

Lau Liat Meng & Co v Lum Kai Keng
[2002] SGHC 159

Case Number : BOC 600475/2001, SIC 600685/2002, SIC 600686/2002
Decision Date : 25 July 2002
Tribunal/Court : High Court
Coram : Choo Han Teck JC
Counsel Name(s) : Andre Arul (C Arul & Partners) for the applicant; Wong Siew Hong (Infinitus Law Corp) for the respondent; Lau Liat Meng in attendance
Parties : Lau Liat Meng & Co — Lum Kai Keng

Civil Procedure – Costs – Interim bill – Nature of such bill – Whether proper for lawyer to submit such bill and reserve right to present further bill covering the same period – Duty of lawyer to draw up bill clearly and accurately

Civil Procedure – Costs – Taxation – Interim bill – Whether Rules of Court allow lawyer to submit larger bill subsequent to interim bill for same period – Whether assistant registrar right in taking into account interim bills in taxing lawyer's bill – O 59 r 28(4) Rules of Court

Civil Procedure – Costs – Taxation – Review of taxation – Nature of hearing of such review – O 59 r 36 Rules of Court

JUDGMENT

GROUND OF DECISION

1. This was an application and cross-application for a review of taxation of costs of the applicant Lau Liat Meng & Co the solicitors for the respondent Lum Kai Keng. The bill of costs 600475 of 2001 was rendered in respect of solicitor and client costs covering the period 26 February 1998 and 28 February 2000.
2. The taxation was conducted over three special half-day hearings. In the bill the amount claimed under section 1 was \$220,000 being a rounded figure based on the agreed rate of \$500 an hour. The applicant submitted a claim based on 446 hours' work. The assistant registrar taxed off \$110,000 and allowed \$110,000. On review, she declined to vary this sum, but increased the sum under section 2 from \$1,200 to \$1,500. Both parties applied to review the taxed costs.
3. The work done was essentially advisory in nature and concerned the administration of the estate of the respondent's deceased husband. The matter became highly contentious and the respondent had since commenced litigation against her son and daughter, as well as the Keppel Tatlee Bank Ltd. The court action was commenced by another firm of solicitors. That part of it is not relevant for the purposes of this review.
4. It is relevant, however, to note that KS Chung was engaged by the respondent as a second counsel on 23 November 1999. It was he who commenced action after the respondent terminated the services of Lau Liat Meng & Co. Mr. Andre Arul appeared in this review as counsel for Lau Liat Meng & Co. He emphasized that the issues involved in the advice to Madam Lum were complex and therefore substantial costs ought to be ordered. Furthermore, he asserted that the costs were agreed at \$500 an hour and therefore, under O 59 r 58, the court ought to give effect to this agreement.
5. There were two interim bills rendered by Lau Liat Meng & Co. The first was dated 14 December 1999 for \$15,000 in respect of "professional services rendered from March 1998 until 25 October 1999". This bill was paid on 26 October 1999. The second bill was undated but counsel said that it

was rendered about the end of December 1999, which meant that it would have been rendered about two weeks after the first. This bill was for \$30,000 which was also paid. There was a letter dated 4 December 1999 in which Lau Liat Meng & Co wrote to Madam Lum thanking her for her cheque for \$30,000 "to account of [their] professional services".

6. 2 to 4 of that letter states as follows:

"2. As we have explained to you your above case is full of complexities. We have attended on you on at least 30 hours (the details of which we have not worked out) our fees are approximately in the region of \$450 to \$1,500 per hour.

3. We know that the court has allowed very much more higher fee (sic). As soon as the above matter is settled we shall render to you either a detailed or summary of the bill.

4. We have not taken into consideration of the numerous hours spent on studying the documents received by us, the getting up and the letters forwarded to various solicitors and to your goodself."

Mr. Arul pressed on with the review on the grounds that he work done was substantial and amounted to 446 hours. He submitted that since the respondent was made aware of the hourly rate of \$500, that should be treated as a contractual rate and enforced as such. He referred me to O 59 r 28(2)(a) which provides as follows:

"28 (2) On a taxation to which this Rule applies, costs shall be taxed on the indemnity basis but shall be presumed –

(a) to have been reasonably incurred if they were incurred with the express or implied approval of the client."

7. Mr. Arul also drew my attention to O 59 r 28 (4) which says that the "delivery of a bill of costs by a solicitor to his client shall not preclude the solicitor from presenting a bill for a larger amount or otherwise for taxation, if taxation is ordered by the court or is consented to by the solicitor and his client".

8. The result, according to Mr. Arul, is that the assistant registrar was wrong not to have applied the contractual rate, and was wrong to have taken the two interim bills into account. The third major objection by Mr. Arul of the taxation was that the assistant registrar was wrong to have dismissed 210 hours of work claimed under sub-item 10 of the bill and referred to in 10 of her grounds of decision. This item concerned (according to the bill) work done "from commencement of November 1999 to February 2000". It was mainly in respect of work done in corresponding with client and the solicitors of the other parties involved. It was also during this period when Tan Geok Ser was briefed as a counsel but his fees were being settled separately, and in any event, he was not much involved, according to Mr. Arul, because he suffered a stroke and was replaced by Mr. KS Chung, who was also paid separately. All three arguments are connected and, in my view, the merits of the application hinge on the effect of the two interim bills. I shall deal with this point shortly.

