IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2020] SGHC 158

Originating Summons No 1446 of 2018 (Summons No 1281 of 2020)

Between

Lin Jianwei

… *Plaintiff*

And

(1) Tung Yu-Lien Margaret
(2) Raffles Town Club Pte Ltd

… *Defendants*

Originating Summons No 320 of 2020

Between

Lin Jianwei

… *Plaintiff*

And

Raffles Town Club Pte Ltd

… *Defendant*

And

Tung Yu-Lien Margaret

… *Intervener*

Version No 1: 27 Oct 2020 (22:41 hrs)

EX TEMPORE JUDGMENT

[Legal Profession] — [Bill of costs]
[Companies] — [Oppression] — [Minority shareholders]

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Lin Jianwei
v
Tung Yu-Lien Margaret and another
and another matter

[2020] SGHC 158

High Court — Originating Summonses Nos 1446 of 2018 (Summons No 1281 of 2020) and 320 of 2020
Tan Siong Thye J
27 July 2020

27 July 2020

Tan Siong Thye J (delivering the judgment of the court *ex tempore*):

Introduction

1 The plaintiff in Originating Summons No 1446 of 2018 ("OS 1446"), Lin Jianwei, and the first defendant in OS 1446, Tung Yu-Lien Margaret, are the only two shareholders and directors of the second defendant in OS 1446, Raffles Town Club Pte Ltd. The plaintiff is the second defendant's majority shareholder, holding 60% of the second defendant's shares, while the first defendant holds 40% of the second defendant's shares.[1] The plaintiff is also the

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[1] 9th affidavit of Tung Yu-Lien Margaret filed in OS 1446/2018 (SUM 1281/2020), dated 17 March 2020, at para 5.

second defendant's executive chairman.[2] OS 1446 revolves around the issue of the validity of certain Extraordinary General Meetings, board of directors' meetings, and related notices issued in relation to the second defendant. The present applications, namely, Summons No 1281 of 2020 ("SUM 1281") and Originating Summons No 320 of 2020 ("OS 320"), arise from OS 1446.

2 In SUM 1281, the first defendant, Tung Yu-Lien Margaret, is the applicant. In OS 320, the plaintiff, Lin Jianwei, is the applicant while Raffles Town Club Pte Ltd is the defendant and Tung Yu-Lien Margaret is the intervener. For convenience, I shall refer to the parties in their capacities in OS 1446.

Brief facts

3 SUM 1281 is the first defendant's application for the reimbursement of the solicitors' fees she had paid on behalf of the second defendant to Nair & Co LLC ("N&C") and Joseph Tan Jude Benny LLP ("JTJB") for their services in safeguarding the interests of the second defendant in OS 1446 ("the Fees"). The reimbursement is pursuant to the consent order of the court made on 4 March 2019 ("the Consent Order") which was the corollary of the agreement made by the plaintiff and the first defendant that a separate firm of solicitors was required to protect the interests of the second defendant in their personal disputes in OS 1446.

4 The plaintiff refuses to authorise this reimbursement on the ground that the Fees are unreasonable and excessive. Accordingly, the plaintiff then took

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[2] 1st affidavit of Lin Jianwei filed in OS 320/2020, dated 16 March 2020 ("Lin's 1st affidavit"), at para 1.

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out OS 320 under s 216A of the Companies Act (Cap 50, 2006 Rev Ed) ("Companies Act") seeking for the Fees to be taxed.

My decision

OS 320

5 I shall first deal with the issues relating to OS 320. The issues that arise for my determination are:

(a) whether the plaintiff has shown that he is acting in good faith in his application for taxation of the Fees, thereby satisfying s 216A(3)(*b*) of the Companies Act; and

(b) whether s 122 of the Legal Profession Act (Cap 161, 2009 Rev Ed) ("LPA") is operative and if so, whether special circumstances have been shown warranting an order for taxation.

