Mok Kwong Yue *v* Ding Leng Kong
[2011] SGHC 245

Case Number : Bill of Costs No 229 of 2010

Decision Date : 16 November 2011

Tribunal/Court : High Court

Coram : Judith Prakash J

Counsel Name(s) : Andrew Ee (Andrew Ee & Co) for the applicant; Muthu Kumaran (Kumaran Law) the respondent.

Parties : Mok Kwong Yue — Ding Leng Kong

Civil Procedure – Taxation of Costs

16 November 2011 Judgment reserved.

Judith Prakash J:

1 The question that concerns me in this review of taxation of a bill of costs is whether the principles established in *Medway Oil and Storage Company, Limited v Continental Contractors, Limited and Others* [1929] 1 A.C. 88 ("*Medway Oil*") as to how costs should be taxed in the situation where each of the opposing parties to a suit obtains a costs order in his favour, should be followed in Singapore.

2 The principles in question ("the *Medway* principles") are summed up in the headnote of the case which reads:

> Where a claim and counterclaim are both dismissed with costs, upon the taxation of the costs, the true rule is that the claim should be treated as if it stood alone and the counterclaim should bear only the amount by which the costs of the proceedings have been increased by it. No costs not incurred by reason of the counterclaim can be costs of the counterclaim. In the absence of special directions by the Court there should be no apportionment. The same principle applies where both the claim and the counterclaim have succeeded.

Background

3 In 2004, Mok Kwong Yue ("the plaintiff") sued Ding Leng Kong ("the defendant") to recover sums of money which he alleged he had paid the defendant by reason of a mistake of law. The defendant resisted the claim on several grounds and also mounted a counterclaim. I heard the action and dismissed both the claim and the counterclaim with costs (see [2008] SGHC 65).

4 Judgment was delivered in May 2008. In November 2010, the plaintiff presented his bill of costs for the work done in respect of the counterclaim for taxation. Up to that time, the defendant had not presented his own bill of costs for the work done in resisting the claim. In fact, despite repeated assurances that the bill would be filed soon, counsel for the defendant, Mr Muthu Kumaran, did not file the defendant's bill for taxation until 28 September 2011. Thus, the plaintiff's bill had to be taxed in the absence of the defendant's bill.

5 As drawn, the plaintiff claimed the following amounts under the bill:

(a) In respect of Section 1, $80,000;

(b) In respect of Section 2, $1,260; and

(c) In respect of Section 3, $9,617.80.

Taxation took place over two sessions and at the end of the second session, the Assistant Registrar ("the AR") awarded the plaintiff $7,000 in respect of Section 1, $400 in respect of Section 2 and taxed off all items in Section 3 except items 62 and 63. The AR disallowed the taxing and the allocatur fee in view of the amount that had been taxed off. The basis of the AR's decision that the plaintiff was only entitled to $7,000 in respect of getting up for the counterclaim was that she accepted that the *Medway* principles applied to this case.

6 The plaintiff applied for a review of the AR's decision. At the review, Mr Andrew Ee, counsel for the plaintiff, put forward a vigorous argument that it was wrong to apply the *Medway* principles. Instead, he submitted, the correct approach to take was that espoused in *Christie v Platt* (1921) 2 K.B. 17 ("*Christie v Platt*"). Although *Medway Oil* has been followed in Singapore previously (the first example being *A.E. Beavis v Foo Chee Fong* [1938] MLJ 129) and the *Medway* principles have been put forward in legal writing as the applicable principles of taxation in a case such as the present (see *Taxation of Party and Party Costs in Civil Proceedings* by Lee Teck Leng (5 S.Ac.L.J. 309)), in view of the arguments made, it may be useful to review the law on the matter.

Tracing the law

7 The first case in the series of authorities that was cited to me was *Saner v Bilton* (1879) 11 Ch. D. 416, the decision of a very well respected judge, Fry J. That case had a result that was similar to the one here in that the plaintiff's claim was dismissed with costs to the defendant and the defendant's counterclaim was dismissed with costs to the plaintiff. Fry J's decision laid down the basis for the *Medway* principles and it was subsequently explained in *Medway Oil* by Viscount Haldane as follows:

> In 1879 Fry J. decided *Saner v Bilton*. ... The question was whether the defendant ought to pay only so much of the costs pertaining to the claim as were occasioned by the counterclaim, or whether the costs of all the proceedings which related to both claim and counterclaim should be apportioned. Fry J. consulted some of the most eminent of the Taxing Masters, who advised against apportionment. He afterwards gave a considered judgment, in which he said that analysis of the practice before the Judicature Act threw but little light on the question before him. *The true view seemed to him to be that the plaintiff having begun the litigation, and the counterclaim having only arisen in it as a consequence, the claim should be treated as if it stood by itself, and the counterclaim should bear only the amount by which the costs of the proceedings had been increased by it.* Special directions might be given by the Court which would vary the application of the rule, but in a case where both claim and counterclaim were simply dismissed with costs, there should be no apportionment, and no question of quantum arose. [Emphasis added]

Part of the significance of *Saner v Bilton* and the basis of its weight as an authority was it was decided after consulting the judicial officers who regularly taxed costs.

8 The next case was *Baines v Bromley & Another* (1881) 6 Q.B. 69. Here, both parties were successful. The plaintiff was given judgment on his claim for approximately £115 and costs whilst the defendants recovered judgment on their counterclaim for approximately £230 and costs. The taxing

master treated the case as a verdict for the defendants because they had recovered more and gave to them the costs of the cause. He allowed the plaintiff only the costs of his witnesses whose evidence was essential to establish the plaintiff's claim. The judge upheld this taxation by the master. On appeal by the plaintiff, the Court of Appeal held that the taxation was wrong and had to be reviewed. Brett L.J. stated:

> I have, however, a firm opinion that where there is a claim with issues taken on it and a counter-claim, not a set-off, but in the nature of a cross-action with issues on it, and where the plaintiff succeeds on the claim and the defendant on the counter-claim, the proper principle of taxation, if not other-wise ordered, is to take the claim as if it and its issues were an action, and then to take the counter-claim and its issues as if it was an action, and then to give the allocatur for costs for the balance in favour of the litigant in whose favour the balance turns. In such a case where items are common to both actions the master would divide them. Where the so-called counter-claim is a set-off, there is but one action.

The learned judge expressed the view that if the defendants' case had been treated as a pure set-off to the amount of the plaintiff's claim and it had so appeared in the judgment, then the defendants would have been entitled to the costs of the action, because then the defendants would have denied by way of defence that the plaintiff had any right to bring an action at all and would have succeeded in their defence. To me, it appears that the distinction between this case and the earlier one was that in *Baines v Bromley* the claim and counterclaims were distinct from each other and did not have facts in common. As the counterclaim was a separate action and not, essentially, a set-off to the plaintiff's claim, the plaintiff was entitled to tax his costs as a successful party notwithstanding that the amount he recovered on the claim was less than the amount the defendants had recovered on the counterclaim.

9 The third case brought up, *In re Brown; Ward v Morse* (1883) 23 Ch. D. 377 ("*Ward v Morse*"), was a similar situation of both parties succeeding and the result was similar to that of *Blaines v Bromley*. The Court of Appeal, affirming the decision of Chitty J, held that when a plaintiff's claim and a defendant's counterclaim had both been successful, the plaintiff, in the absence of any special directions to the contrary, was entitled to the general costs of the action, notwithstanding that the result of the litigation was in favour of the defendant (in the sense that the counterclaim was for a greater sum than the claim). There would be no apportionment of such costs as would have been duplicated had the counterclaim been the subject of an independent action, but the plaintiff was not to recover as costs of the action any costs fairly attributable to the counterclaim. In this decision, *Saner v Bilton* was considered in addition to *Baines v Bromley.* Two of the members of the coram, Baggallay L.J. and Cotton L.J., considered that although in *Saner v Bilton* both parties had failed, the principle established there should be equally applicable to a case where both parties had succeeded. The third judge, Fry L.J. (of *Saner v Bilton* fame), agreed that the appeal should be dismissed without making further comments.

10 A few years later, in *Atlas Metal Co. v Miller* (1883) 23 C.H. 377 ("*Atlas Metal*") (another case where the claim was dismissed with costs and the counterclaim was also dismissed with costs, *ie*, the *Saner v Bilton* situation) the taxing master had taxed the costs of both parties as though there had been two separate and distinct actions, and had allowed attendances on summonses, general attendances, term fees, instructions for brief, fees to counsel thereon, attendances in court, copies of documents etc to both parties. The defendants complained that as a result although they had succeeded in their defence of the claim, they had been deprived of the general costs of the action.