9. Mr. Wong appeared as counsel for the present solicitors of Madam Lum (in place of Mr. KS Chung). Mr. Wong contended that the work was in fact not very substantial as much of it was done by Mr. Chung. Secondly, he says that he applicant was only entitled to render his bill for work done after the period covered by the two interim bills. Since the first bill covered work till 25 October 1999, the

second bill, though undated, ought to cover at best, till end of December 1999. Hence, the bill of costs should be for work from January 2000 till February 2000 for which a sum of \$10,000 would be more than adequate.

10. I will first deal with a preliminary point. Parties were uncertain as to how a review of taxation before a judge in chambers ought to be heard. The Court of Appeal in *Tan Boon Hai (on behalf of himself and all other unsuccessful candidates in the Singapore Hainan Hwee Kuan 1999/2000 Management Committee Elections) v Lee Ah Fong* [2002] 1 SLR 10 held that

"a judge on hearing an application for review of taxation of costs under O 59 r 36 hears the matter *de novo*, and is not fettered by the discretion exercised by the registrar in determining the quantum of any item in the bill under review by him. The judge is entitled to exercise the powers and discretion vested in him by the rules and make a completely fresh decision, among other things, substituting his own discretion for that of the registrar and awarding a different figure altogether in place of that awarded by the registrar. Of course, in this exercise the judge should give due weight to the registrar's decision on the quantum that was allowed". *Ibid* at page 24.

Counsel before me erroneously believed that a hearing *de novo* means that the taxation process begin afresh before the judge. I do not think that that is so. The power to decide afresh and conducting the proceedings afresh are not the same thing. The judge on review is entitled to consider what is relevant, depending on what is in issue. There is no necessity to begin completely afresh. Hence, this review was conducted on the basis of the main points that Mr. Arul had submitted to be areas where the registrar had erred.

11. I now revert to the substance of the complaint by Lau Liat Meng & Co. The two interim bills rendered by the applicant are important. Mr. Arul conceded that the two bills in question were interim bills. His argument, however, was that by O 59 r 28 (4) his client was entitled to submit a larger bill subsequent to an interim bill. In my view, this rule is intended to allow a solicitor to put up a larger bill for taxation notwithstanding that his original bill to the client was for a lesser sum. It has no relevance when a client has accepted the original bill and paid the sum stipulated. An interim bill, in its ordinary meaning, is a bill for services rendered up to the date specified even though the matter may not have been completed. Services rendered thereafter will be charged for afresh, but not those already performed, billed, and paid. If the solicitor wishes to ease the hardship of a cash-strapped client, he may do so by stating that the interim bill may be paid by instalment or to have payment deferred. It does not seem to me proper for a solicitor to render an interim bill and, in this case, by implication, reserve the right to present a further bill covering the same period. If that was Lau Liat Meng & Co's intention it was not made clear in the bill or covering letter. A lawyer owes a duty to his client to draw up his bill clearly and accurately, and with such attention to detail as he would do in undertaking any work on behalf of his client. A client is entitled to engage a lawyer within his means, and therefore, must not be led to believe that the fees he or she was paying were only a fraction of the actual fees incurred. If he had realised that the fees were more than he could afford he should be entitled to seek alternative assistance. The first bill for \$15,000 was fairly detailed and drawn expressly in respect of work done from the time of engagement to 26 October 1999. The second bill (for \$30,000) was brief and covers work done in a general manner.

12. In view of the fact that the first bill covered the time up to 26 October 1999, the second bill by its being rendered at the end of December 1999 must have covered only work done between 27 October and 31 December 1999. A perusal of the items listed in the bill of costs leads me to the opinion that the \$30,000 fee charged appears to be a little on the high side, but, nonetheless, I will

not interfere with it. I am, therefore, of the view that the assistant registrar was right in taking the fees charged in the two interim bills into account. However, she was not invited to decide on the point of the effect of an interim bill. This I have now done. The only finding I would add is that Lau Liat Meng & Co was therefore only entitled to bill for work done after the second interim bill. There was no date on that bill so I will accept counsel's word that it was rendered at the end of December 1999. That being the case, the question is, what would be reasonable costs for work done between 1 January 2000 and 28 February 2000? Going by the bill of costs, there were about 30 hours worth of work recorded during this period. In my view, judging by the nature of the work and the time spent, the sum of \$110,000 (including the sum of \$47,293.26 already paid) originally awarded was far too generous. In my view, the appropriate amount to be allowed should be \$12,000. Mr. Arul pursued his submission that the applicant's letter of 4 December 1999 to Mdm Lum had put her on notice that the interim bills do not set out the full interim costs. He relied specifically on the sentence "As soon as the above matter is settled we shall render you a detailed or summary of the bill". I do not think that this helps the applicant at all. In the first place, a "detailed" bill is the opposite of a "summary of the bill". All that it can mean, in my view, is that either a more detailed version of the bill will be given, or a brief summary account of it will be given. In either case, it should not be read to mean that the firm reserves the right to present a further bill for work done up to the date of the bill or the date specified in the bill. The solicitor should not derive an advantage by reason of his own muddle.

13. For the reasons above, I dismissed the application of Lau Liat Meng & Co, and allow the application of Mdm Lum. I therefore set aside the award of \$110,000 and substitute it with an award of \$12,000 (over and above the sum of \$47,293.26 already paid). Considering the entire period of work from February 1998 to February 2000, as well as the nature of the work, a total fee of \$59,293.26 (being \$47,293.26 already paid and the \$12,000 awarded herein) would be a fair and reasonable sum. The quarrel over the costs in respect of section 2 is petty and I dismissed the application to revise the sum awarded by the registrar below. For the review before me, I awarded costs of \$1,000 to Mdm. Lum.

Sgd:

Choo Han Teck

Judicial Commissioner