Whether the plaintiff is acting in good faith

6 Under s 216A(3) of the Companies Act, the complainant has to satisfy three requirements before the court grants leave to the complainant to bring an action in the name of and on behalf of the company, as follows:

> (3) No action or arbitration may be brought and no intervention in an action or arbitration may be made under subsection (2) unless the Court is satisfied that —
>
> > (*a*) the complainant has given 14 days' notice to the directors of the company of his intention to apply to the Court under subsection (2) if the directors of the company do not bring, diligently prosecute or defend or discontinue the action or arbitration;
> >
> > (*b*) the complainant is acting in good faith; and

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> (*c*) it appears to be prima facie in the interests of the company that the action or arbitration be brought, prosecuted, defended or discontinued.

7 Pursuant to s 216A(3)(*b*) of the Companies Act, one of the requirements for the statutory derivative action sought by the plaintiff is he must satisfy the court that he is acting in good faith in his application for taxation of the Fees in OS 320. As observed by the Court of Appeal in *Ang Thiam Swee v Low Hian Chor* [2013] 2 SLR 340 at [31]:

> The onus is upon the applicant to demonstrate that he is or may be 'genuinely aggrieved' … and that his collateral purpose is sufficiently consistent with the purpose of 'doing justice to a company' … so that he is not abusing the statute, and, by extension, also the company, as a vehicle for his own aims and interests.

8 The evidence does not suggest that the plaintiff is acting in good faith. Rather, this application appears to be another acrimonious instance of personal grievances between the two directors (*ie*, the plaintiff and the first defendant), played out under the semblance of a corporate dispute.

9 First, the plaintiff claims that he is seeking for the taxation of the Fees in the interests of the second defendant as the Fees are unreasonable and excessive. But this is not borne out by the facts. The second defendant's solicitors had drafted affidavits and written submissions for at least five applications, including applications for discovery and cross-examination. They also had to prepare for and make submissions at four hearings. Apart from bare assertions that the amounts billed are excessive, the plaintiff has not provided further reasons to substantiate his position although he has been provided with

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a considerable amount of documents in the form of itemised invoices, timesheets and the solicitors' warrant to act.[3]

10 Secondly, the plaintiff was not involved and could not be involved in giving instructions to the second defendant's solicitors under the Consent Order albeit he is the majority shareholder and executive chairman of the second defendant. Thus, the first defendant who dealt with the second defendant's solicitors would be in a better position to evaluate the extent of the work that went into safeguarding the interests of the second defendant for the various applications in OS 1446. She was of the view that the Fees were reasonable and thus paid them on behalf of the second defendant. As there are only two shareholders and directors of the second defendant, the amount paid to the second defendant's solicitors will also have an impact on the first defendant albeit the impact on the plaintiff will be greater as he is the majority shareholder.

11 It was the plaintiff who commenced OS 1446 and added the second defendant as a party to OS 1446 although the disputes are between him and the first defendant. At that initial stage, his personal solicitors also had acted for the second defendant, which gave rise to a conflict of interest and eventually resulted in the Consent Order. In the Consent Order, the plaintiff also agreed that the second defendant will pay the solicitors' fees for the services rendered to the second defendant. It is implied that the solicitor's fees have to be reasonable and if they are excessive the first defendant is required to send the solicitors' fees for taxation otherwise she would be in dereliction of her duties as a director under s 157 of the Companies Act. Section 157(1) of the

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[3] Lin's 1st affidavit, at pp 37–109.

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Companies Act states that "[a] director shall at all times act honestly and use reasonable diligence in the discharge of the duties of his office".

12 Here we have a situation where the Fees were processed and accepted by the first defendant who acted as an active and the sole director authorised to act on behalf of the second defendant in relation to its solicitors for OS 1446. She opines that the Fees are reasonable. The plaintiff, on the other hand, who was not involved in giving instructions to the second defendant's solicitors and was not in Singapore for most of the time, makes a bare assertion that the Fees are unreasonable and excessive. Clearly, the plaintiff has no idea of the scope and extent of the work done by the solicitors who had worked on OS 1446. Furthermore, the plaintiff in the Consent Order agreed for the second defendant to pay the second defendant's solicitors for their services. Hence, the plaintiff seems to have reneged on the Consent Order.

