IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2019] SGHC 253

Originating Summons No 989 of 2019

Between

JWR Pte Ltd

… *Applicant*

And

Syn Kok Kay (trading as Patrick Chin Syn & Co)

… *Respondent*

ORAL JUDGMENT

[Legal Profession] — [Bill of costs]

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JWR Pte Ltd
v
Syn Kok Kay (trading as Patrick Chin Syn & Co)

[2019] SGHC 253

High Court — Originating Summons No 989 of 2019
Tan Siong Thye J
26 September 2019

24 October 2019 Judgment reserved.

Tan Siong Thye J:

1 The applicant in Originating Summons No 989 of 2019 ("OS 989/2019") seeks an order to tax 35 invoices ("the Invoices") as bills of costs under s 122 of the Legal Profession Act (Cap 161, 2009 Rev Ed) ("LPA"). The total amount of the Invoices is $1,514,089.80. These were issued by the respondent who was the applicant's previous solicitor, through M/s Patrick Chin Syn & Co ("the Firm"). The applicant has also requested an order requiring the respondent to deliver certain documents to it.

Background

2 The applicant is a company incorporated in Singapore. Its Managing Director is Chen Walter Roland ("Chen"), a retired surgeon.

3 The respondent is a practising solicitor who is the sole proprietor of the Firm.

4 The applicant was the plaintiff in Suit No 896 of 2012 and was represented by Edmond Pereira ("Mr Pereira") of Edmond Pereira Law Corporation ("EPLC"). That suit was struck out.

5 The applicant was dissatisfied with the services of Mr Pereira and it brought Suit No 992 of 2015 ("S 992/2015") against Mr Pereira and EPLC for professional negligence. Its claim was for $8.9bn, revised from the original figure of $3.9bn.[1] The applicant engaged the respondent to act for it and the respondent took over the matter on 14 December 2015. S 992/2015 went on trial and was heard over three days in March 2019 and was dismissed on 28 May 2019. The applicant has since appealed against the decision in S 992/2015. The respondent is not acting for the applicant in the appeal.

6 The respondent issued Invoices 1 to 34 in the table below for acting for the applicant in S 992/2015. Invoice 35 was issued on 13 June 2019 for the sum of $150,000. This was an interim payment for work relating to the appeal of the decision in S 992/2015. This was not paid by the applicant. The details of the Invoices are as follows:

S/N	Invoice number	Date	Amount	Paid?
1	*PCS/1660/2015	10/12/2015	$15,000.00	Yes
2	PCS/1671/2016	01/02/2016	$10,000.00	Yes
3	PCS/1688/2016	15/04/2016	$10,000.00	Yes
4	PCS/1707/2016	13/06/2016	$25,000.00	Yes
5	PCS/1727/2016	12/08/2016	$20,000.00	Yes

[1] Syn Kok Kay ("Syn")'s affidavit at para 9.

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S/N	Invoice number	Date	Amount	Paid?
6	PCS/1757/2016	03/10/2016	$25,000.00	Yes
7	PCS/1767/2016	29/11/2016	$20,000.00	Yes
8	*PCS/1773/2017	17/01/2017	$25,000.00	Yes
9	PCS/1777/2017	09/02/2017	$25,000.00	Yes
10	*PCS/1790/2017	24/03/2017	$25,000.00	Yes
11	PCS/1792/2017	07/04/2017	$25,000.00	Yes
12	PCS/1795/2017	08/05/2017	$30,000.00	Yes
13	PCS/1800/2017	09/06/2017	$30,000.00	Yes
14	PCS/1807/2017	26/07/2017	$40,000.00	Yes
15	PCS/1820/2017	21/09/2017	$40,000.00	Yes
16	PCS/1824/2017	07/11/2017	$30,000.00	Yes
17	PCS/1828/2017	17/11/2017	$40,000.00	Yes
18	PCS/1837/2018	11/01/2018	$20,000.00	Yes
19	PCS/1848/2018	05/02/2018	$30,000.00	Yes
20	PCS/1855/2018	12/03/2018	$30,000.00	Yes
21	PCS/1869/2018	13/04/2018	$30,000.00	Yes
22	PCS/1873/2018	10/05/2018	$30,000.00	Yes
23	PCS/1887/2018	04/06/2018	$30,000.00	Yes
24	PCS/1892/2018	09/07/2018	$30,000.00	Yes
25	PCS/1896/2018	02/08/2018	$30,000.00	Yes
26	PCS/1906/2018	30/08/2018	$30,000.00	Yes

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S/N	Invoice number	Date	Amount	Paid?
27	^PCS/1914/2018	October 2018	$30,000.00	Yes
28	*PCS/1917/2018	26/10/2018	$30,000.00	Yes
29	PCS/19120/2018	09/11/2018	$50,000.00	Yes
30	PCS/1925/2018	07/12/2018	$50,000.00	Yes
31	PCS/1931/2019	09/01/2019	$50,000.00	Yes
32	PCS/1941/2019	07/02/2019	$395,000.00	Yes
33	PCS/1946/2019	07/02/2019	$42,407.80	Yes
34	PCS/1950/2019	29/04/2019	$21,682.00	Yes
35	PCS/1954/2019	13/06/2019	$150,000.00	No
Total			$1,514,089.80	-

7 Most of the Invoices, except Invoices 1, 8, 10, 27 and 28 (marked with an asterisk or a caret), are only a page with the letterhead of the Firm, followed by a file reference number, date, bill number, and "To" field. The body of the Invoices takes the following standard form:[2]

INTERIM BILL

HC/S 992 of 2015 – CLAIM AGAINST EDMOND PEREIRA LAW CORPORATION & EDMOND AVETHAS PEREIRA

TO ACCOUNT OF OUR PROFESSIONAL CHARGES AND SERVICES

To account for our further costs.	S$XXX

TOTAL PAYABLE BY YOU	S$XXX

[2] Chen Walter Roland ("Chen")'s affidavit at pp 189–194, 196, 198–199, 215–223.

