IN THE APPELLATE DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2024] SGHC(A) 37

Appellate Division / Civil Appeal No 10 of 2024

Between

Arbiters Inc Law Corporation

… *Appellant*

And

(1) Arokiasamy Steven Joseph
In his personal capacity and in his capacity as administrator of the estate of Salvin Foster Steven, the Deceased

(2) Tan Kin Tee

… *Respondents*

In the matter of Originating Application No 1008 of 2023

Between

Arbiters Inc Law Corporation

… *Applicant*

And

(1) Arokiasamy Steven Joseph
In his personal capacity and in his capacity as administrator of the estate of Salvin Foster Steven, the Deceased

(2) Tan Kin Tee

… *Respondents*

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GROUNDS OF DECISION

[Civil Procedure — Costs —Taxation]
[Legal Profession — Professional conduct]

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Arbiters Inc Law Corp
v
Arokiasamy Steven Joseph and another

[2024] SGHC(A) 37

Appellate Division of the High Court — Civil Appeal No 10 of 2024
Woo Bih Li JAD, Debbie Ong Siew Ling JAD and See Kee Oon JAD
14 August 2024

5 December 2024

See Kee Oon JAD (delivering the grounds of decision of the court):

Introduction

1 This appeal brought into sharp relief the broad supervisory role of the court in assessing legal costs notwithstanding any prior agreement on costs between the solicitor and the client. The court will not hesitate to void such agreements where they are found to be unfair or unreasonable. This would extend to situations such as the present where we found the costs claimed by the solicitor to be so plainly excessive as to amount to overcharging.

2 This appeal arose out of an application by the appellant law corporation, Arbiters Inc Law Corporation ("Arbiters Law") under s 113 of the Legal Profession Act (Cap 161, 2001 Rev Ed) to enforce two letters of engagement as "contentious business agreements" ("CBAs") within the meaning of s 111(1), so that Arbiters Law could compel its former clients, the respondents,

Mr Arokiasamy Steven Joseph ("Mr Steven") and his wife, Mdm Tan Kin Tee ("Mdm Tan"), to pay its legal costs. The application ought to have been filed under s 113 of the Legal Profession Act 1966 (2020 Rev Ed) ("LPA") instead, rather than its predecessor statute. Notwithstanding this irregularity, we proceeded to deal with the appeal as if the application had been properly filed under s 113 of the LPA.

3 The judge below ("the Judge") held that the letters of engagement were not to be enforced as CBAs. As Arbiters Law was agreeable to the Judge fixing its costs, the Judge fixed its costs (including disbursements) at $60,000. Arbiters Law had also submitted that the respondents should pay the full sum of fees claimed by Professor Eleni Palizidou ("Prof Eleni"), the respondents' expert, and in pounds sterling. The Judge ordered the respondents to pay only part of Prof Eleni's invoiced fees in Singapore dollars. Arbiters Law, being dissatisfied with the orders, filed an appeal against of the decision of the Judge.

4 After hearing the parties' submissions on 14 August 2024, we allowed the appeal in part only. We ordered an uplift of $27,000 for Arbiters Law's professional fees and disbursements. However, we concurred with the Judge that the letters of engagement between the parties were unenforceable as CBAs. Our reasons for doing so differed to some extent from those that the Judge relied on. Nevertheless, in the overall analysis, we arrived at substantially the same conclusion as the Judge, namely, that Arbiters Law's claimed legal fees were plainly excessive. In respect of Prof Eleni's fees, we ordered Mr Steven to make payment of the full invoiced fees in pounds sterling.

5 The grounds of our decision are set out below.

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Background to the dispute

The respondents' engagement of legal services

6 Mr Salvin Foster Steven ("Mr Salvin"), the son of the respondents, committed suicide on 7 September 2017.[1] He had a history of mental illness and was admitted to the Institute of Mental Health ("IMH") in 2010.

7 After Mr Salvin's suicide, the respondents contacted Mr Anil Narain Balchandani ("Mr Balchandani") of Red Lion Circle Advocates and Solicitors ("Red Lion Circle") in 2017 for legal advice.[2] They subsequently formally engaged Mr Balchandani in 2020 to act for them to sue two doctors (the first and second defendants) and the IMH (the third defendant) (collectively, the "defendants") for an alleged breach of duty and negligence that led to Mr Salvin's suicide.[3] On 2 September 2020, HC/S 833/2020 ("S 833") was commenced by Mr Balchandani on behalf of the respondents; Mr Steven sued in his personal capacity and as the administrator of Mr Salvin's estate, and Mdm Tan sued in her personal capacity.[4]

8 In November 2020, on Mr Balchandani's advice, the respondents instructed Arbiters Law to assist Mr Balchandani in S 833.[5] Mr Vijay Kumar Rai ("Mr Rai") was the lawyer in charge of the matter.[6] The respondents signed

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1 Mr Steven's affidavit dated 26 October 2023 ("Mr Steven's 26 October affidavit") at para 13; ROA Vol 3B at p 8.

2 Mr Steven's 26 October affidavit at para 14; ROA Vol 3B at p 9.

3 Mr Steven's 26 October affidavit at para 8; ROA Vol 3B at p 7.

4 Mr Rai's affidavit dated 2 October 2023 ("Mr Rai's 2 October affidavit") at para 5; ROA Vol 3A at p 9; Mr Steven's 26 October affidavit at para 14; ROA Vol 3B at p 9.

5 Mr Rai's 2 October affidavit at para 6; ROA Vol 3A at p 9; Mr Steven's 26 October affidavit at para 14; ROA Vol 3B at p 9.

6 Mr Rai's 2 October affidavit at para 6; ROA Vol 3A at p 9.

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a letter of engagement on 25 November 2020 for Arbiters Law to represent them in the action, alongside Red Lion Circle.[7]

9 Mr Rai claimed that, subsequently, the respondents "decided that it would be prudent for them to be separately represented". Therefore, according to Mr Rai, Mr Steven signed a fresh letter of engagement on 8 April 2021, whereby he would be represented by Arbiters Law. Mdm Tan remained represented by Mr Balchandani.[8] We refer to the letter of engagement dated 25 November 2020 and the letter of engagement dated 8 April 2021 collectively as the "LOEs". The terms of the LOEs are the same, save that only the 25 November 2020 letter of engagement stipulates a request for an "initial deposit of S$4,000" in cl 17. We reproduce the material portions of the LOEs:[9]

> 6. As we foresee matters now, the scope of our services will extend to the following:
>
> 6.1 Advising you on matters of Singapore law related to the claim for medical negligence by failure to diagnose, treat and/or advice;
>
> 6.2 Reviewing and understanding the correspondence and relevant documents;
>
> 6.3 Obtaining further information and instructions from you as may be necessary;
>
> 6.4 Acting for you in the claim by you;
>
> 6.5 Drafting Court documents;
>
> 6.6 Attending Court, hearings, trial and presenting arguments; and
>
> 6.7 Doing all things as may be required or necessary and/or incidental in connection with the foregoing;

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7 Mr Rai's 2 October affidavit at para 6; ROA Vol 3A at p 9 .

8 Mr Rai's 2 October affidavit at para 7; ROA Vol 3A at p 10.

9 Letter of Engagement dated 25 November 2020 and Letter of Engagement dated 8 April 2021; ROA Vol 3A at pp 32–42, 44–52.

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…

Information on our professional fees and disbursements

13. In this letter, the term "professional fees and disbursements" includes (without limitation) legal fees, charges, disbursements, expenses and remuneration relating to our provision of legal services and advice to you in handling the Matter.

14. Our professional fees will be based on the actual time spent in connection with this matter by the lawyers having conduct of your matter, including the time spent in meetings with you, including any telephone conversations, emails to or from you, letters and others; preparing, reviewing and working on matter, preparing papers including correspondence; making and receiving telephone calls and others on your behalf, preparing for and attending hearings on your behalf, travelling and waiting, and the overall management of this matter.

…

Hourly rate

16. The hourly rate of the lawyer(s) who will be attending your matter are as follows:

    16.1 The hourly rate of Mr Vijay Kumari Rai is SGD ~~**1,500**~~ **1,000/-** per hour and that of our Associate(s) is SGD **250/-** per hour. We are mindful of the need to keep your costs under control, and will endeavour to do so by ensuring that all work is done at the appropriate levels of seniority with the requisite degree of supervision.

    16.2 We keep our hourly rates constantly under review and will notify you of any changes in them.

    16.2.1 Please note our professional fees exclude disbursements and Goods and Services Tax ("GST").

    16.2.2 These disbursements include postage charges, telephone charges, photocopying charges, fees and the costs of airfare and/or hotel accommodation for any travel outside Singapore relating to this matter by our lawyer(s). A list of disbursements will be provided in the bill and a further itemised list of disbursements can be provided upon request.