11 In the Court of Appeal, the defendants relied on *Saner v Bilton*. The judgment of the court (Lindley M.R. and Chitty L.J.) allowing the appeal was delivered by Lindley M.R. His Lordship noted

that *Saner v Bilton* had been approved and followed by the Court of Appeal in three later cases including *Ward v Morse*. After a survey of the authorities, he said at p 504:

> By the judgment as drawn up *the plaintiffs have to pay the defendants the costs of the action – not some of them or some portion of them, but all of them.* There are no separate issues in the action the costs of which have to be borne by the defendants. In considering what are costs of the action the counter-claim, as distinguished from the defence, ought to be disregarded. The costs of the action ought to be taxed as if there were no counter-claim. Whether both parties fail ..., or whether both succeed ..., or whether one fails and the other succeeds, can in principle make no difference.
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> ...
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> Next, as to the counter-claim. The defendant has to pay the costs of this, and the counter-claim is to be treated as an independent cause of action, and, to use Lord Esher's words, as if the claim did not exist. This last expression, however, is calculated to mislead, if not explained and properly understood. *What are costs of a counter-claim? The answer must be the costs occasioned by it. No costs not incurred by reason of the counter-claim can be costs of the counter-claim.* The fact that if there had been no action the costs of the counter-claim would have been larger, because the defendant would then have had to issue a writ and take other proceedings, does not make costs not incurred costs incurred, and in considering what the costs of a counter-claim really have been in any particular case, costs saved by not bringing a cross-action cannot be treated as costs incurred.
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> [Emphasis added]

12 It is plain that up to this point the principles established in *Saner v Bilton* had been endorsed and applied. Thus, in a situation where both parties failed in the claim and the counterclaim, the plaintiff would have to pay the defendant's costs of defending the claim and in recovering his own costs for defending the counterclaim would only be able to recover those costs that arose solely in connection with the counterclaim. The costs of bringing the claim could not be apportioned in any way so as to become part of the costs of defending the counterclaim. Then comes the case that Mr Ee relied on, *Christie v Platt*. This case was decided in 1921 and, in Mr Ee's view, it was a departure from the *Saner v Bilton* line of authorities and should be followed instead of that line.

13 The facts of *Christie v Platt* are as follows. The plaintiff, a landlady, brought a claim against her tenant, the defendant, for rent. In her defence the tenant pleaded that the demised premises were uninhabitable. By way of counterclaim, the tenant repeated the paragraphs of the defence and claimed damages. The landlady obtained judgment on the claim for £200 and costs while the tenant judgment on the counterclaim for £225 and costs. In fact, the case was mainly fought on the allegations of the tenant, the case of the landlady being straightforward since the agreed rent had not been paid. The taxing master allowed the costs of the plaintiff on the claim at £214 and 5 shillings and the costs of the defendant on the counterclaim at £3 and 5 pence. In coming to this decision, in relation to the plaintiff's bill, the taxing master allowed the costs of counsel's brief at the trial, fees to counsel, and costs and expenses of witnesses. In taxing the defendant's bill of costs, he allowed nothing in respect of these items and justified his decision by reference to *Atlas Metal*. The defendant appealed to the judge in chambers who held that the taxation had to be reconsidered and that certain costs had to be apportioned. This holding meant that the defendant would be able to recover more costs than the taxing master had awarded. The plaintiff appealed to the Court of Appeal.

14 From the recitation of the facts, it would be noted that this case was akin to the factual

situation in *Ward v Morse* and was not identical with *Saner v Bilton* where both the plaintiff and the defendant had failed in their actions. However, the taxing master's decision was in line with *Atlas Metal*, the case that he used to justify his decision.

15 The plaintiff's appeal was dismissed. In the Court of Appeal, Atkin L.J. observed that during the trial the substantial issue which caused the expense was the issue of whether or not there was a breach of the implied term that the premises should be habitable. His Lordship considered that the taxation by the Master was flawed because the plaintiff who succeeded on an unopposed allegation had recovered substantial costs, while the defendant who won on the issue involving nearly all the expense was allowed only £3.