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8 The Invoices are for the respondent's professional services and these were not itemised except Invoices 33 and 34,[3] which contained professional fees (not itemised) of $30,000 and $10,000 respectively, and itemised disbursements of $12,407.80 and $11,682 respectively. At the bottom of each of the Invoices there was a standard "IMPORTANT NOTES" section, Note 2 of which states "This is a short form bill and our rights are reserved to render to a revised full form bill or account if required".

9 The applicant did not produce a copy of the Invoices marked with an asterisk. Instead, it tendered unnumbered official receipts from the Firm. These have the Firm's letterhead, a file reference number, the date, the words "Re HC/S 992/2015", and the words "Received from [the Firm] the sum of [amount] being payment of [bill number]", followed by the amount in figures, a cheque number and the Firm's seal. Nor did the applicant produce a copy of Invoice 27, marked with a caret. It tendered a cheque stub for the sum of $30,000 matching that invoice number.[4]

The parties' cases

The applicant's case

10 The applicant only seeks orders for taxation for Invoices 1 to 34. It is not pursuing Invoice 35 as the respondent has confirmed, through written submissions and again at the hearing, that he is not claiming Invoice 35 (which

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3 Chen's affidavit at pp 219–220, 222.

4 Chen's affidavit at p 239.

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is an interim fee of $150,000 for the appeal against the decision in S 992/2015 and has not been paid by the applicant) as he no longer acts for the applicant.[5]

11 The applicant's arguments are twofold. Firstly, Invoices 1 to 34 are not proper bills of costs within the meaning of s 122 of the LPA and so the two disqualifying events to an order for taxation in s 122 (*ie*, that the bills were paid or that 12 months had lapsed from the date of the invoices) do not apply. It relies on the case of *H&C S Holdings Pte Ltd v Gabriel Law Corp* [2018] SGHC 168 ("*H&C S Holdings*") for the proposition that in order to constitute a proper bill of costs, the bill must have enough information on its face to enable the client to decide if he should obtain advice on whether to proceed to taxation. The lack of information in Invoices 1 to 34 prevented Chen from deciding whether the fees charged by the respondent are reasonable. The applicant had twice requested itemised bills from the respondent without success.[6]

12 Secondly, even if Invoices 1 to 34 are proper bills of costs, there are special circumstances under s 122 of the LPA that justify the making of an order for taxation.[7] The applicant relies on the lack of itemisation in these Invoices and alleged overcharging by the respondent.[8]

13 On this basis, the applicant seeks the following reliefs:

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5 Respondent's written submissions ("RWS") at para 2.

6 Applicant's written submissions ("AWS") at paras 23(a), 24–25.

7 AWS at paras 23(b), 27–29.

8 AWS at para 30.

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(a) a declaration that Invoices 1 to 34 are not proper "bills of costs" within the meaning of s 122 of the LPA such that the two disqualifying events to an order for taxation in s 122 do not apply to Invoices 1 to 34;

(b) an order for the respondent to deliver, within 14 days of the making of the order, a bill of costs for taxation covering work done under Invoices 1 to 34; and

(c) an order for taxation of all bills of costs.

14 In prayer 5 of OS 989/2019, the applicant also seeks an order that the respondent deliver certain documents pertaining to S 992/2015 ("the Documents") within 14 days, subject to any lien the respondent may have:

(a) all correspondence relating to S 992/2015;

(b) the defendant's three bundles of documents in S 992/2015;

(c) the defendant's document marked "D1" in S 992/2015, being the alleged last page of the handwritten attendance note of 8 October 2012;

(d) all certified transcripts, notes of evidence, grounds of decision, or notes of arguments in the respondent's possession; and

(e) softcopy trial transcripts for S 992/2015, by way of CD-Rom.

The respondent's case

15 The respondent's contention is that Invoices 1 to 34 are proper bills of costs. He relies on the presumption in s 118(3) of the LPA that a bill delivered in compliance with s 118(1) of the LPA shall be presumed until the contrary is shown to be a bill *bona fide* complying with the LPA.

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16 The respondent also contends that there are no special circumstances under s 122 of the LPA to refer the bills of costs for taxation. The total bills for about $1.36m (excluding Invoice 35) were reasonable considering that the respondent had handled the matter for 3.5 years and the claim amount was $8.9bn. Further, the respondent alleges that the applicant:

(a) was aware that the respondent would not be rendering itemised bills and that the bills were for progress payments of S 992/2015;

(b) knew the amount that the respondent had billed it;

(c) had paid Invoices 1 to 34 promptly without reservation; and

(d) was prepared to pay the respondent $2m if the appeal was successful.[9]

17 Regarding the last point, the respondent tendered a letter from Chen to him, dated 20 June 2019, which provided as follows:[10]

> Dear Mr Syn,
>
> 1. Your opinion is that the case was made out and the Defendants are negligent, therefore liable
>
> 2. How confident are you of wining [*sic*] the Appeal ?
>
> …
>
> 4. Please confirm your proposed Professional Fees for the Appeal is fixed at $350,000, plus disbursements of several thousand dollars … and that the professional fees of $350,000 will not increase any further.
>
> 5. We wish to explore another alternative arrangement for the professional fees for the appeal, namely a NO WIN –

9 RWS at para 4(v).

10 Syn's affidavit at p 10.

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> NO FEE arrangement excluding disbursements which would be reimbursed to you
>
> 6. In the event we lose the Appeal, there will be no fees paid to you except for the disbursements
>
> 7. In the event we win the appeal and damages are awarded to us … you will then receive 20% of the damages sum subject to a cap of $2 Million …

My decision

18 I shall first address the non-contentious issues, namely prayer 5 of OS 989/2019 and Invoice 35.

Prayer 5

19 In prayer 5 of OS 989/2019, the applicant seeks the delivery of the Documents by the respondent. This can be disposed of quickly. At the hearing, the respondent's counsel confirmed, after seeking an adjournment to take instructions from his client, that the respondent would deliver the Documents that he had. The applicant's counsel said that the applicant undertook to pay the photocopying fees and that delivery of the Documents was subject to the usual lien. Accordingly, by consent, I granted an order in terms for prayer 5 of OS 989/2019.