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> 17. It is normal practice for law firms to require clients to pay sums of money from time to time on account of anticipated professional fees and disbursements. We usually request a deposit of up to 30% of the anticipated professional fees and disbursements for the entire matter. We propose to collect **$1,500**/- every month to account. This may vary according to the work done and time expended and the rate/speed of progress. We therefore request that an initial deposit of S$4,000/- … be placed with us prior to the commencement of work. …
>
> …
>
> **Further Information on Costs for a Litigation Matter**
>
> 22. A dispute such as the present one, if it proceeds up to trial/arbitration, can take up to 1 to 2 days. We estimate the total professional fees, exclusive of disbursements, to be about SGD150,000 … If the matter is settled before trial, as happens in many litigious matters, our professional fees will be correspondingly lower. Please note that this estimate of likely professional fees is provided for your guidance only and that our invoiced professional fees will in any event be based on the actual time spent by the lawyer(s) handling this matter.
>
> …
>
> [emphasis in original]

The conduct of S 833

10 On 3 December 2021, the respondents discontinued their claim against the second defendant in S 833. They were ordered to pay costs of $32,000 to the second defendant and reasonable disbursements for the discontinuance, and another $8,000 each to the second defendant and the IMH for a related application in HC/SUM 5081/2021 ("SUM 5081").[10]

11 Subsequently, Mr Rai realised, through the first defendant's supplementary expert report dated 29 April 2022, that his client's case hinged on proof that one of the drugs prescribed to Mr Salvin, "Concerta", was

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10 HC/ORC 6948/2021 dated 15 December 2021; ROA Vol 3A at p 55.

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inappropriate, and he needed expert evidence to prove it. This led Arbiters Law to contact Prof Eleni, an expert psychopharmacologist, by email on 19 July 2022 to request that she provide an expert report. Prof Eleni responded in late August, and sometime in mid-September, the respondents provided Prof Eleni with the relevant documents and the letter of instruction.[11]

12 At a pre-trial conference before the Judge on 10 October 2022, Mr Rai sought leave to engage Prof Eleni as an expert for the respondents. By that time, dates for the trial had been fixed beginning from 12 January 2023. The parties' lists of witnesses and their affidavits of evidence-in-chief had been filed. Mr Rai submitted that he was earlier unable to engage Prof Eleni, who is from London, because she was undergoing chemotherapy for cancer. The Judge allowed Mr Rai's application on the condition that he file Prof Eleni's affidavit of evidence-in-chief ("AEIC") by 25 October 2022. Her AEIC was not filed by that date.

13 On 14 December 2022, the first and third defendants made an offer to settle ("OTS") with a settlement sum of "$200,000 for damages, costs and interest". On 19 December 2022, the respondents instructed Arbiters Law and Red Lion Circle to issue an OTS in the sum of $450,000, excluding costs, disbursements and interest. On 30 December 2022, the first and third defendants increased their OTS from $200,000 to $270,000. According to Mr Rai, the respondents decided to wait to see if the first and third defendants would increase their offer for settlement further.[12]

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11 Appellant's Case dated 2 May 2024 ("AC") at para 8.

12 Mr Rai's 2 October affidavit at paras 17, 19–20; ROA Vol 3A at pp 14–15.

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14 On 12 January 2023, the first day of trial, Mr Rai made a fresh application to file Prof Eleni's AEIC. Counsel for the first and third defendants understandably objected to Mr Rai's application. The Judge accepted that the expert evidence was crucial to the respondents' case, and thus allowed the application and adjourned the trial to 11 September 2023.

15 On 17 July 2023, the first and third defendants further increased their OTS to $330,000 (inclusive of interest, legal costs and disbursements). According to Mr Rai, the respondents rejected the offer and insisted that they would not settle for a sum less than $2m and, in addition, full coverage of their legal fees.[13]

16 As it transpired, Arbiters Law and Red Lion Circle were discharged by the respondents on 26 July 2023.[14] However, the lawyers did not seek leave from the court to be discharged. Sometime between 27 July 2023 and 1 August 2023, the respondents personally contacted the first and third defendants in S 833 and secured a settlement without admission of liability, wherein the first and third defendants would pay the respondents an *ex gratia* sum of $330,000.[15]

SUM 2331 and SUM 2424

17 On 2 August 2023, Arbiters Law filed HC/SUM 2331/2023 ("SUM 2331"),[16] by which it sought, among other things: (a) to record the settlement between the respondents and the first and third defendants; (b) for

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13 Mr Rai's 2 October affidavit at Tab 4; ROA Vol 3A at p 59; AC at para 17.

14 Mr Rai's 2 October affidavit at para 25; ROA Vol 3A at p 18; Mr Steven's 26 October affidavit at para 10; ROA Vol 3B at pp 7–8.

15 Mr Rai's 2 October affidavit at paras 26 and 33; ROA Vol 3A at pp 18 and 21; Mr Steven's 26 October affidavit at para 16; ROA Vol 3B at p 9.

16 HC/SUM 2331/2023 dated 2 August 2023.

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the settlement sum to be paid into court by these defendants; and (c) for the trial to be vacated and the action discontinued.[17] The reason for this step was that Arbiters Law was of the view that the respondents ought not be allowed to receive any settlement sum without any assurance that their legal fees would be paid. However, on 4 August 2023, the respondents filed notices of their intention to act in person: see *Arokiasamy Steven Joseph (administrator of the estate of Salvin Foster Steven, deceased) and another v Lee Boon Chuan Nelson and others and other matters* [2023] SGHC 230 ("*Arokiasamy*") at [4]. On 7 August 2023, the Judge granted leave for Mr Rai and Mr Balchandani to be discharged from acting for the respondents.

18 Having been discharged, Arbiters Law no longer had the standing to proceed with SUM 2331. As a result, Arbiters Law filed another summons, HC/SUM 2424/2023 ("SUM 2424") to be joined as a party to S 833. The Judge dismissed both SUM 2331 and SUM 2424 with costs to be paid by Arbiters Law to the respondents and the first and third defendants. The respondents were also given leave to discontinue S 833: *Arokiasamy* at [9].

19 On 14 August 2023, the court recorded the settlement between the respondents and the first and third defendants, the terms of which (aside from the quantum of the settlement sum) are confidential: *Arokiasamy* at [6]. During the hearing before us, Mr Steven confirmed that the settlement sum of $330,000 had been released to him and Mdm Tan.

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17 AC at para 20.

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The bills of costs in relation to S 833

20 In the course of acting for the respondents pursuant to the 25 November 2020 letter of engagement, Arbiters Law issued 36 bills of costs in relation to the work done for S 833 from 25 November 2020 to 8 April 2021. The first 27 bills were paid by the respondents, which amounted to a sum of $56,065.60 and comprised $36,000 in professional fees and $20,065.60 in disbursements. The remaining nine bills of costs which were unpaid totalled $29,006.68, comprising $22,562.50 in professional fees and $6,444.18 in disbursements.

21 Pursuant to the 8 April 2021 letter of engagement, Arbiters Law issued a single bill to Mr Steven dated 27 July 2023 in the sum of $343,015.75, which also remained unpaid. This sum included the charge of $1,605 for the trial attendance of a witness, which Arbiters Law did not claim in HC/OA 1008/2023 ("OA 1008"), which was filed against the respondents for payment of Arbiters Law's legal costs. Out of the remaining sum of $341,410.75, $340,437.50 comprised professional fees, and was computed based on 224.65 hours of work done by Mr Rai and 463.15 hours of work done by a legal associate (*ie*, (224.65 hours x $1000) + (463.15 hours x $250)).

22 These bills were also not inclusive of the expert fees claimed for Prof Eleni of £12,300 (which parties did not dispute were equivalent to $20,541), which were also unpaid. Her hourly rate was £300, and the breakdown for her fees, as stated in her invoice, was as follows:[18]

[18] Prof Eleni's invoice; ROA 3A at p 234.

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S/N	Work item	Time spent (hrs)	Cost (£)
1	Case files review, notes taking, literature review	15	4,500
2	Preparation of report	14	4,200
3	Answering questions	12	3,600
	Total	**41**	**12,300**

OA 1008

23 On 2 October 2023, Arbiters Law filed OA 1008 against the respondents for payment of its legal costs. Arbiters Law sought a declaration that the LOEs were valid and binding CBAs[19] under s 111(1) of the LPA. This was so that its bills of costs would not be subject to an assessment of costs, which would effectively compel the respondents to pay the amount that Arbiters Law claimed.[20]

24 On the strength of the 25 November 2020 letter of engagement, Arbiters Law claimed the fees and disbursements due from the respondents amounting to $29,006.68. It also claimed the sum of $341,410.75 pursuant to the 8 April 2021 letter of engagement. In addition, Arbiters Law asked that the respondents pay the £12,300 fees of Prof Eleni. In the alternative, Arbiters Law prayed for the bills to be assessed.[21] We summarise the costs claimed by Arbiters Law in the table below:[22]

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19 OA 1008 dated 2 October 2023.