13 Therefore, the evidence does not show that the plaintiff is acting in good faith purportedly to protect the interests of the second defendant. The plaintiff has incurred more legal costs by refusing to reimburse the first defendant, who had paid the second defendant's solicitors, and applying for the Fees to be taxed primarily because he opines that they are unreasonable and excessive without supporting evidence. Whether the Fees are reasonable is subjective and the plaintiff is merely dissatisfied that the first defendant seeks reimbursement of the Fees as the Fees, in his opinion, are high. The plaintiff makes his assertions without a full appraisal of the work involved, which only the first defendant would know. Thus, I am not satisfied that the requirement under s 216A(3)(*b*) of the Companies Act has been fulfilled.

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Whether there are special circumstances warranting taxation

14 The plaintiff has also not satisfied s 122 of the LPA, the reasons for which I shall now elaborate.

15 Section 122 of the LPA states:

> **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.

16 There are two issues here: (a) whether s 122 of the LPA is triggered because 12 months have elapsed from the delivery of the bills stating the Fees, and/or because payment of the Fees has been made; and (b) whether special circumstances have been shown to warrant an order for taxation. It appears that notice was given to the second defendant's solicitors regarding the application for taxation.

17 When the second defendant's solicitors sent their bills to the first defendant for payment, she paid the bills on behalf of the second defendant in her capacity as the director of the second defendant. It was appropriate for the second defendant's solicitors to send their bills to the first defendant for payment as the Consent Order authorises her and not the plaintiff as the director of the second defendant to give instructions to the solicitors. In these circumstances, it was reasonable for the second defendant's solicitors to seek payment directly from the first defendant, who made the payment to the solicitors on behalf of the second defendant. Therefore, payment has been made for the purposes of s 122 of the LPA.

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18 Further, some of the invoices for the Fees were issued more than 12 months ago, thereby also triggering the application of s 122 of the LPA. For instance, N&C's invoice was issued on 11 March 2019 for services rendered from 13 December 2018 to 4 March 2019.[4]

19 Since payment has been made to the second defendant's solicitors, and 12 months have elapsed from the delivery of the bill in respect of some of the Fees, s 122 of the LPA applies. Therefore, the onus is on the plaintiff to show that there are special circumstances to warrant the taxation of the Fees. I have dealt with this legal issue comprehensively in my recent decision in *JWR Pte Ltd v Syn Kok Kay (trading as Patrick Chin Syn & Co)* [2019] SGHC 253 at [37]–[40]:

> 37 … [A]n 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 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]):

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4 Lin's 1st affidavit, at pp 70 and 72.

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> … 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].
> >
> > (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

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> 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.

[emphasis in original]

20 Thus, I am cognizant of the fact that the threshold for what amounts to special circumstances is generally quite low and there is no rigid rule in this respect. It depends on the facts and merits of each case. In this case, however, special circumstances have not been shown. The fact that the plaintiff disagrees

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with the first defendant that the Fees are reasonable is insufficient to constitute "special circumstances". As I have mentioned above, the notion of reasonableness is highly subjective and thus often open to differing views. The finality accorded to the solicitors on payment of their bill cannot be extinguished just because the plaintiff, the other director of the second defendant, disagrees with the first defendant that the Fees are reasonable and not excessive. This is an internal disagreement between the plaintiff and the first defendant, who are the shareholders and directors of the second defendant. If the plaintiff is of the view that there has been some impropriety or breach of fiduciary duties on the part of the first defendant, the correct remedy is for him to pursue an action on behalf of the second defendant against the first defendant herself instead of seeking an order for taxation. Given that the first defendant had paid the Fees on behalf of the second defendant, it would not be reasonable and appropriate *vis-à-vis* the second defendant's solicitors for the plaintiff now to about-turn and request for taxation of the Fees as he opines that the Fees are excessive.