Invoice 35

20 Before I deal with the central issues in OS 989/2019 concerning the Invoices I would like to have Invoice 35 out of the way. As mentioned above, this invoice for $150,000 was an interim payment for the appeal lodged against the decision in S 992/2015 for which the respondent quoted to the applicant a sum of $350,000. As the respondent is not representing the applicant for the appeal he will not claim from the applicant for Invoice 35.

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Other Invoices

21 Thus, the court now only has to deal with the remaining 34 Invoices and the following issues:

(a) Are Invoices 1 to 34 bills of costs under s 122 of the LPA?

(b) If so, are there special circumstances that justify the court making an order for taxation notwithstanding that more than 12 months have passed from the delivery of these Invoices and the fact that the applicant had made payment?

Are Invoices 1 to 34 "bills of costs" under s 122 of the LPA?

22 It is important to decide the basic issue of whether Invoices 1 to 34 are bills of costs under s 122 of the LPA. If these Invoices are not bills of costs then the twin bars of payment of the bills and the time limitation of 12 months for taxation would not apply, and the applicant can send them for taxation. In dealing with this basic issue I have considered s 118(3) of the LPA, which states that a bill of costs that is delivered in compliance with s 118(1) is presumed to be a bill *bona fide* complying with the LPA, unless proven to the contrary. The applicable provisions of the LPA are as follows:

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> **Solicitor not to commence action for fees until one month after delivery of bills**
>
> **118.**—(1) Subject to the provisions of this Act, no solicitor shall, except by leave of the court, commence or maintain any action for the recovery of any costs due for any business done by him until the expiration of one month after he has delivered to the party to be charged therewith, or sent by post to, or left with him at his office or place of business, dwelling-house or last known place of residence, a bill of those costs.
>
> …
>
> (3) Where a bill is proved to have been delivered in compliance with subsection (1), it shall not be necessary in the first instance for the solicitor to prove the contents of the bill and it shall be presumed until the contrary is shown to be a bill bona fide complying with this Act.

23 On the issue of ascertaining whether the presumption is rebutted, detailed guidance was given in *Ralph Hume Garry (a firm) v Gwillim* [2003] 1 WLR 510 ("*Ralph Hume Garry*"), cited in *H&C S Holdings* at [36] and *Ho Cheng Lay v Low Yong Sen* [2009] 3 SLR(R) 206 ("*Ho Cheng Lay*") at [13]–[16]:

> 31 What help can we get from this trilogy of cases [*Keene v Ward* (1849) 13 QB 515, *John Haigh v John Ousey* (1857) 7 El & Bl 578 and *Cook v Gillard* (1852) 1 E & B 26] where the dispute arose in contentious business not because of any insufficiency in the description of the work done but because of a want of identification of the court in which the business was conducted? We must bear in mind the statutory background, viz: (i) the client's only protection against overcharging was to seek taxation; (ii) the bill to be taxed was the bill as delivered ('refer such bill … to be taxed'); (iii) if less than one-sixth was taxed off that bill, the client paid the costs of taxation; (iv) the Georgian statute stating that jurisdiction to tax was given to the court in which the greater part of the business had been done and that different scales of charges prevailed in different courts had been repealed: now taxation could take place in all of the superior courts on substantially the same principles and on a uniform scale of charging.
>
> 32 Against that background the principles to be deduced from those cases appear to me to be these.

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> (1) **The legislative intention was that the client should have sufficient material on the face of the bill as to the nature of the charges to enable him to obtain advice as to taxation.** The need for advice was to be able to judge the reasonableness of the charges and the risks of having to pay the costs of taxation if less than one-sixth of the amount was taxed off.
>
> (2) **That rule was, however, subject to these caveats: (a) precise exactness of form was not required** and the rule was not that another solicitor should be able on looking at the bill, and without any further explanation from the client, see on the face of the bill all information requisite to enable him to say if the charges were reasonable; (b) thus the client must show that further information which he really and practically wanted in order to decide whether to insist on taxation had been withheld and that he was not already in possession of all the information that he could reasonably want for consulting on taxation.
>
> (3) The test, it seems to me, is thus, not whether the bill on its face is objectively sufficient, but **whether the information in the bill *supplemented by what is subjectively known to the client* enables the client with advice to take an informed decision whether or not to exercise the only right then open to him, viz, to seek taxation reasonably free from the risk of having to pay the costs of that taxation**.
>
> (4) ***A balance has to be struck between the need, on the one hand, to protect the client and for the bill, together with what he knows, to give him sufficient information to judge whether he has been overcharged and, on the other hand, to protect the solicitor against late ambush being laid on a technical point by a client who seeks only to evade paying his debt.***

…

70 … **the burden on the client under section 69(2) of the Solicitors Act 1974 to establish that a bill for a gross sum in contentious business will not be a bill "bona fide complying with this Act" is satisfied if the client shows: (i) that there is no sufficient narrative in the bill to identify what it is he is being charged for, and (ii) that he does not have sufficient knowledge from other documents in his possession or from what he has been told reasonably to take advice whether or not to apply for that bill to be taxed. The sufficiency of the narrative and the sufficiency of his**

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> **knowledge will vary from case to case, and the more he knows, the less the bill may need to spell it out for him. The interests of justice require that the balance be struck between protection of the client's right to seek taxation and of the solicitor's right to recover not being defeated by opportunistic resort to technicality.**
>
> [emphasis in original omitted; emphasis added in bold and bold italics; sub-paragraphing added]

24 I find that the applicant has rebutted the presumption that Invoices 1 to 34 are *bona fide* bills under s 118(3) of the LPA for the following reasons.