20 Mr Rai's 2 October affidavit at para 44; ROA Vol 3A at p 28.

21 OA 1008 dated 2 October 2023.

22 Mr Rai's 2 October affidavit at paras 38–40; ROA Vol 3A at pp 23–26.

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S/N	Nature of fees	Amount outstanding ($)	Amount paid ($)
Fees pursuant to the 25 November 2020 letter of engagement			
1	Disbursements	6,444.18	20,065.60
2	Professional fees	22,562.50	36,000
	Sub-total	**29,006.68**	**56,065.60**
Fees pursuant to the 8 April 2021 letter of engagement			
3	Disbursements	973.25	0
4	Professional fees (based on 224.65 hours for Mr Rai and 463.15 hours for the legal associate)	340,437.50	0
	Sub-total	**341,410.75**	**0**
	Total (excluding expert fees)	**370,417.43**	**56,065.60**
Expert fees			
5	Prof Eleni's fees (£12,300)	20,541	0
	Total	**390,958.43**	**56,065.60**

25 Excluding disbursements, the combined fees of Arbiters Law were $399,000 (*ie*, $36,000 + $22,562.50 + $340,437.50). The unpaid fees were $363,000 (*ie*, $22,562.50 + $340,437.50). The total disbursements were $27,483.03 (*ie*, $6,444.18 + $20,065.60 + $973.25) and the unpaid

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disbursements were $7,417.43 (*ie*, $6,444.18 + $973.25). This was not inclusive of the expert fees claimed for Prof Eleni (*ie*, $20,541 or £12,300).

26 The respondents took the position that the LOEs did not constitute CBAs, because the terms governing the solicitor's fees were not sufficiently specific or certain. In the alternative, even if the LOEs amounted to CBAs, the respondents submitted that the LOEs ought to be declared void for being unfair or unreasonable.[23] As such, the respondents asked for the bills to be assessed.[24] The respondents claimed that they were not in a financial position to pay the outstanding costs claimed by Arbiters Law. Mr Steven said that he had been employed by the Ministry of Defence until 2020 and was now a retiree.[25] His wife, Mdm Tan, has been working as a part-time teacher since 2021. They live in a Housing and Development Board flat. According to the respondents, the costs would entirely deprive them of the settlement sum and would likely result in them being declared bankrupt.[26]

Decision below

27 The decision of the Judge in OA 1008, out of which the present appeal arose, is set out in *Arbiters Inc Law Corporation v Arokiasamy Steven Joseph and another* [2024] SGHC 26 (the "Judgment"). The Judge held that the LOEs were *not* CBAs. His reasons were as follows (Judgment at [15] and [17]):

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23 Mr Steven's 26 October affidavit at paras 23–33; ROA Vol 3B at pp 14–17.

24 Mr Steven's 26 October affidavit at para 45; ROA Vol 3B at p 21.

25 Mr Steven's 26 October affidavit at para 34; ROA Vol 3B at p 18.

26 Mr Steven's 26 October affidavit at paras 34–39; ROA Vol 3B at pp 18–19.

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(a) First, the estimate of the "total professional fees exclusive of disbursements" in cl 22 was way off mark to enable the LOEs "to be of any use as a [CBA]".

(b) Second, no advice was given as to what sort of disbursements were needed.

(c) Third, at the time that the LOEs were entered into, the critical expert, Prof Eleni, was not engaged, let alone the determination of her fees.

(d) Fourth, cl 22 was written in a way that "may give the clients the impression that the trial would only last a day or two". Further, the reference to "the total professional fees" in cl 22 may or may not be a reference to a two-day trial. There was also no provision as to what would happen when the trial exceeded two days.

Therefore, Arbiters Law was not entitled to the costs it claimed without an assessment of costs.

28 However, as the parties agreed that the Judge was to fix the costs of Arbiters Law if the LOEs did not amount to CBAs, the Judge proceeded to do so. The Judge decided the appropriate costs to be fixed by considering what a reasonable lawyer in the positions of Mr Rai and Mr Balchandani would have done, and the fees that a reasonable lawyer would have charged (Judgment at [20]–[21]). The Judge was the judge before whom S 833 was fixed for hearing and who also heard OA 1008. He considered the issues in S 833 to be "clear and specific": the medical question as to the suitability of the drugs given to Mr Salvin was important but neither complicated nor complex. The issues of fact as to whether the doctors and the IMH had sufficient knowledge or notice

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to have done more to prevent the suicide were also straightforward (Judgment at [22]). The Judge held that the legal fees and disbursements for filing the action and taking it through the interlocutory applications would be "between $60,000 to $100,000". The Judge also observed that the case was settled before trial. While S 833 was fixed for trial twice, the Judge did not think that it would be fair to require the respondents to bear the costs of vacating the first trial (Judgment at [23]).

29 The Judge opined that after Mr Rai had been engaged to take over the matter, Mr Balchandani ought either to have transferred the case to Arbiters Law, or merely instructed Mr Rai as counsel. Representing the respondents separately, where there did not appear to be any conflict of interests, unnecessarily expanded the respondents' legal costs (Judgment at [25]). The Judge took the view that a reasonable lawyer acting for the respondents would have charged about $60,000 up to the trial. The fees claimed by Arbiters Law were thus excessive. There would be no costs for the trial since the action was settled. The Judge also considered that some work might have been done by Mr Balchandani (Judgment at [26] and [29]).

30 As for Prof Eleni's fees, the Judge thought that they were excessive: she did not have to attend court, and her report mainly consisted of answering questions from counsel (Judgment at [30]).

31 Based on the foregoing, the Judge made the following orders:

(a) The respondents were to pay Arbiters Law solicitor-and-client costs fixed at $60,000 inclusive of reasonable disbursements, and the sum of $56,065.60 was taken as part payment (Judgment at [26]).

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(b) The respondents were to pay Mr Balchandani solicitor-and-client fees fixed at $25,000, inclusive of disbursements, and any sums previously paid were taken as part payment (Judgment at [29]).

(c) The respondents were to pay Prof Eleni's fees in the reduced sum of $9,000 (Judgment at [30]).

(d) Arbiters Law was to pay the respondents the costs of OA 1008 fixed at $2,000 each (Judgment at [31]).

Parties' cases on appeal

32 Arbiters Law appealed against the entirety of the Judge's decision and sought an order in terms of the prayers in OA 1008.[27]

33 Arbiters Law maintained its case that the LOEs were CBAs and enforceable as such. In response to the Judge's finding that the estimated costs stated in cl 22 were "way off mark" (Judgment at [17]), Arbiters Law submitted that the estimate was for "guidance only" and that the professional fees would "be based on the actual time spent by the lawyer(s) handling the matter". Furthermore, the respondents had been kept apprised of the total number of hours incurred, and they never queried why the professional fees exceeded the "estimate" of $150,000. Arbiters Law claimed that Mr Steven had approved or agreed to the number of hours incurred through his approval of his solicitors' bills.[28]

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27 AC at para 2.

28 AC at paras 59–74.

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34 Arbiters Law also disagreed with the Judge's award on costs for S 833. It averred that the separate representation of the respondents was justified. There was no proof that the work done by Mr Balchandani and Mr Rai was duplicative. In any event, the issue of the legal costs of separate legal representation was a non-starter because Red Lion Circle did not claim its costs for the period starting when Arbiters Law separately represented Mr Steven (*ie*, from April 2021).[29] The Judge also failed to properly appreciate the breakdown of the settlement sum, which led the Judge to make an extraordinarily low award of legal costs.[30] We elaborate below on the breakdown of the settlement sum.

35 Arbiters Law took pains to emphasise that S 833 required substantial work, experience and expertise. The respondents were prepared to call 13 factual witnesses and two expert witnesses for the trial, and the factual witnesses would give evidence involving their medical expertise. The extremely technical subject matter and the differing positions taken by medical expert witnesses made matters complex.[31]

36 Lastly, Arbiters Law submitted that the Judge should have awarded the full sum of Prof Eleni's fees, and in pounds sterling instead of Singapore dollars. The Judge ignored the respondents' position that they intended to pay Prof Eleni's fees in full, which was effectively an admission that her fees were reasonable. Further, Prof Eleni's evidence was highly technical and complex, which attracted lengthy responses from the defendants' witnesses.[32]

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29 Red Lion Circle's letter dated 19 January 2024 at para 7; ROA Vol 4 at p 54; Red Lion Circle's letter dated 29 January 2024 at para 11; ROA Vol 4 at p 58; AC at paras 34–41.

