the party that was liable to pay the legal fees incurred under the 17 July 2013 LOE (given the presence of cll 6–8 (see above at [43]–[44])), it is unnecessary to delve into this issue given my view that the LOEs do not amount to CBAs within the meaning of s 111 of the Act.

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Conclusion

68 For the above reasons, Chancery Law fails in its application under s 113 of the Act. The bills in issue are to be taxed in the usual manner.

69 I note that s 122 of the Act states that:

> ***After the expiration of 12 months from the delivery of a bill of costs***, or after payment of the bill, no order shall be made for taxation of a solicitor's bill of costs, except upon notice to the solicitor and under special circumstances to be proved to the satisfaction of the court.

70 Neither party has addressed the court on whether the discretion to order taxation should be made given that more than one year has lapsed. To that end, I note that any "delay" appears to be connected in large part with the protracted dispute over the appointment and/or termination of the engagement of Chancery Law. Further, most of the bills were rendered in 2014. The application to enforce the CBAs was also brought in 2014. For these reasons and considering the circumstances as a whole, I direct that the bills be sent for taxation. Costs of this application are awarded to the MCST to be agreed or taxed.

George Wei
Judge

Tan Tian Luh and Ngo Wei Shing (Chancery Law Corporation) for the applicant;
Denis Tan (Toh Tan LLP) for the respondent.

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