25 Firstly, there is no narrative in Invoices 1 to 34 to identify what the applicant was being charged for. The contents of each Invoice (see [7] above) are similar to those in *Ho Cheng Lay.* In that case each of the invoices had a heading, such as 'bill YSL 2144/01 "Re: Divorce Proceedings No. 2685 of 1998"'; the statement "Towards account of our retainer inclusive of disbursements"; and a lump sum indication of the amount charged. The court held that the skeletal bills issued by the defendant lawyer fell short of the standard required (*Ho Cheng Lay* at [17]). That description and conclusion apply equally to each of the Invoices here though the court in *Ho Cheng Lay* was concerned with the issue of whether special circumstances existed, rather than whether the bills were proper bills of costs. This is because the same factors can be relied on in both situations, as was made clear in *Ho Cheng Lay* (at [11]–[12]):

> 11 The plaintiff cannot take that point after making the application for taxation. By filing the application, he acknowledged that there were bills to be taxed. If the plaintiff disputed the validity of the bills, he should have sought a declaration that the bills delivered were not proper bills and he was not under any liability to pay them.
>
> 12 That does not mean that the form and contents of the bills are not relevant to the determination of the application [of whether there are special circumstances under s 122 of the

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> LPA]. This is so because if a bill presented is lacking in particulars, that is a factor in favour of requiring it to be taxed.

26 Secondly, I find that the applicant did not have any information that would have enabled him to take advice on whether or not to go for taxation. That the applicant lacked such information is apparent from how it felt the need to raise the issue of absence of itemisation, not once but twice. The first time was on 19 June 2017 by way of a letter to the respondent, which stated:[11]

> 19 June 2017
>
> Ref : HC/S 992/2015 Receipts / Payments
>
> Dear Mr Syn,
>
> 1. Have just received your email dated 9 June 12017 [*sic*], as having problem with computer system. We did not receive the letter by post. We have posted cheque payment for the interim bill PCS/1800/2017 for further costs and services. You should receive it by tomorrow.
>
> 2. *Have not received several receipts for the payments made.* Please check your accounts, confirm that payments were made and send me the receipts. Also please indicate the summary of payments for the stage of the proceedings as there seems to be a delay in the LOD stage, over the past 5 months since January 2017. We have not even proceeded to the stage for application for specific discovery, but bills from Jan 2017 to present have increased by $160,000.
>
> 3. *The payments were as follows.* ***Please fill in the missing info :***

S No	Description and or Bill No	Amount due	Description Cheque No	Date of Payment	Receipt Number	Stage of Proceedings
1		$10,000	Deposit DBS 000155	24/4/2016		Appearance, Amendment No 1 WOS n SOC
2		$25,000	DBS 000163	16/6/2016		SUM
3		$20,000	DBS 000171	15/8/2016		SUM
4.		$50,000	UOB 561034	5/10/2016		SFC
5.		$4,500	UOB 561035	5/10/2016		Costs for SFC
6	1757/2016	$25,000	UOB 561036	7/10/2016		FNBP & Reply to Defence

[11] Chen's affidavit at p 224.

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7	1767/2016	$20,000	UOB 561039	1/12/2016		? Application ADR
8		$25,000	UOB561040	13/1/2017		? LOD
9		$25,000	UOB 561041	17/2/2017		?
10		$25,000	UOB 561043	24/3/2017		?
11		$25,000	UOB 561046	18/4/2017		?
12		$30,000	UOB 561048	15/5/2017		? Specific Dis
13	PCS/1800/2017	$30,000	UOB 561050	19/9/2017		? Specific Dis
	SFC/costs subtotal	$54,500				
	Subtotal Fees	$260,000				
	Total:	$314,500				

> 4. Please provide copies of the application for ADR and the Defendants response.
>
> ***5. Please provide a detailed itemisation / statement of your professional fees, disbursements and monies held under the SFC, and copy of receipts of payments made and received by you***
>
> [emphasis added in italics and bold italics]

27 It is evident from this letter that the applicant did not know what it was being billed for. Chen was guessing what work had been done by the respondent regarding the various bills which had no itemisation. The abject lack of knowledge necessitated him writing this letter to seek for information or confirmation on the applicant's behalf. This is reflected in the numerous question marks and blank spaces in the table set out in his letter above. In paragraph 5 of the letter, Chen categorically requested that the respondent provide "detailed itemisation / statement of your professional fees, disbursements and monies held under the SFC, and copy of receipts of payments made and received by you". The respondent did not reply to this letter. Nevertheless, the applicant had little choice but to continue paying the respondent promptly if it wished the respondent to continue representing it.

28 The applicant again sought for itemisation of its solicitor's bills from the respondent in its letter dated 15 March 2018. Chen asked the respondent at paragraph 3 to "please explain the basis for the progressive interim bills". At the fourth bullet point of the same paragraph, Chen requested the respondent for

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itemisation: "We will require a detailed itemised Bill subsequently".[12] This met with the respondent's terse response, by email on 13 April 2018, as follows:[13]

> We forward herewith our further Bill for your attention. *Please note that we do not itemise our Bill.* As indicated previously ***the costs of acting in this matter is in access*** [*sic*] ***of one million.*** We are billing you on a progressive basis. [emphasis added in italics and bold italics]

Not only did the respondent not explain his charges or provide an itemised bill, he blithely proceeded to forward a further bill for payment. It is regrettable that the respondent chose to respond in this way and exercised his discretionary rights in the standard form "IMPORTANT NOTES" section, Note 2 on each of the Firm's own Invoices, which stated that the Invoice was a short form bill and the Firm reserved its rights to render a full form bill or account if required.

29 The respondent alleges that the applicant knew the amount the respondent was going to bill it for the work to be rendered. I accept that the applicant knew the quantum of each of Invoices 1 to 34 (otherwise it could not have made payment). But the real concern is whether the client knew the *breakdown* of what it was paying for, in order to determine whether the charges are reasonable. The complete lack of itemisation here means that the applicant would not know if, for instance, there was any double-billing, mistaken billings for work that was not done or whether the applicant had been overcharged. It is clear and I do not think the respondent can gainsay that the applicant did not have sufficient or any information for the work that the respondent billed. This is apparent from the correspondence with the respondent, where Chen set out a

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12 Syn's affidavit at p 5.