30 AC at paras 42–49.

31 AC at paras 76–85.

32 AC at paras 86–97.

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37 Conversely, the respondents agreed with the Judge's finding that the LOEs were not CBAs. In particular, the LOEs did not fulfil the specificity requirement as the terms were contradictory and confusing for unsophisticated laypersons. The respondents also submitted that their acceptance of Arbiters Law's charge-out rates, by virtue of having paid some of the bills, did not mean that the respondents were able to make a reasonable forecast as to the amount of costs incurred based on the terms of the LOEs.[33]

38 In the alternative, if the LOEs were CBAs, the respondents argued that the LOEs ought to be declared void pursuant to s 113(4) of the LPA. They submitted that the terms of the LOEs were unfair and unreasonable because: (a) the professional fees claimed were excessive and disproportionate; and (b) the contents and terms of the LOEs were not properly explained to the respondents.[34]

39 The respondents took the view that the Judge properly exercised his discretion in making the award on costs. The Judge was entitled to take into account the fact that "work might have been done by Mr Balchandani". The total legal costs to be paid by the respondents was a fair and reasonable amount.[35]

40 Finally, the respondents averred that it was irrelevant that they had been agreeable to pay Prof Eleni's fees of £12,300. This did not detract from the court's power to exercise its discretion in fixing the quantum of disbursements.[36]

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33 Respondents' Case dated 30 May 2024 ("RC") at paras 22–35.

34 RC at paras 36–45.

35 RC at paras 46–69.

36 RC at paras 70–71.

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Issues to be determined

41 Three primary issues arose for the determination of this court:

(a) First, whether the LOEs were enforceable, such that Arbiters Law's bills of costs would not be subject to assessment. This depended on these sub-issues:

(i) whether the terms governing the fees of the LOEs were sufficiently certain or specific, so as to qualify the LOEs as CBAs within the meaning of s 111(1) of the LPA; and

(ii) if the LOEs qualified as CBAs, whether they should nonetheless be declared void for being unfair or unreasonable under s 113(4) of the LPA.

(b) Second, if the LOEs were declared void, whether the Judge erred in his award of costs for S 833.

(c) Third, whether Prof Eleni's fees should be paid in full and in which currency and by whom.

The applicable legal principles

42 Section 111 of the LPA recognises that a solicitor and a client may reach an agreement on costs in relation to contentious business. The term "contentious business" is itself defined in s 2 of the LPA as "business done in or for the purposes of proceedings begun before a court of justice or before an arbitrator". Section 111 of the LPA reads as follows:

> **Agreement as to costs for contentious business**
>
> **111.**—(1) Subject to the provisions of any other written law, a solicitor or law corporation or limited liability law partnership may make an agreement in writing with any client respecting

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> the amount and manner of payment for the whole or any part of his, her or its costs in respect of contentious business done or to be done by the solicitor or law corporation or 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 the solicitor or the law corporation or limited liability law partnership would otherwise be entitled to be remunerated.
>
> (2) Every such agreement must be signed by the client and is subject to the provisions and conditions contained in this Part.
>
> …

43 In order to constitute a valid CBA under s 111 of the LPA, the agreement must satisfy the following three requirements:

(a) First, the agreement must be made in writing: s 111(1) of the LPA.

(b) Second, the agreement must be signed by the client: s 111(2) of the LPA; see *Sports Connection Pte Ltd v Asia Law Corp and another* [2010] 4 SLR 590 ("*Sports Connection*") at [17] and *Re Nirumalan Kanapathi Pillai* [1999] 3 SLR(R) 1037 at [25] and [26]).

(c) Third, there must be sufficient certainty or specificity of the terms governing the fees: *Chancery Law Corp v Management Corporation Strata Title Plan No 1024* [2016] 4 SLR 480 ("*Chancery Law*") at [25], citing *Shamsudin bin Embun v P T Seah & Co* [1985-1986] SLR(R) 1108 ("*Shamsudin*") at [22]. To satisfy this requirement, "the agreement must be sufficiently specific – so as to tell the client what he is letting himself in for by way of costs": per Lord Denning, *Chamberlain v Boodle & King (a firm)* [1982] 1 WLR 1443 ("*Chamberlain*") at 1445, cited in *Chancery Law* at [59] and in *Shamsudin* at [18]–[22]. Similarly, in *Ho Seow Wan v Morgan Lewis Stamford LLC (formerly known as Stamford Law Corporation)*

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> [2018] SGHC 31 ("*Ho Seow Wan*") at [66], Chan Seng Onn J stated that the agreement must be "specified in sufficiently clear terms so that the client would be in a position to make a *reasoned calculation* based on the agreement as to what his legal fees would eventually be upon completion of the contentious legal matter" [emphasis added], and that what was to be regarded as sufficiently clear would be an "intensely fact-specific inquiry". Conversely, 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: *Chancery Law* at [64].

44 The significance of entering into a CBA is that, if it is enforceable and enforced, the client loses the right to request for a bill of costs to be issued and sent for assessment (see s 112(4) of the LPA). Effectively, the solicitor is entitled to enter into an agreement on costs with the client at a higher rate than what he would normally charge, *ie*, at a premium (*Sports Connection* at [13]). In *Wilson v The Specter Partnership and Others* [2007] 6 Costs LR 802 at [15], Mann J observed that the essence of a CBA and its benefit to both parties is certainty – the parties to the CBA define how the client will be charged. Conversely, if a solicitor or law corporation did not enter into a CBA with the client pursuant to s 111 of the LPA, neither s 112 nor s 113 would be engaged, and the client would retain the right to have his or her bills of costs sent for assessment under the regime outlined in Part 9 of the LPA (*Ho Seow Wan* at [45]).

45 However, the court is conferred a broad supervisory role in assessing legal costs notwithstanding any prior agreement between the solicitor and the client (*Lin Jian Wei and another v Lim Eng Hock Peter* [2011] 3 SLR 1052 at [23] and [26]). In dealing with an application to enforce a CBA under s 111 of the LPA, the court may, if it appears to the court or judge that the agreement is

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in all respects fair and reasonable, enforce the agreement in such manner and subject to such conditions (if any) as to the costs of the application as the court thinks fit (see s 113(3) of the LPA). If, however, the terms of the agreement are deemed by the court to be unfair or unreasonable, the agreement may be declared void under s 113(4) of the LPA. Where the court directs that the agreement be given up to be cancelled, the court may direct that the bill be assessed (see s 113(5) of the LPA).

46 This means that all CBAs "will have to survive the scrutiny of the court and it reflects the particular jealousy with which the court regards work done in court" (Tan Yock Lin, *The Law of Advocates and Solicitors in Singapore and West Malaysia* (*Butterworths,* 2nd Ed, 1998), at p 691). In other words, "no such agreement is sacrosanct in the sense of being conclusive and immune to, as well as impervious from, any investigation by the court itself" (per Andrew Phang JC (as he then was) in *Wong Foong Chai v Lin Kuo Hao* [2005] 3 SLR(R) 74 at [31]). Similarly, Practice Direction 5.2.2 of the Council of the Law Society of Singapore emphasises that s 111 of the LPA "does not give solicitors a *carte blanche* to agree to an unreasonable fee, and it is well settled that overcharging a client whether in a bill of costs or otherwise may amount to professional misconduct".

47 In this regard, we emphasise that under ss 113(3) to 113(4) of the LPA, the court's powers would extend to reviewing the *implementation* of a LOE, in particular, to address overcharging:

> **Enforcement of agreements**
>
> 113.—
>
> …
>
> (3) Upon any such application, if it appears to the court or Judge that the agreement is in all respects fair and reasonable

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> between the parties, it may be enforced by the court or Judge by rule or order, in such manner and subject to such conditions (if any) as to the costs of the application as the court or Judge thinks fit.
>
> (4) If the terms of the agreement are deemed by the court or Judge to be unfair or unreasonable, the agreement may be declared void.

We agree in particular with Chan J's observations in *Ho Seow Wan* at [85] that "the terms of the agreement" as provided for under s 113(4) of the LPA ought to be read broadly when the fee agreement concerned was an agreement as to charge-out rates, so as to encompass a review of how the solicitor had in fact utilised his time on the agreed scope of work to be done by him. This position finds support in the case law on solicitors' costs agreements with clients.

48 In *In re Stuart, ex parte Cathcart* [1893] 2 QB 201 at 205, Lord Esher MR, delivering the judgment of the Court of Appeal when declaring an agreement on costs null and void on the ground of unreasonableness, stated that whether an agreement was reasonable was to be determined by the court "having regard to the kind of work which the solicitor has to do under the agreement". In the later decision of *Shamsudin* at [28] and [33], Chan Sek Keong JC (as he then was) defined the term "reasonable" to mean "not excessive in relation to the amount of work done, taking into account the nature of the work, the duration of his work, the standing of the solicitor concerned, and also the range of fees payable in a High Court action". In *Ho Seow Wan*, Chan J also correctly reasoned that s 113(4) was clearly meant to be read in concert with s 113(2) of the LPA, which provides that the court may examine and determine every "question respecting the validity or the *effect* of the agreement" [emphasis in original] (*Ho Seow Wan* at [85(b)]).

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49 Where fees are charged on a time basis, overcharging may occur if the number of hours billed for has been inflated, or where the solicitor enlarged the size of the total bill by deliberately engaging in work unnecessary to achieve the purpose of the retainer or taking an unnecessarily long time for the work by failing to act with reasonable due diligence to increase the actual time taken for the work (*Law Society of Singapore v Andre Ravindran Saravanapavan Arul* [2011] 4 SLR 1184 ("*Andre Arul*") at [30]; *Ho Seow Wan* at [81]). Where such instances of overcharging occur, even if the "terms" of the fee agreement *per se* appear to be fair or reasonable on the face of it, the court may still void the CBA under s 113(4) of the LPA.