21 Furthermore, as mentioned above, the first defendant was the only director who dealt with the second defendant's solicitors. Hence, she is better-placed than the plaintiff to assess the reasonableness of the Fees. There is also no issue of the bill being insufficiently particularised in this case, as the itemised invoices, timesheets and the solicitors' warrant to act were all disclosed by the solicitors to the first defendant and subsequently to the plaintiff. To allow taxation under the circumstances will be unfair to the second defendant's solicitors who should not be dragged into the personal disputes between the only two shareholders and directors of the second defendant.

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The Consent Order

22 The Consent Order clearly shows that the plaintiff listed 30 firms of solicitors whom he was confident could safeguard the second defendant's interests objectively, independently and competently. JTJB was chosen by the first defendant from the plaintiff's approved list of solicitors. Under the Consent Order the plaintiff agreed that only the first defendant is entitled to represent the second defendant to give instructions to, receive advice from or otherwise communicate with JTJB. The import of the Consent Order, therefore, was that the plaintiff had agreed for the first defendant to be solely responsible for liaising with the solicitors and for managing the company's affairs in relation to its solicitors. There was no expectation of any involvement on the plaintiff's part. This reinforces the above points that under these unique circumstances, the first defendant was entitled to assess the solicitors' bills and make payment for the bills on the second defendant's behalf and seek reimbursement from the second defendant.

Conclusion on OS 320

23 In summary, as far as OS 320 is concerned, the plaintiff has not satisfied s 216A of the Companies Act and s 122 of the LPA. The evidence shows that the first defendant had paid the Fees on behalf of the second defendant as she opines that the Fees are reasonable. Further, some of the invoices for the Fees were issued more than 12 months ago. The plaintiff has also not satisfied the court that there are special circumstances under s 122 of the LPA to warrant the taxation of the Fees. Rather, the circumstances under which he now seeks to apply for taxation on the second defendant's behalf suggest that the application is not being made in good faith. Accordingly, OS 320 is dismissed.

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SUM 1281

24 The Consent Order clearly states that the second defendant is to pay the costs of the solicitors in safeguarding the interests of the second defendant in OS 1446. The plaintiff is not arguing that he is not willing to pay the Fees at all. Rather, he wants the Fees to be sent for taxation so that it can be assessed as to whether the Fees are reasonable.

25 I have explained above that there is no basis for the Fees to be sent for taxation. Therefore, I allow SUM 1281.

Summary of findings

26 In summary, in respect of OS 320, I find that the plaintiff has not shown that he is acting in good faith in applying under s 216A of the Companies Act for leave to bring an action for taxation on behalf of the second defendant. Neither has the plaintiff shown special circumstances warranting an order for taxation under s 122 of the LPA, given that the Fees have already been paid by the first defendant and the invoices for some of the Fees were issued more than 12 months ago. This is in line with the import of the Consent Order.

27 In respect of SUM 1281, since there is no basis for the Fees to be taxed and the Consent Order clearly states that the second defendant is to pay for the solicitors' fees incurred in safeguarding its interests in OS 1446, the plaintiff should procure the second defendant to reimburse the first defendant for the Fees that she had paid on behalf of the second defendant.

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Conclusion

28 For the above reasons, I dismiss OS 320 and allow SUM 1281. I shall now hear parties on the issue of costs.

Tan Siong Thye
Judge

Tham Wei Chern, Danica Gan Fang Ling and Verna Goh (Fullerton Law Chambers LLC) for the plaintiff in OS 1446/2018;
Eugene Singarajah Thuraisingam and Chooi Jing Yen (Eugene Thuraisingam LLP) for the plaintiff in OS 320/2020;
Davinder Singh s/o Amar Singh SC, Tan Siew Wei Cheryl, Pardeep Singh Khosa, Tan Mao Lin, Darveenia Rajula Rajah and Vanessa Poo Jill (Davinder Singh Chambers LLC) for the first defendant in OS 1446/2018 and the intervener in OS 320/2020.

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