13 Chen's affidavit at p 225.

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table with numerous incomplete entries and question marks alongside his exhortation that the respondent provide itemised bills.[14]

30 In my deliberation of the issue of whether Invoices 1 to 34 are bills of costs under the LPA, I am mindful of O 59 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) which sets out the procedure for taxation and requirements for bills of costs drawn for taxation. Basically, it requires the bill to itemise the work done and the disbursements incurred. This is to enable the Registrar to ascertain the complexity and to value the efforts of the applicant. These provisions give some perspective of what a bill under the Rules of Court should contain. In this case, Invoices 1 to 34, which are devoid of any particulars, would not have in any case fit the description of a bill of costs under O 59.

31 What, then, should a bill of costs not drawn for taxation contain? I had requested parties to enquire whether the Law Society of Singapore had issued any advisories or guidance regarding the contents of bills of costs. I was informed that there is none. However, the Law Society of England and Wales expects solicitors to furnish, in their bills of costs, adequate information to their clients. Its website states:

> **Your solicitor's bill**
>
> All bills should show you the dates between which the work was done and enough information for you to decide whether the bill is reasonable. Sometimes your solicitor will accompany the bill with a print out of a computer time record or work summary. If you want more information you may request a bill containing detailed items within three months of receiving a summary bill. This will then replace the summary bill and may be for more than the original bill.
>
> …

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14 Chen's affidavit at p 224.

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> **Bills for contentious work**
>
> If the work involved a court case, your solicitor can send you either a brief summary of costs (called a gross sum bill) or a bill containing detailed items. If you receive a summary, you may ask for a bill containing detailed items within three months. However, you cannot ask for this if your solicitor has already started to sue you for the money. If you ask for a bill containing detailed items, it will replace the original summary and can be for more or less than the summary.

32 In Australia, the Law Society of New South Wales and the Legal Services Commission of Queensland also require solicitors' bills that are not lump sum bills to be itemised in detail to fulfil the requirements under their respective statutes and regulations:

(a) The Law Society of New South Wales states in its Costs Guide (7th Ed, 2015):

> **3.4.3 DEFINITIONS OF BILLS**
>
> Regulation 5 of the [Legal Profession Uniform General Rules 2015] includes the following two definitions of bill:
>
> - "lump sum bill" means a bill that describes the legal services to which it relates and specifies the total amount of the legal costs
> - "itemised bill" means a bill that specifies in detail how the legal costs are made up, so as to allow costs to be assessed.
>
> **3.4.4 REQUEST FOR AN ITEMISED BILL**
>
> If a "lump sum bill" is given by the law practice, then any person who is entitled to apply for an assessment may ask the law practice to give them an itemised bill (s. 187(1) of the [Legal Profession Uniform Law (NSW)]).
>
> …
>
> **3.4.7 CONTENT OF A BILL**
>
> Itemised bills should include:
>
> - date of attendance

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- description of the task/s undertaken during the attendance
- the names of the practitioners who undertook the attendance
- the duration of the attendance
- the amount charged for the attendance.

(b) The Legal Services Commission of Queensland states in its Explanatory Notes to the Regulatory Guide entitled "Itemised Bills" (2019 Ed, Version 3):

> … The [Legal Profession Act 2007] defines the terms 'lump sum bill' and 'itemised bill' at section 300. It defines the term 'lump sum bill' to mean 'a bill that describes the legal services to which it relates and specifies the total amount of the legal costs' and the term 'itemised bill' to mean 'a bill stating, in detail, how the legal costs are made up in a way that would allow the legal costs to be assessed.' It adds in a note to section 332(1) that 'a bill in the form of a lump sum bill includes a bill other than an itemised bill.'
>
> There is no prescribed or 'set' form of itemised bill in Queensland (unlike for example in New South Wales, where section 111B of the Legal Profession Regulation 2005 (NSW) spells out what must be included in itemised bills in that jurisdiction).

In the Regulatory Guide, the Legal Services Commission of Queensland gives the following guidance on the contents of an itemised bill as distilled from the case law:

> **THE CONTENT OF AN ITEMISED BILL**
>
> 4. The [Legal Profession Act 2007] defines an itemised bill at section 300 to be 'a bill stating in detail how the legal costs are made up, in a way that would allow the legal costs to be assessed.' It gives no further detail than that, however, and there is no 'set form' of itemised bill.
>
> 5. The courts have decided that the level of detail may vary from case to case, depending on factors such as the nature of the matter, the way in which the costs are to be calculated and the client's 'sophistication' in legal

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> matters. The courts have also made it clear however, whatever level of detail may be required in any particular matter, that an itemised bill must give a client sufficient information about the costs the lawyer has charged the client to enable the client to make an informed decision whether the costs are reasonable and whether to exercise his or her entitlement to have the costs independently assessed.
>
> 6. That implies in our view that an itemised bill should include:
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> a) the basis of the charges for the work done, viz:
>
> - where the fees are calculated on a time basis, details of the time spent on each item of work and the charge-out rate of the person(s) who have done the work
> - where the fees are calculated on a scale, sufficient detail to identify which item(s) of the scale are being applied to each item of work, and
> - where the fees are calculated on a fixed fee basis, sufficient detail to show how and to what extent the retainer has been carried out in exchange for the costs that are being charged; and
>
> b) a detailed description of each item of work done, including by whom it was done
>
> c) the date each item of work was done, arranged in chronological order
>
> d) where the fees are calculated on either a time basis or a scale, the amount charged for each item of work.

33 I note that the guidelines reproduced above mostly focus on the requisite contents of an itemised bill that is delivered by a law firm on a client's request (*ie*, in the exercise of the client's right to ask for an itemised bill after receiving a lump sum bill). The practice of issuing a lump sum bill in the first instance before providing an itemised bill only on request is an accepted one in Singapore (see, *eg*, *Lee Hiok Ping and others v Lee Hiok Woon and others* [1988] 2 SLR(R) 326 ("*Lee Hiok Ping*")). In this case, the respondent had categorically refused to provide an itemised bill (at [28] above) even when requested by the

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applicant. Thus the respondent's case stands or falls based on whatever invoices or bills he presented at the first instance.