50 The basis for the court's supervisory role and power of intervention is the court's recognition of the unequal relationship between the solicitor and client, and the influence of a solicitor over his client (*Shamsudin* at [27]). In *Allison v Clayhills* (1907) 97 LT 709 at 712 (cited in *Shamsudin* at [25]), Parker J stated that a solicitor:

> … may by virtue of his employment acquire a personal ascendancy over a client and this ascendancy may last long after the employment has ceased, and the duty towards the client which arises out of any such ascendancy will last as long as the ascendancy itself can operate.

In general, a solicitor is in a better position to evaluate the appropriate and reasonable remuneration for the legal work done for the client. Even where a client is well-educated and fluent in English, the court recognises that, more likely than not, he or she would not be accustomed to litigation or dealing with lawyers when engaging a solicitor (see *Marisol Llenos Foley v Harry Elias Partnership LLP* [2022] 3 SLR 585 ("*Marisol*") at [3]). Therefore, most clients would be unable to make an accurate assessment of the likely costs that may ultimately be incurred. In the words of the authors of Andrew Boon and Jennifer

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Levin, *the Ethics and Conduct of Lawyers in England and Wales* (Hart Publishing, 1999) ("*The Ethics and Conduct of Lawyers in England and Wales*") at p 284:

> These issues cannot be left to the operation of the market. Fees are an ethical issue because, in Schaffer's words, "[t]he distinctive feature of ethics in a profession is that it speaks to the unequal encounter of two moral persons. Legal ethics … becomes the study [for lawyers] of what is good … for this other person, over whom I have power." In the context of charging fees, the lawyer has power because he or she has the knowledge regarding the likely costs and benefits of any proposed course of action and the client is, at least relatively, ignorant of this.

51 We also cannot overemphasise the broader point: costs are a major barrier for the ordinary client in getting access to justice. An unfair or unreasonable fee agreement presents a major obstruction in this regard and can undermine confidence in the administration of justice. In fact, it is for these same reasons that where a client seeks to impeach the fairness or reasonableness of an agreement for costs on contentious matters, the onus is on the *solicitor* who wishes to enforce the CBA against his client to prove its fairness and reasonableness (*Shamsudin* at [24], [33]–[38]). As observed by Kay LJ in *In re Baylis* [1896] 2 Ch 107 at 603:

> In every case of an agreement between a solicitor and client the court has always recognised that a solicitor can exercise great influence over his client, and it looks upon an agreement prepared by the solicitor with great jealousy and care, and throws upon the solicitor the burden of showing that it was fair and proper.

52 Therefore, while a solicitor and client may have the contractual freedom to enter into a valid agreement for the payment of costs, and while there is no question that a solicitor is entitled to costs from his client, no action can be brought to enforce such an agreement except by an order of the court. Where the terms of a CBA are deemed by the court to be unfair or unreasonable, the

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court may direct that the solicitor's bill be assessed. In essence, the assessment of costs procedure provides a form of court control over costs (*The Ethics and Conduct of Lawyers in England and Wales* at p 300). As observed in *Andre Arul* at [41], assessment is "the most objective and conclusive way of determining the amount of fees a solicitor is entitled to".

Issue 1: Whether the LOEs were enforceable CBAs

The LOEs did amount to CBAs under s 111 of the LPA

53 The primary dispute between the respondents and Arbiters Law was in respect of the fees charged and not the disbursements, leaving aside Prof Eleni's fees for the time being. There was no dispute that the LOEs satisfied the first two requirements under s 111 of the LPA to be a CBA. The question was whether the terms governing the solicitors' fees were sufficiently certain or specific. In our view, the terms of the LOEs themselves were sufficiently certain such that the LOEs could be considered to have satisfied the third requirement. In this regard, we respectfully differed from the Judge's views to the contrary for the reasons which we shall elaborate on below.

54 Similar to the case of *Ho Seow Wan* at [67], the LOEs at cl 6 specified the specific scope of matters that were covered under the fee agreement. Clause 16 provided that Mr Rai and a legal associate were in charge of the matter, and it set out their specific charge-out rates. We noted that the LOEs did not specify the identity of the legal associate, but we accepted Mr Rai's explanation during the hearing that the assigned legal associate was subsequently identified (at least in the bills rendered) and remained on the file throughout the duration of the matter where his fees remained the same. Clause 16.2 also made clear that the professional fees excluded disbursements and Goods and Services Tax (see *Ho Seow Wan* at [68]; *Chamberlain* at 1446;

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Shamsudin at [14]). Further, cl 14 of the LOEs stipulated that the charge-out rates were to be applied to the actual number of hours spent by the respective solicitors concerned. It stated that the "professional fees [would] be based on the actual time spent in connection with this matter by the lawyers having conduct of [the client's] matter" and explained what fell within the ambit of such "conduct".

55 It was also significant that cl 22 of the LOEs provided an estimate of the total professional fees. This was stated to be "about SGD150,000", excluding disbursements, on the premise that if the dispute proceeded to trial or arbitration, it could take "up to 1 to 2 days". In our view, such a fee estimate went some way in enabling the respondents to know what they were letting themselves in for by way of costs. Pertinently, cl 22 further provided expressly that if the matter was settled before trial, the "professional fees [would] be correspondingly lower". Thus, cl 22 essentially conveyed to the respondents that a settlement before trial would very likely mean that the total professional fees would be *lower* than the estimated $150,000 which was envisaged for up to two days of trial or arbitration.

56 In principle, we accepted that a fee agreement between a solicitor and a client, which provides for an agreement as to the solicitor's charge-out rates (as opposed to a lump-sum fee), can constitute a CBA within the meaning of s 111 of the LPA (see *Ho Seow Wan* at [55]). However, merely specifying the hourly rates of the assigned solicitors in the agreement, without more, may not always enable the client to make a reasonable forecast as to the total amount of costs to be incurred. Therefore, where possible, such agreements ought to provide a fair estimate of the overall charge. Without such an estimate, a client would have less certainty as to what his or her aggregate exposure in fees might ultimately be, at the time the client enters into the agreement.

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57 For completeness, we noted that Arbiters Law had relied on the similarities between cl 22 of the LOEs and cl 9 of the Standard Letter of Engagement set out in Appendix 11C of the Law Society's Practice Management Guide 2017 (the "Standard Letter of Engagement") to argue that "adherence to the Law Society guide mandates the conclusion that [the LOEs] are CBAs and that the same are enforceable as such".[37] We rejected this argument. In our view, the Standard Letter of Engagement was not envisioned to be a CBA under s 111 of the LPA. This is made clear by cl 52 of the Standard Letter of Engagement, which specifically provides that an assessment of costs is not precluded by the agreement and thus is inconsistent with the agreement being a CBA. Clause 52 of the Standard Letter of Engagement states as follows: "If you dispute our bill, this agreement does not affect your right to apply to court to have our bill taxed or our fee agreement reviewed". In our present case, while the LOEs purported to adopt the terms of the Standard Letter of Engagement, they omitted cl 52. Hence the LOEs did not adhere to the guide. In addition, there was a note to the Standard Letter of Engagement. The first sentence of the note stated that, "This is merely a sample Letter of Engagement and not a Law Society approved format". Therefore, the fact that the terms of an agreement were similar to the terms of the Standard Letter of Engagement did not in itself lend support to the argument that the agreement constituted a CBA.

58 The question remained as to whether the terms of the LOEs were certain enough to constitute CBAs. At the heart of this inquiry was whether the inclusion of hourly rates with an estimate of the overall fees was good enough. If not, when would the terms of a letter of engagement be sufficiently certain?

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[37] Appellant's Reply dated 12 June 2024 ("AR") at paras 6 and 16.

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Must it be for a fixed sum or at least have a maximum cap on the fees? We noted that neither s 111(1) LPA nor the cases mandate this. Section 111(1) refers to "a gross sum or otherwise" and "at either the same rate as or a greater or a lesser rate" than that for which the law practice may be entitled to be remunerated. In the circumstances, we were of the view that the LOEs were CBAs.

59 To the extent that the Judge noted that the estimate of $150,000 was "way off mark", we were of the view that this did not mean that the LOEs were uncertain at the time they were entered into, *ie*, 25 November 2020 and 8 April 2021 respectively. However, it was relevant to a different question, namely, whether the LOEs were enforceable.

60 To the extent that the Judge noted the absence of any advice in the LOEs as to what sort of disbursements were needed, we were also of the view that this was relevant as to whether the LOEs were enforceable and not to the question of certainty at the time the LOEs were entered into. In the context of cases where expert evidence is likely to be required, the letter of engagement should alert the client of this likelihood as well as the need to engage an expert and obtain estimates of such costs as soon as possible. However, these are separate points, and their absence did not render the LOEs uncertain.