16 In delivering the main judgment in the case, Atkin L.J. stated that the master should have taxed the costs of the claim on the footing that there was no counterclaim, and the costs of the counterclaim on the footing that there was no claim; but that that was subject to the overriding condition, that he must ascertain what were the costs really incurred by the plaintiff in establishing her claim and what were those really incurred by the defendant in establishing her counterclaim. When that had been done, then any costs saved to the defendant, by reason of there being a claim and counterclaim instead of two separate and distinct proceedings commenced by two separate writs and conducted as two separate actions were not to be allowed to the defendant, because they were not costs incurred by the defendant but saved to her. In considering what the costs of the counterclaim were, the Master had rightly accepted the view that such costs as were common to both claim and counterclaim were to be divided. But when he found a set of costs which were common to both claim and counterclaim and found that the plaintiff was not charging any more than she would have if there was no counterclaim, he had allowed the plaintiff all that she claimed. That was wrong. The question to be asked was did the plaintiff incur all those costs because of her claim? If they were incurred in part on account of the claim and in part on account of the counterclaim, the plaintiff could not have them all. This would have applied to the brief fee because there was one brief and one fee but the brief was to support the claim and to resist the counterclaim. It could not be said that the plaintiff had incurred the whole fee on account of the claim; that would mean that she had paid her counsel no fee for defending her against the counterclaim. How the fee was to be apportioned in each case had to be decided by the Master to the best of his ability in the circumstances of each case. The fee had to be adjusted in line with how the Master considered how much of it was fairly attributable to the claim and how much to the counterclaim. The same attitude had to be applied when considering the expenses incurred in calling witnesses.

17 It can be seen from the above that the approach taken by the Court of Appeal in *Christie v Platt* was to apportion costs between a plaintiff and a defendant where each had been successful (*ie* on the claim and the counterclaim respectively) in accordance with a consideration of how much of each item of costs had been incurred in relation to either the claim or the counterclaim. This approach favouring apportionment was not in line with *Saner v Bilton*.

18 The next case I must deal with is *Wilson v Walters* [1926] 1 K.B. 511. By the time it was decided, there had been attempts to reconcile *Saner v Bilton* and *Christie v Platt*.

19 In *Wilson v Walters*, the plaintiff had sued for negligence and the defendant had counterclaimed for damages for negligence as well. Both claim and counterclaim arose out of the same event and both failed. The judge held that in taxing the costs of the counterclaim, items common to claim and counterclaim which had already been dealt with in taxing the costs of the claim, should be apportioned. The case went on appeal and the Court of Appeal considered both *Saner v Bilton* and *Christie v Platt*. Scrutton L.J. who delivered the main judgment, cited extensively from the Irish case of *James Crean & Son, Ltd. v J. Steen M'Millan* [1922] 2 I.R. 105 ("*Crean v M'Millan*"), which had also

had to consider the difficulties arising from the divergent approaches of these cases. At p 516 of the judgment, Scrutton L.J. said:

> I will refer again to the judgment of O'Connor L.J. [in *Crean v M'Millan*], which was accepted by the final Court, the High Court of Appeal for Ireland. In the judgments of that Court a test was laid down for distinguishing between cases where one would apply the *Saner v Bilton* rule, and those where one would apply the procedure in *Christie v Platt*, and the Lord Chancellor says this, after referring to two Irish cases: "In these last two cases we get to the root of the matter, and are able to get a principle that will guide the taxing master. Wherever there is a separate and substantial question raised by the counterclaim, there must be substantial costs paid in relation to the counterclaim, and it follows that there must be an apportionment of the costs. But, on the other hand, where the subject matter of the counterclaim is identical with the defence or part of the defence, in that case the taxing master should not apportion, but simply allow such extra costs as have been incurred by reason of the counterclaim. This view seems to me to be the foundation of the decision in *Christie v Platt*, and is consistent with almost all the decisions in England or here."

20 Scrutton L.J. accepted that approach and held that where it was the same transaction that the parties were fighting about, the rule as laid down in *Saner v Bilton* applied and it was not a case for apportionment. The other judge, Sargant L.J., agreed. He noted that on the facts of the case neither party had had any right against the other and therefore no litigation ought to have ensued. He continued:

> ... the plaintiff ... commenced the proceedings and failed in those proceedings, and those proceedings he ought to pay for. On the other hand, the defendant, who might very likely never have commenced any proceedings had he not been attacked, on being attacked put in a counterclaim. It seems to me that the costs he ought to pay are only those extra costs occasioned by the counterclaim he put in in reply to the claim; and only to the extent to which the costs of the proceedings have been increased by the putting in of the counterclaim.

It will be appreciated that this was the justification that Fry L.J. had applied in the first place when he decided *Saner v Bilton*.