34 The basic notion of a bill of costs is to itemise the solicitor's services to the client so that the latter understands what he is paying for (*Ho Cheng Lay* at [14]–[15]):

> 14 What are the requirements for such bills? This has not been addressed in any reported decision in Singapore. The courts of England, however, have dealt with this question for a long time. *In Keene v Ward* (1849) 13 QB 515; 116 ER 1359, Patteson J stated at 521 that:
>
> > In requiring the delivery of an attorney's bill, the Legislature intended that the client should have sufficient materials for obtaining advice as to taxation …
>
> 15 Patteson J's statement was referred to and followed in subsequent cases. In *John Haigh v John Ousey* (1857) 7 El & Bl 578; 119 ER 1360 ("*Haigh v Ousey*"), Lord Campbell CJ ruled that a bill must disclose on the face of it sufficient information as to the nature of the charges, and cited Patteson J's ruling as authority.

These cases may be very old but they are still relevant, and were cited by the English Court of Appeal in *Ralph Hume Garry* (at [23] above).

35 For the reasons above, I find that the applicant has rebutted the presumption under s 118(3) of the LPA that Invoices 1 to 34 are *bona fide* bills. In the circumstances, the twin bars, *ie*, the payment of the bill and the 12-month limitation under s 122 of the LPA, will not apply to the applicant. I shall discuss s 122 of the LPA in detail below. On my finding that these Invoices are not bills of costs the application for Invoices 1 to 34 to proceed for taxation is allowed. However, for completeness, I shall discuss whether there are special circumstances under s 122 of the LPA to warrant sending this case for taxation as well.

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Do special circumstances exist that would warrant an order for taxation?

36 The relevant provisions of the LPA are as follows:

> **Order for taxation of delivered bill of costs**
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> **120.**—(1) An order for the taxation of a bill of costs delivered by any solicitor may be obtained on an application made by originating summons or, where there is a pending action, by summons by the party chargeable therewith, or by any person liable to pay the bill either to the party chargeable or to the solicitor, at any time within 12 months from the delivery of the bill, or, by the solicitor, after the expiry of one calendar month and within 12 months from the delivery of the bill.
>
> …
>
> **Time limit for taxation of bills of costs**
>
> **122.** 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.

37 Under s 120(1) of the LPA, an order for taxation may be obtained by the client on an application at any time within 12 months from the date of the delivery of the bill. But s 120 must be read with s 122, which limits the right to obtain an order for taxation where either or both of the twin bars operate, *ie*, where 12 months have passed since the delivery of a bill of costs, or if payment of the bill has been made. In such a case, an order of taxation will only be made if the applicant is able to prove the existence of special circumstances: *Sports Connection Pte Ltd v Asia Law Corp and another* [2010] 4 SLR 590 ("*Sports Connection*") (at [23]):

> Under s 120(1) of the LPA, an order for taxation may be obtained on an application made by Originating Summons at any time within 12 months from the date of the delivery of the bill. Section 122 of the LPA creates a partial bar on an applicant's entitlement to obtain taxation in two circumstances, namely, after the expiration of 12 months from the delivery of a bill of costs, or after payment of the bill. If any of these two

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> circumstances exist, an order of taxation will only be made if the applicant is able to prove the existence of special circumstances to the satisfaction of the court.

38 In deciding whether special circumstances exist, the court must balance the solicitor's interest in being fairly paid against the basic requirement of the client to be given sufficient information in the bill of costs to understand the services it is being billed for (*Sports Connection* at [4]):

> … strike a balance "between the need, on the one hand, to protect the client and … on the other hand, to protect the solicitor against late ambush being laid on a technical point by a client who seeks only to evade paying his debt" (per Ward LJ in *Ralph Hume Garry (a firm) v Gwillim* [2003] 1 WLR 510 at [32(4)] ("*Ralph Hume Garry*"), which was cited with approval in *Ho Cheng Lay v Low Yong Sen* [2009] 3 SLR(R) 206 at [16]).

39 The categories of special circumstances are not exhaustive. In *Kosui Singapore Pte Ltd v Thangavelu* [2015] 5 SLR 722 ("*Kosui*"), the court summarised some examples in which bills were sent for taxation (at [61]):

> There is no rigid rule as to what kind of circumstances are sufficiently special to justify taxation of a solicitor's bill when one or both of the disqualifying events under s 122 have been triggered. It is for the court to determine on the facts of each case whether there are special circumstances which make it right to refer the solicitor's bill for taxation: *Harry Wee* at [15] citing the headnote to *Re Cheeseman* [1891] 2 Ch 289. It is, therefore, not possible to compile an exhaustive list of special circumstances. The following, however, are examples of circumstances which have been found to be sufficiently special on the facts of specific decided cases:
>
> (a) Prolonged negotiation over fees between solicitor and client after which the client applies for taxation: see *Harry Wee* at [14].
>
> (b) A disciplinary committee's finding that the solicitor has in fact overcharged: see *Ho Cheng Lay v Low Yong Sen* [2009] 3 SLR(R) 206 ("*Ho Cheng Lay*") at [5].
>
> (c) An impecunious client who requires time to secure a grant of legal aid in order to apply under s 120: see *Ho Cheng Lay* at [6].

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> (d) A bill which fails to provide sufficient information, even when supplemented by what is subjectively known to the client, to enable the client to take an informed decision on whether or not to seek taxation: *Ho Cheng Lay* at [17]; see also *Harry Wee* at [13].
>
> (e) The fact that the solicitor, without his client's knowledge or consent, appropriated funds belonging in equity to the client in order to pay the bill: *Ho Cheng Lay* at [23].
>
> (f) Duress, pressure or fraud by the solicitor: *Sports Connection Pte Ltd v Asia Law Corp* [2010] 4 SLR 590 ("*Sports Connection*") at [35], citing *In re Hirst & Capes* [1908] 1 KB 982 at 996.