61 As for cl 22 of the LOEs, while the Judge was of the view that the reference to "the total professional fees" may or may not be a reference to a two-day trial, we were of the view that the estimate of "the total professional fees" was, in fact, a reference to a two-day trial. However, the clause should have been better drafted to make this clear.

62 To the extent that the Judge noted that there was no provision in cl 22 as to what would happen if the trial exceeded two days, we were of the view that

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it would be fair to assume that the fees would then increase at the rates specified. However, this would not be an issue of uncertainty at the time the LOEs were entered into. If the trial exceeded two days, then this would be a factor in considering whether the initial estimate was fair and whether the LOEs were enforceable.

Whether the terms of the LOEs were unreasonable

63 In our view, the terms of the LOEs were unreasonable within the meaning of s 113(4) of the LPA. Therefore, we declared the LOEs void and unenforceable.

64 Mr Rai submitted that the LOEs were neither unfair nor unreasonable because the respondents had negotiated his hourly rate from $1,500 per hour to $1,000 per hour and they knew what they were in for. However, as explained above (at [47]), "the terms of the agreement" under s 113(4) of the LPA should be read broadly when the fee agreement sets out the solicitor's charge-out rates, and this would encompass a review of how the solicitor had utilised his time on the agreed scope of work to be done by him. Therefore, even if the hourly rates of Mr Rai and his legal associate were reasonable on the face of the LOEs, the terms of the agreement as a whole including how they were applied to reach the total fees charged could still be determined to be unreasonable upon the court's review.

65 In our view, the fees claimed by Arbiters Law under the LOEs were excessive and amounted to overcharging. We took three main considerations into account. First, the total professional fees charged by Arbiters Law was $399,000, which was more than 2.5 times the amount of professional fees estimated in cl 22 of the LOEs (*ie*, $150,000). Furthermore, as we noted above

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at [55], cl 22 stated that if the matter was settled before trial, the professional fees would be "correspondingly lower" than the estimate of $150,000. While the figure of $150,000 was only an estimate, on an objective view one would not have expected that estimate to be so far off the figure that Arbiters Law ultimately sought to charge, when S 833 was in fact settled and did not eventually proceed to trial. There was no satisfactory explanation for the variance and whether the respondents had been given any prior notice that the fees would be much more than the initial estimate. In the circumstances, the sum of $399,000 was disproportionate and excessive.

66 Second, at the hearing before us, Mr Rai accepted that the settlement sum between the respondents and the first and third defendants in S 833 was a relevant factor that the court should take into account when determining a reasonable amount of costs. This was indeed a material consideration. Bearing in mind that the total sum of Arbiters Law's fees alone amounted to $399,000, if Mr Rai were allowed to claim the full amount of fees, the respondents would be entirely deprived of the settlement sum of $330,000. They would also be out of pocket to the tune of $69,000, in addition to the disbursements. This was by no means an insubstantial amount. On top of Arbiters Law's costs, there were also Red Lion Circle's costs, part of which had already been paid by the respondents.

67 In its Appellant's Reply, Arbiters Law argued that the court ought to have regard to the actual value of the claim in awarding costs.[38] Arbiters Law submitted that the sum of $2m was reflective of the actual value of the claim in S 833, as the respondents had initially instructed Arbiters Law that they would not settle for a sum of less than $2m (see above at [15]). Therefore, the award

[38] Appellant's Reply dated 12 June 2024 at para 32.

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of costs should be increased to reflect the value of the claim. We were not persuaded by this argument. While it is possible that the value of the claim may be indicative of the complexity of a case (per O 21 r 2(2)(*b*) of the Rules of Court 2021), on the facts, there was no basis to suggest that the sum of $2m was anything more than an arbitrary figure that the respondents wished to recover. The actual value of the claim in S 833 would depend on the strength of the respondents' claim, and whether they could have established their various causes of action. It was also notable that the respondents eventually settled for a sum equivalent to only 16.5% of the original $2m.

68 Third, we considered the nature of the claim and the conduct of Arbiters Law's legal work. The main case pleaded by the respondents in S 833 was that the doctors and the IMH had prescribed a drug that was inappropriate and unsuitable for Mr Salvin. The second major claim was based on the allegation that the defendants had failed to note the acute suicidal tendency of Mr Salvin, and consequently, were negligent in failing to prevent his suicide. While it made sense for Mr Steven to sue as the administrator of Mr Salvin's estate, it was not entirely clear to us why the respondents also personally sued the defendants in S 833. The Statement of Claim (Amendment No 1) dated 28 June 2021 (the "Statement of Claim") failed to specify the duty owed by the defendants to them, or how that duty was breached. The suggestion that the respondents had lost their jobs because they could not work on account of their grieving over Mr Salvin's death appeared to be just casting blame in a non-legal sense: see *Arokiasamy* at [11]–[12]. We also noted that the respondents, acting on the advice of their solicitors, only decided to discontinue their claim against the second defendant on 3 December 2021, which was more than a year after Arbiters Law began representing the respondents. Doing so at this late juncture resulted in the respondents being ordered to pay costs of at least $48,000.

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69 During the hearing, Mr Rai took great pains to attempt to explain why S 833 was a complicated case which justified the costs claimed. One reason, according to Mr Rai, was that the defendants had alleged that Mdm Tan was contributorily negligent. Further, at some later point in the proceedings, Mr Rai became aware of two doctors who confirmed that the deceased was not suffering from mere Attention Deficit Hyperactivity Disorder, as diagnosed, but from schizophrenia coupled with psychotic disease. According to Mr Rai, though this confirmed the medical opinion of the respondents' medical expert, it required re-looking at the case, and obtaining more documents. In addition, the time-release capsule medication prescribed to Mr Salvin was consumed in a manner that interfered with the timely release of the drugs, which complicated his treatment. Mr Salvin also allegedly suffered from undiagnosed psychotic diseases. Finally, it was apparently only revealed to Mr Rai at the last minute that neither of the respondents were able to stop Mr Salvin from committing suicide, because one had gone to take a shower and the other had gone to take a nap. While we acknowledged that the technical subject matter would introduce some level of complexity, we found that the claim was not as complicated as Mr Rai had asserted. We agreed with the Judge that, having regard to the pleadings in S 833, as well as the reports of the experts, the issues in the matter were not as complicated as portrayed. The question of whether the doctors and the IMH had sufficient knowledge or notice to have done more to prevent the suicide was also relatively straightforward (Judgment at [22]).

70 The fact that the total sum of Arbiters Law's fees amounted to $399,000 reflected the inappropriate appreciation that Mr Rai had of the matter. In our view, a reasonable lawyer acting for the respondents in these circumstances would not have charged such an excessive sum for his total professional fees up

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to the trial. Based on the foregoing, we found that the LOEs were unreasonable and thus void and unenforceable.

Issue 2: Whether the Judge erred in his award of costs for S 833

Costs to Arbiters Law

71 The parties had agreed that the Judge was to fix the costs of Arbiters Law if the LOEs did not amount to CBAs, and the Judge had proceeded to do so. We next considered the quantum for Arbiters Law's professional fees and disbursements. As stated above (at [65]), we were of the view that the fees claimed by Arbiters Law were excessive. However, we found that the Judge's assessment of $60,000 for Arbiters Law's solicitor-and-client costs (*ie*, fees and disbursements) was on the low side. It did not adequately take into account the fact that Arbiters Law had acted for the respondents up to the point of having made all the necessary preparations for trial. S 833 was only settled at the doorstep of the trial fixed on 11 September 2023 (and which had been refixed from 12 January 2023). We also acknowledged that the claim involved technical subject matter relating to Mr Salvin's medical treatment, the effect of the drugs that he had been prescribed with, and his medical diagnoses – these would have introduced some level of complexity, and would require Arbiters Law to expend more time and effort on the matter. We therefore allowed an uplift to $87,000 instead for Arbiters Law's professional fees and disbursements. As $60,000 had already been paid to Arbiters Law, we ordered Mr Steven to pay the balance sum of $27,000 to Arbiters Law as he was the remaining client who would have had the benefit of Arbiters Law's services.

72 For completeness, we address the main arguments raised by Arbiters Law in relation to its entitlement to fees. To recapitulate, Arbiters Law submitted that the Judge failed to properly appreciate the breakdown of the

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settlement sum, which resulted in the low award of costs. In particular, according to Arbiters Law, the Judge did not consider that $160,000 of the settlement sum was a contribution to party-and-party costs. Therefore, it was unjust for the Judge to limit solicitor-and-client costs and disbursements to a sum much lower than that.[39] We were not persuaded by this argument.