2 1 *Wilson v Walters* indicated that, in general, the approach of *Saner v Bilton* was the preferred approach and the approach in *Christie v Platt* was only applied in special circumstances. This sort of categorisation was also found in the judgment in *Medway Oil* itself. That was decided two years after *Wilson v Walters*. *Medway Oil* was another case where both the claim and the counterclaim failed and both were dismissed with costs. The facts of the case were that the plaintiffs in the original action had sued the defendants for damages for wrongful repudiation of a contract for sale of kerosene oil. The defendants had counterclaimed for the difference between the contract and market price of the oil on the basis that the plaintiffs had themselves wrongly repudiated the contract of sale. On taxation of the costs, the taxing master reported that he proposed to tax on the assumption that each party had been completely defeated on his affirmative claims. The matter then went up to the High Court judge, MacKinnon J, who applied the principle of *Wilson v Walters* and said that the plaintiff could only recover as costs of the counterclaim the costs incurred by the counterclaim alone. The Court of Appeal disagreed and held upon the principle of *Christie v Platt* that all matters arose upon the claim and upon the counterclaim, and that the costs of all must be apportioned.

22 In the House of Lords, *Saner v Bilton* and *Wilson v Walters* were approved and followed. On the other hand, *Christie v Platt* was explained and distinguished. In the event, the decision of the Court of Appeal was reversed and MacKinnon J's judgment was restored. Viscount Haldane delivered the

leading judgment and in the course of his judgment he went through all the previous cases (including the ones that I have cited herein above). Upon the review, he concluded that *Atlas Metal* had obviously followed the principle of *Saner v Bilton* and that successive Courts of Appeal had laid down a principle which was not only intelligible, but capable of being easily applied by the Taxing Master. Although the principle might work out apparently harshly in exceptional cases, when these threatened to occur the remedy was to apply at the trial for special directions as to issues and details. In Viscount Haldane's view, the law had been settled since 1898, the year of the judgment in *Atlas Metal*.

23 His Lordship then went on to consider what he called "a change of attitude" in 1920. After setting out the circumstances of *Christie v Platt*, Viscount Haldane agreed with Atkin L.J. in the former case that the result of the taxation must have been wrong because there had obviously been costs incurred in common and it was not right for the plaintiff in *Christie v Platt* to get £214 while the defendant only got £3 to cover the whole of her costs. In His Lordship's view, in *Christie v Platt* there may well have been costs to be divided such as the brief fee which was paid to the plaintiff's counsel to cover his services in both claim and counterclaim. Viscount Haldane recognised that "the distinction between division and apportionment may in certain circumstances be a thin one" but he observed (at p 100) that under the rule espoused by *Atlas Metal* "the distinction is fundamental". Viscount Haldane then went on (at p 100) to consider the Irish case of *Crean v M'Millan*, observing approvingly that the judges there had disposed of the question as to how the costs should be borne when there was a counterclaim in accordance with the principle initiated by *Saner v Bilton*. His Lordship also noted that *Wilson v Walters* had applied this principle and gave advice on how a taxing master could avoid a harsh consequence when applying the same. He said (at p 101-102):

> My Lords, the principle applied in *Wilson v Walters* may have consequences in individual cases which would be harsh if the Taxing Master did not supervise the costs of claim and counterclaim closely, and split up the costs of items which are required by both. In such instances he takes an item, a single fee on the plaintiff's brief for example, and splits it into two notional fees, the one attributable to the claim, and the other to the counterclaim. This is not an apportioning, in which the payment is treated as a single item and the question is to what it is attributable. It is in reality a notional division of what on the face only of it is one item. If the principle is not kept in mind confusion will follow, as was pointed out by Lindley M.R. and other judges.

24 Viscount Haldane concluded his judgment by endorsing the *Saner v Bilton* approach on the basis that the principle established by successive decisions, down to *Christie v Platt*, was a clear principle which would in most cases operate justly while in others the taxing master would be able to correct the effect of applying it in isolation as an abstract rule by dividing items as distinguished from apportioning general costs (see p 104). Before *Saner v Bilton*, the law relating to taxation in cases like the present was, Viscount Haldane commented, in a state of "hopeless confusion". The other Law Lords agreed with Viscount Haldane that the rule in *Saner v Bilton* should be followed.