40 What is important is that there must be a nexus between the alleged special circumstance and the particular disqualifying event, such that the special circumstance *explains or justifies* why indulgence should be granted. If both disqualifying events operate, then the special circumstances which the client advances must have a rational connection to both (*Kosui* at [65]):

> So, for example, if a client does not pay his solicitor's bill but allows the 12-month period to elapse, he is likely to satisfy the court that it is right to refer the bill to taxation if he can show that he failed to apply in time because he was engaged in prolonged negotiations over the bill with the solicitor. However, if a client pays his solicitor's bill and then applies to tax it within the 12-month period, it would be quite immaterial for the client to show that he paid the bill after a period of prolonged negotiations with the solicitor. Those negotiations do not even begin to explain the only disqualifying event which is in play on these facts: the fact that the bill has been paid. He must instead advance special circumstances which explain or excuse his decision to pay the bill. These could be circumstances which show why the client is not, in fact, approbating or reprobating or why the solicitor is not entitled to security of receipt. There must typically be a rational connection between the special circumstances and the disqualifying event which is in play. If both disqualifying events are in play, then the special circumstances which the client advances must have a rational connection to both events.

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41 I find that there are special circumstances that warrant the making of an order for taxation in this case, these being the lack of itemisation despite repeated requests by the applicant for details. I do not accept any of the arguments proffered by the respondent against this conclusion.

42 The respondent alleges that the applicant "was aware that the [r]espondent will not be rendering itemised bills" and had nevertheless "paid … promptly without reservation". The applicant has indeed admitted that it "paid [Invoices 1 to 34] promptly".[15] But, in the first place, the onus should not unfailingly be on the client to take objection. As stated in *H&C S Holdings* at [125]:

> … [T]he Firm cannot excuse its very late attempt to clarify the position on the basis that the Client did not raise any issues regarding Invoice 39 in its correspondence with the Firm. *The primary duty must rest on the Firm to raise proper bills of costs that identify clearly and accurately the matter (for example the case name or file) to which they relate. …*

Though expressed in the context where a firm was handling multiple active files for the same client, the call for clarity and accuracy applies equally to communications about different subsidiary matters within the same case.

43 Moreover, the payments in this case were made under protest or indication of unhappiness. I have set out above the undisputed facts, which are that the applicant had twice raised the issue of lack of itemisation. For this reason, this case is distinguishable from *Kosui*, where the court held that special circumstances were not made out despite the lack of itemisation. The applicant, Kosui, had engaged the respondent Mr Thangavelu's then-firm to act for it.

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15 Chen's affidavit at para 20.

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When Mr Thangavelu left for a new firm, Kosui appointed the new firm to act for it instead, on condition that a partner from the old firm remained on the case. This was done and the new firm eventually billed Kosui about $700,000 for eight bills dated between December 2010 and July 2011. There was no itemisation. About a year later, Kosui found that Mr Thangavelu had apportioned about $400,000 to the partner and $300,000 to himself. Kosui alleged overcharging and complained to the Law Society. Its complaints were dismissed. Subsequently, Kosui twice rejected Mr Thangavelu's offers to have the bills taxed. But Kosui eventually commenced court proceedings praying that the bills be referred to taxation. By that time, the twin bars had come into play. In finding that there were no special circumstances, the court found that Kosui's conduct in refusing to consent to taxation revealed that it was Kosui's aim to assess if the fees charged by the new firm were reasonable. Its real complaint was that it disagreed with the allocation of fees between Mr Thangavelu and the partner from the old firm, but that could not be remedied by taxation.

44 The facts in *Kosui's* case are materially different from this case. For instance, Mr Thangavelu twice offered the bills to be taxed and these were rejected. Pertinently for this case, in relation to the lack of itemisation the court found that there was *objective evidence* that Kosui was well aware of what the bills covered despite the lack of itemisation. As the court stated (at [92]):

> On the contrary, *it is clear that the applicant knows exactly what work ALC's bills covered.* At the meeting between the applicant, the respondent and Mr Wong on 9 October 2012, the ***applicant*** prepared and tendered a table dated 2 October 2012. The applicant set out in that table in 11 stages the legal work done in Suit 312 and in the ensuing appeal. …
>
> …
>
> The applicant not only knew enough to draw up this table, he had enough information at hand to set out figures in this table showing that, by the applicant's estimation, Mr Wong was entitled to $488,580 for his contributions at each of these

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> 11 stages and the respondent was entitled to $50,000 for his contributions.
>
> [emphasis added in italics and bold italics]

Unlike *Kosui's* case, there is no such objective evidence here.

45 Moreover, in this case, the lack of itemisation is compounded by the nature of the parties' arrangement. The lack of itemisation might be less problematic if, for example, the parties had a written agreement to pay a lump sum with progressive billings, so the client at least understands the big-picture and the limit of his bill regarding lawyers' fees. However, as a matter of good standard, fair practice and transparency, even for lump sum fees the solicitor should, nevertheless, provide sufficient itemisation for the client to appreciate the bill. But in this case, the respondent's email reproduced at [28] above does not indicate any such cap on the respondent's fees. On the contrary, the respondent stated that "the costs of acting in this matter is *in access* [*sic*] *of one million*" [emphasis added]. This literally means that there is no limit to the respondent's fee! It would not be fair to the applicant which was subjected to the possibility of the open-ended ballooning of costs *without the benefit of itemised bills that would allow it to assess the reasonableness of the mounting charges*. That would leave the client at the complete mercy of the respondent.

46 The respondent argues that the quantum of fees ($1.36m for Invoices 1 to 34) is reasonable as the amount of the claim in S 992/2015 was $8.9bn. Furthermore, the applicant was prepared to pay the respondent $2m on a contingency fee basis if the appeal was successful. I accept that the quantum of fees may have some correlation to the amount of the claim, in the sense that, generally, high fees are commensurate with large claims and low fees with small claims. But considering the seriousness of the complete lack of itemisation in this case and the repeated exhortation by the applicant for itemisation of the

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respondent's bills, the circumstances reveal a lack of fairness by the respondent to the applicant *vis-à-vis* billing for his professional services. The applicant was literally helpless and at the mercy of the respondent as the applicant had no clue what he was billed for. The applicant was never given any itemisation of its bills and when it requested for itemisation the respondent nonchalantly ignored it. The applicant trusted the respondent and paid whatever it was billed.