73 Arbiters Law derived the figure of $160,000 from the brief explanation of the settlement agreement given by one of the defendants' lawyers during the hearing of SUM 2331 and SUM 2424 on 14 August 2024.[40] This explanation was noted in the Judge's Minute Sheet, but this only contained brief notes of argument. The explanation did not provide a full breakdown of the settlement sum, and there was no certainty that the sum of $160,000 was factored into the settlement sum as contribution towards party-and-party costs. Further, we would emphasise that the terms of the settlement agreement are confidential – neither Arbiters Law nor the court are privy to its precise contents.

74 During the hearing, Mr Rai further submitted that, assuming that the party-and-party costs were $160,000, that sum should be marked up by 50% to derive the solicitor-and-client costs. Mr Rai relied on the decision of *Mah Kiat Seng v Attorney-General and others* [2023] SGHC 52 ("*Mah Kiat Seng*") at [8]. In our view, this argument was misconceived. We accept that solicitor-and-client fees would be higher than party-and-party costs, excluding disbursements. However, in *Mah Kiat Seng* at [8], Philip Jeyaretnam J was mindful of certain provisions in the English Civil Procedure Rules concerning costs management and noted that, unlike in England, the rules in Singapore did

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39 AC at paras 42–47.

40 Notes of Argument for S 833 (SUM 2331 and SUM 2424) dated 14 August 2023; ROA Vol 3B at pp 129–130.

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not set any hourly rate for litigants in person. Therefore, in so far as Arbiters Law sought to rely on *Mah Kiat Seng* to justify a mark up in their costs, this was misconceived. In any event, it was unclear whether the defendants attributed $160,000 as party-and-party costs. Even if they had done so, it was still open to the court to consider what was reasonable in all the circumstances as Arbiters Law's fees.

75 Finally, Arbiters Law took issue with the Judge noting that the settlement sum included $30,000 towards contribution of legal costs. As stated above (at [72]), Arbiters Law submitted that the correct value of the contribution by the defendants towards legal costs of the respondents was $160,000, but the Judge erroneously pegged his award of costs to the sum of $30,000. In our view, it was unclear whether the Judge had pegged the party-and-party costs to the sum of $30,000. In any event, we did not do so.

Prof Eleni's fees

76 As for the invoiced fees for Prof Eleni's report, we found that the Judge had erred, with respect, when he reduced her fees by more than half from £12,300 (or $20,541) to $9,000.

77 In Mr Steven's affidavit dated 26 October 2023, he stated that the respondents fully intended to make payment to Prof Eleni for her work done in preparation for her expert report in S 833.[41] Tan Kok Quan Partnership ("TKQP"), who had acted for the respondents *pro bono* in OA 1008, wrote a letter to Arbiters Law dated 19 October 2023, and requested for Prof Eleni's contact details to verify her invoice and payment details, so that the respondents

[41] Mr Steven's 26 October affidavit at para 43; ROA Vol 3B at pp 20–21.

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could thereafter make payment of her professional fees directly to her.[42] At the hearing of OA 1008 on 11 January 2024, Mr Paul Seah, from TKQP, reaffirmed that the respondents would make direct payment to Prof Eleni.[43] In our view, the court should be slow to substitute its view for what the respondents had unequivocally stated they were agreeable to.

78 We also observed that the amount claimed by Prof Eleni was not unreasonable. She completed an expert report, and also responded to questions posed by the first and third defendant in a document that spanned a total of 57 pages. We ordered Mr Steven to make payment of Prof Eleni's invoiced fees in full in the currency stated in her invoice (*ie*, pounds sterling) less the equivalent in pounds sterling of the $9,000 that has already been paid to her. There was no useful purpose in directing Mr Steven to pay in Singapore currency when the invoice was in pounds sterling. We were also of the view that Mr Steven should be solely responsible to pay her fees because, by then, Arbiters Law was representing him alone.

Mr Rai's conduct

79 We have set out above our reasons for allowing the appeal in part and varying certain orders made by the Judge. At this juncture, we turn to express our grave concerns as to Mr Rai's conduct in S 833 and in the present proceedings. In our view, both the overcharging issue, which we have already addressed at length above, and other aspects of Mr Rai's conduct ought to be referred to the Law Society of Singapore for the necessary further steps to be taken.

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42 Letter from TKQP to Arbiters Law dated 19 October 2023; ROA Vol 3B at p 98.

43 Notes of Argument for OA 1008 dated 11 January 2024; ROA Vol 3B at p 137.

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80 First and foremost, there was the question of whether separate legal representation for the respondents was justified. In Mr Rai's affidavit dated 2 October 2023, he expressed that there was a potential conflict of interest as certain matters that were "confidential" and "subject to solicitor and client privilege" had arisen.[44] The respondents did not claim privilege.

81 However, according to [27] of the Judgment, Mr Rai gave a different reason to the Judge on 14 August 2023, *ie*, that Mr Balchandani had sought to have Arbiters Law come on board because Mr Balchandani "was not experienced in medical negligence" and had "played a passive role as counsel for [the] second [respondent]".[45] As can be seen, this response conflated two things. The first was whether Arbiters Law, in addition to Mr Balchandani, should have been asked to act for both respondents. The second was why each respondent had to be separately represented by Arbiters Law and Mr Balchandani subsequently. Mr Rai's response did not adequately explain why Mr Balchandani had to act for Mdm Tan separately. If Mr Balchandani did not have the requisite experience, the question which needs to be addressed is whether he should be acting for Mdm Tan separately. It was no excuse to say that he played a passive role for Mdm Tan.

82 Subsequently, in Mr Balchandani's letter to the court dated 19 January 2024, Mr Balchandani explained that the respondents were separately represented because: "they were on the verge of divorce (and indeed asked our firm for such assistance), *inter alia*, and more importantly, they were blaming

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44 Mr Rai's 2 October affidavit at para 7; ROA Vol 3A at p 10.

45 Minute Sheet for S 833 dated 14 August 2023.

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each other for the deceased's death (a symptom of their complex bereavement disorder)".[46]

83 At the hearing before us on 14 August 2024, Mr Rai alluded to the respondents being on the brink of divorce as the matter that had been subject to privilege. However, Mr Rai then offered a different reason. He claimed that the reason for separate legal representation was because the defendants in S 833 had alleged that Mdm Tan was contributorily negligent for Mr Salvin's death. As can be seen, this was not the reason proffered by Mr Rai before the Judge in OA 1008 on 14 August 2023. More importantly, this explanation could not have been true. Mr Rai's position was that the defence of contributory negligence was only disclosed in the defendants' Defence, which had been filed on 17 May 2021. However, by that point, Mr Steven had already signed the 8 April 2021 letter of engagement for separate representation. Therefore, when the two sets of solicitors decided that the respondents should be separately represented, any concerns about contributory negligence had not yet come to the fore and could not have been operating on their minds. Mr Rai's inability to precisely articulate why the respondents had to be separately represented, as well as his contradictory explanations, made it difficult to accept his explanation that there was a potential conflict of interest that necessitated the respondents' separate legal representation.

84 As the Judge correctly observed, the separate representation of the respondents unnecessarily expanded their costs. In our view, this reflected on the issue of whether Arbiters Law's own costs had been reasonably incurred as there was some doubt as to whether the solicitors knew what they were doing even on relatively simple issues.

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[46] Red Lion Circle's letter dated 19 January 2024 at paras 6–7; ROA Vol 4 at p 54.

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85 In the Appellant's Case, Arbiters Law submitted that this issue was a non-starter because Mr Balchandani did not claim costs for the period during which the respondents were separately represented by the solicitors. However, this missed the point because at the time the respondents were separately represented, Arbiters Law would not know whether Mr Balchandani would claim his costs. The work done by Arbiters Law and Mr Balchandani would inevitably have been somewhat duplicative. In Bill No. VKR495,[47] which set out the professional fees and disbursements of Arbiters Law for the work done for Mr Steven between 8 April 2021 to 27 July 2023, multiple items of work related to Mr Rai and the legal associate's meetings and discussions with Mr Balchandani, as well as meetings with the respondents *and* Mr Balchandani.

86 Second, Arbiters Law's conduct of S 833 also appeared to suggest that some of the costs that it claimed were not reasonably incurred. For instance, they only introduced a crucial witness, namely, Prof Eleni, at a late stage.

87 In S 833, the Statement of Claim made significant reference to how the first and second defendants had allegedly beached their duty of care by inappropriately prescribing Concerta to Mr Salvin.[48] According to the respondents, Mr Salvin's dependence on Concerta worsened his psychosis, which led him to commit suicide.[49] Based on these claims, it should have been clear to Arbiters Law from the outset that they would have to prove whether the defendants had been negligent in prescribing Concerta to Mr Salvin, and whether Mr Salvin's consumption of Concerta had a causal connection to his

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47 Mr Rai's 2 October affidavit at Tab 10; ROA Vol 3A at pp 207–230.

48 Statement of Claim (Amendment No 1) dated 28 June 2021 in S 833 ("**SOC**") at paras 13–18, 22–25, 35, 37, 39–39A, 48–53,

49 SOC at paras 37, 47, 55, 59, 69(h), 69(o), 69(t). 69(v), 69(aa), 70(j), 70(k), 70(m), 70(n), 70(o), 70(p), 70(r), 70(v), 70(x), 70(z), 70(aa)

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death. Yet, Arbiters Law only decided to engage an expert on these issues much later, and only contacted Prof Eleni on 19 July 2022. While Arbiters Law had initially engaged another expert witness, Dr Sivakumar Thurairajsingam ("Dr Thurairajsingam"), who filed an AEIC dated 17 October 2022 and an expert report dated 13 November 2018, Dr Thurairajsingam's expert report did not examine the issues relating to treatment with Concerta in any depth. Instead, his expert report was stated in rather general terms.[50]

88 Arbiters Law's failure to bring in another relevant expert at an earlier stage (be it Prof Eleni or another expert) eventually resulted in the trial being vacated on 12 January 2023, the very date it was scheduled to commence and adjourned to 11 September 2023. On 12 January 2023, Mr Rai had submitted to the Judge that part of the delay was attributable to the fact that Prof Eleni had been undergoing chemotherapy for cancer (see Judgment at [4]). Nonetheless, Arbiters Law had sufficient time before that to reach out to an expert witness. We agreed with the Judge that "the first trial was vacated under circumstances that do not seem to me fair to require the [respondents] themselves to bear the costs of vacating the trial" (Judgment at [23]).

89 The belated decision to discontinue the respondents' claim against the second defendant also suggested that Arbiters Law's conduct of S 833 was not satisfactory. By this point, Arbiters Law had represented the respondents or Mr Steven for more than a year. The discontinuance caused the respondents to be ordered to pay costs of at least $48,000. Arbiters Law explained that they had initially brought S 833 against the second respondent because they were concerned that a claim against the second respondent would subsequently be

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50 Dr Thurairajsingam's expert report dated 13 November 2018 at paras 1, 15–20, 38, 43, 49–50.

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time barred. Further, Arbiters Law appeared to say that they were waiting for the IMH to declare whether it would be vicariously liable for the actions of the second defendant. According to Arbiters Law, the defendants were keeping their options open, and there was no such confirmation until the application for discontinuance was filed. In our view, this was not an adequate explanation for why S 833 was not discontinued against the second respondent at an earlier stage. Therefore, Arbiters Law's general conduct indicated that some of the costs that it sought were not reasonably incurred.

90 Third, during the hearing before us, Mr Rai conceded that, aside from Arbiters Law's bills, there was no documentary evidence that, at any point during the proceedings in S 833, he had advised the respondents that the fees were escalating beyond the estimates set out in the LOEs. Mr Rai submitted that the bills sent to the respondents were essentially monthly reports that kept them apprised of the costs. However, in our assessment, these bills were somewhat confusing and not easy to understand. They certainly did not do much to inform the respondents of the continued upward trajectory of costs as the matter progressed. As noted by Jeffrey Pinsler *SC* in Jeffrey Pinsler, "Lawyers' Fees: Developments Concerning Unethical Charging", *Civil Litigation Update* (2023) at para 1:

> … most clients are uncertain about the quantum of fees that they will have to pay in the absence of a fixed fee agreement or a scale of costs. This is understandable given the vicissitudes of litigation. There is no crystal ball which allows the lawyer to foresee the developments in proceedings which may require more or less work or new initiatives in response to changing circumstances. *The best that can be done in such a situation is to provide estimates for the client as and when appropriate* (see r 17(3) of the Legal Profession (Professional Conduct) Rules 2015 ("LP(PC)R 2015") and to evaluate the cost consequences of steps which may be taken in the proceedings (see rr 17(2)(e) and 17(2)(f) of the LP(PC)R 2015).
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> [emphasis added]

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In our assessment, Mr Rai fell short of his duties to his clients. He ought to have done more in keeping the respondents informed of the escalating costs.

91 To the extent that Mr Rai said that he had orally informed the respondents (or Mr Steven) about the escalating costs, there was no corroborative evidence of such oral discussions. For example, no attendance notes of the same were produced.

92 Fourth, before this court, Mr Rai gave the misleading impression that Arbiters Law was amenable to an assessment of costs whereas the respondents were not. He claimed that Arbiters Law had repeatedly invited the respondents to propose a reasonable amount of costs, or even to apply for taxation if they so wished, but instead they got abusive and vulgar messages in response. However, the respondents' position had "always been that the Appellant's bills should be submitted for taxation".[51] In *Arokiasamy* at [17] and [19], in respect of SUM 2424 and SUM 2331, the Judge mentioned that "counsel's fees [for S 833] should be taxed to determine what [was] justifiably due to counsel" and that "[t]he clients [were] entitled to have counsel's fees taxed to determine the actual amount payable". This was on 25 August 2023. On 29 August 2023, Mr Steven sent a letter to Arbiters Law, to request that all of Arbiters Law's legal costs be assessed, and to ask Arbiters Law to inform the respondents when it had "filed the taxation".[52] After Arbiters Law had commenced OA 1008, by way of a letter dated 19 October 2023, TKQP proposed that Arbiters Law withdraw the application with no order to costs, and to submit their costs for assessment.[53] Arbiters Law did not accept the proposal. In fact, in the Judgment

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51 RC at para 74.

52 Letter from Mr Steven to Arbiters Law dated 29 August 2023; ROA Vol 3B at p 82.

53 Letter from TKQP to Arbiters Law dated 19 October 2023; ROA Vol 3B at pp 94–95.

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at [31], the Judge remarked that Arbiters Law "had spurned all invitations to have its bill taxed". Therefore, it was misleading for Mr Rai to maintain that it was *the respondents* who were unwilling to assess the legal costs.

93 It was only after we probed Mr Rai on this point that he conceded that the respondents had, in fact, been amenable to an assessment of the costs. But he continued to insist that the respondents should have made the application for assessment because, according to him, it was for the party who disputes the bills to do so. This submission suggested that an application for an order for assessment had to be made, but under the LPA, no such order is necessary if both client and solicitor agree (see s 120(3) of the LPA). Mr Rai also submitted that there were implications on allocatur fees and stamp duty, indicating that he was not sure if the respondents would pay such fees. However, the truth is that he never broached these issues with them prior to the decision of the Judge for OA 1008. He did not want to proceed with an assessment but yet argued that it was the respondents who did not want it. In our view, if Mr Rai genuinely sought to resolve the dispute by an assessment of costs, none of these would have been a hurdle. From his remarks about allocatur fees and stamp duty, it was obvious that he knew full well that he could have filed such an application instead and that s 120(1) of the LPA expressly enables the solicitor to make such an application. Instead, quite regrettably, the course of action that Mr Rai took was to serve a statutory demand dated 27 July 2023 on the respondents as a prelude to bankruptcy proceedings (see *Arokiasamy* at [8]).[54]

94 For the above reasons, we are of the view that the conduct of Mr Rai warrants a referral to the Law Society of Singapore. We sum up the concerns as follows:

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[54] Statutory demand to Mr Steven dated 27 July 2023; ROA Vol 3B at pp 86–92.

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(a) first, overcharging the respondents by claiming a total of $22,562.50 from the respondents as its fees and $340,437.50 from Mr Steven as its fees when the costs estimate in cl 22 of the LOEs was "about $150,000" for up to two days of trial (exclusive of disbursements) and the court's assessment of costs and disbursements was $87,000 (excluding Prof Eleni's fees);

(b) second, failing to advise the respondents that the fees were escalating beyond the LOEs' estimate;

(c) third, unnecessarily compounding costs for the respondents through separate legal representation by Arbiters Law and Red Lion Circle, when there did not appear to be a real issue of conflict of interest that necessitated separate representation; and

(d) fourth, giving the misleading impression to the court that Arbiters Law was amenable to assessment for the costs of Arbiters Law and the respondents were not.

95 We direct the Registrar of the Supreme Court to refer the conduct of Mr Rai to the Law Society of Singapore for its Council to refer the matter to the Chairman of the Inquiry Panel under s 85(3)(*a*) of the LPA to inquire whether Mr Rai had acted in the interest of the respondents or Mr Steven in respect of [94(a)]–[94(c)] and whether Mr Rai had attempted to mislead the court in respect of [94(d)] above.

Conclusion

96 Although we decided to allow the appeal in part, Arbiters Law only succeeded to a small extent in its appeal. In addition, we also noted Mr Rai's

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highly unsatisfactory conduct of the matter. Costs therefore should not follow the event.

97 Accordingly, we made no order as to costs of the appeal. We also did not interfere with the Judge's costs order for the hearing below. We further made the usual consequential orders as to the release of the security deposit for the appeal.

Woo Bih Li
Justice of the Appellate Division

Debbie Ong Siew Ling
Judge of the Appellate Division

See Kee Oon
Judge of the Appellate Division

Rai Vijay Kumar, Andrew Ohara and Jasleen Kaur (Arbiters Inc Law Corporation) for the appellant;
Arokiasamy Steven Joseph and Tan Kin Tee in person.

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