47 The respondent cited four cases to resist OS 989/2019. None of these assist him.

(a) *Chor Pee & Partners v Wee Soon Kim Anthony* [2005] 3 SLR(R) 433 was a High Court decision that was reversed on appeal. That reversal was not brought to my attention – a glaring omission on the part of the respondent's counsel that was fortunately corrected by the applicant's counsel. Turning then to the Court of Appeal decision in *Wee Soon Kim Anthony v Chor Pee & Partners* [2006] 1 SLR(R) 518, that case is an authority on s 111 of the LPA, which 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 or a limited liability law partnership 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 or the limited liability law partnership, 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 or the limited liability law partnership 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.

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The Court of Appeal held at [26] that a client can enforce an oral agreement against a solicitor but not *vice versa* – to be enforceable against a client, there must be a written agreement with the client's signature. Applied to this case, the email from the respondent at [28] above cannot be considered an enforceable agreement on costs under s 111 of the LPA as it is not signed by the client.

(b) The facts of *Engelin Teh Practice LLC formerly known as Engelin Teh and Partners v Tan Sui Chuan* [2006] SGDC 2 are entirely distinguishable from this case. There, the plaintiff law firm had sued the client for unpaid fees. At first instance, the plaintiff applied for summary judgment and the defendant was given unconditional leave to defend. The plaintiff appealed and the District Court allowed the appeal. Although the defendant alleged overcharging in his defence and stated that he wished to proceed for taxation in his affidavit, he had not gone for taxation and did not give any reasons for his delay of nearly two years after delivery of the bill. There were, therefore, no special circumstances that warranted an inquiry into the bill as a defence to the law firm's claim.

(c) The facts of *Koperasi Belia National Bhd v Dublee Holdings Sdn Bhd* Civil Suit No C23–2772–86 are similarly distinguishable. A client had sought taxation of its lawyer's bills after the Malaysian equivalent of the twin bars came into play. The court found that there were no special circumstances because the client had not stated in its affidavit any facts that might support that finding. This is not so for the present case, where Chen's affidavit sets out ample first-hand and documentary evidence regarding the lack of itemisation.

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(d) In *Lee Hiok Ping*, the court stated (at [28]) that "it is a fairly common practice in the profession for a solicitor to send a lump sum bill based upon a very rough estimate, without going too much into details". But that statement is irrelevant for our purposes because it was made in a very different context. The issue there was whether a lawyer was entitled to withdraw the first bill and tender a second bill for a different sum after the client requested that the first bill be taxed. The observations of the court on this point is reproduced below:

> I recognize that it is a fairly common practice in the profession for a solicitor to send a lump sum bill based upon a very rough estimate, without going too much into details. But if a solicitor should wish to reserve to himself a right to withdraw the bill in the event that the client should ask him to submit the bill for taxation, it seems to me only fair that he should at the time of the submission of the bill make this point very clear to the client including the basis upon which the lump sum bill was drawn. The client should also be advised that if the bill was not accepted and a detailed bill had to be drawn up for taxation, it could very well be for a larger amount than the amount claimed in the lump sum bill.

48 Invoices 1 to 34 here have failed to fulfil the desired objective because they only informed the applicant to pay a certain sum for the respondent's professional services. I would add that in this case, the absence of itemisation has a nexus to both of the twin bars. The applicant did not have any information to decide whether to apply for taxation within 12 months, given the impossibility of determining the reasonableness of the charges. The fact that the applicant paid also cannot be held against it, not merely because it alleges that it trusted its lawyer but – crucially – because it had asked about itemisation and registered its concerns and yet was rebuffed.

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Will there be prejudice to the respondent if the application is allowed?

49 Finally, I would like to deal with the issue of whether the respondent will be prejudiced if Invoices 1 to 34 are taxed by the Registrar. Prejudice comes into the picture because, as stated in *Ralph Hume Garry*, the court must be alive to the possibility of late ambush by a client who wants to get out of paying his dues. This does not apply here as the applicant had promptly paid these Invoices.

50 The Invoices pertain to S 992/2015 and were issued progressively from 2015 to April 2019, excluding Invoice 35, which is the fee for the appeal and now not pursued by the respondent. This suit was dismissed by Aedit Abdullah J on 28 May 2019 after a three-day trial. As the respondent has records of all the efforts he put in for S 992/2015, there is no prejudice to him when it comes to taxation. The only possible risk of "prejudice" is that the Registrar may reduce the sums in Invoices 1 to 34. But that cannot be considered prejudice as it is speculative and would only arise if the Registrar reduces the sums in these Invoices.

51 Accordingly, if Invoices 1 to 34 were bills of costs I would have, nevertheless, found that special circumstances existed to warrant the making of an order for taxation.

Conclusion

52 It is tempting to caricature the applicant as a disgruntled client out for vengeance after the respondent had lost its case in S 992/2015. But it is ultimately speculative whether the applicant would have acted differently had the outcome been in its favour.

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53 I find that the applicant has rebutted the presumption under s 118(3) of the LPA that Invoices 1 to 34 are *bona fide* bills. I, therefore, grant the declarations that Invoices 1 to 34 are not proper bills of costs within the meaning of s 122 of the LPA and that the twin bars in s 122 are inapplicable. Furthermore, the facts of this case would have satisfied the requirement of special circumstances in s 122 of the LPA. Thus, I allow the application in OS 989/2019. The respondent is to deliver, within 14 days of my order, bills of costs for taxation covering work done under Invoices 1 to 34, excluding the portions on disbursements that are itemised in Invoices 33 and 34.

54 I shall now hear parties on the issue of costs.

Tan Siong Thye
Judge

Chong Siew Nyuk Josephine and Navin Kangatharan (Josephine Chong LLC) for the applicant;
Joseph Tan (Nanyang Law LLC) and Syn Kok Kay (Patrick Chin Syn & Co) for the respondent.

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