25 Counsel only cited two cases to me that were decided after *Medway Oil*. The first of these was the decision of the High Court here in *A.E. Beavis v Foo Chee Fong* [1938] 1 MLJ 129 ("*Beavis*"). In that case, the plaintiff obtained judgment against the defendant for costs on both claim and counterclaim. The amount recovered on the claim was under $5,000 but the amount of the counterclaim exceeded $5,000. According to the civil procedure rules then applicable, there was a lower scale of costs for cases involving claims of less than $5,000. The question that arose was whether the taxation of the plaintiff's costs on the claim should proceed on the lower scale and the taxation on the costs on the counterclaim should proceed on the higher scale. Terrell J agreed with the Registrar that this question should be answered in the affirmative. This, however, did not mean that the plaintiff necessarily recovered more costs for getting up the counterclaim. Terrell J noted

that the Registrar had allowed $700 as getting up in respect of the claim and $320 in respect of the counterclaim and stated:

> ... The getting up fee on the counterclaim has been allowed at $320, and in view of the ruling in *Medway Oil & Storage Co v Continent Contractors*, [1929] AC p 88, that the unsuccessful defendant, where a counterclaim is dismissed, should only be called on to pay the amount by which the costs of the original action have been increased, I think it was correct to allow a smaller sum for the getting up fee on the counterclaim, notwithstanding that it was on the higher scale.

This case is the first (perhaps the only) reported decision in Singapore which applied *Medway Oil* in relation to the costs payable by an unsuccessful defendant in respect of his counterclaim. It is noteworthy that there was no hesitation in doing so and no suggestion that any other rule might apply.

26 The most recent case cited to me is another English authority, *Millican and Another v Tucker and Others* [1980] 1 W.L.R. 640 ("*Millican*"). The plaintiffs sued the defendants for certain declarations and an account. The first defendant, who was legally aided, put in a counterclaim against the plaintiffs. Subsequently, the suit was settled and the plaintiffs obtained a judgment against the first and third defendants. The issue was whether the plaintiffs could obtain costs against the legal aid fund under the relevant legislation. The judge held that as the counterclaim constituted a separate proceeding for the purposes of the relevant section, he could properly order the payment of the costs of the counterclaim and that since the claim and counterclaim raised the same issues, it was legitimate to treat the costs as incurred partly on the claim and partly on the counterclaim. On appeal, it was held that costs incurred in connection with a claim remained part of the costs of the claim and however dealt with could not become costs of the counterclaim. In reaching this decision, *Atlas Metal* and *Medway Oil* were applied and Donaldson L.J. observed as follows (at p 653):

> Where a court orders that claim and counterclaim be dismissed, or allowed, with costs, the rule of taxation is that the claim should be treated as if it stood alone and the counterclaim should bear only the amount by which the costs of the proceedings have been increased by it. This is the rule in *Saner v Bilton* (1879) 11 Ch.D. 416 which was approved by the House of Lords in *Medway Oil and Storage Co. Ltd. v Continental Contractors Ltd.* [1929] A.C. 88. In the present case almost the whole of the plaintiffs' costs would have been incurred if the claim had stood alone, because the counterclaim did little more than claim declarations which were the mirror image of those claimed by the plaintiffs. This is not to say that the counterclaim was unnecessary. Only that it scarcely added to the costs. The counterclaim for an account would, if successful, have added to the costs at the later stage of an inquiry, but that stage was never reached.

27 From this somewhat brief account of the cases it would be realised that the *Medway* principles are well embedded in English law. *Christie v Platt* is regarded as a wrong turning brought about by sympathy in relation to a result that was patently unfair. In fact, even Lord Blanesburgh who was party with Atkin L.J. to the decision in *Christie v Platt*, admitted in *Medway Oil* that *Christie v Platt* had fundamentally misunderstood the *Saner v Bilton* rule and stated that now that he had had further time for consideration, that rule appeared preferable to the substitute of apportionment proposed in *Christie v Platt*. He also noted that in any case where the *Saner v Bilton* rule appeared likely to result in injustice, the court would have the power to give special directions which could vary the rule.

2 8 *Beavis* shows that the *Medway* principles have been applied in Singapore. Since *Beavis* there has been no local case giving reasons why those principles should be disregarded in favour of the *Christie v Platt* approach. I am satisfied that the *Medway* principles are part of the local law. Even if

they were not, I would adopt them because, as so many eminent judges have stated, they are principles which are intelligible and easily applied and any potential hardship may be ameliorated by counsel applying for special directions on costs. Of course this means that counsel must be thinking of costs when they make their final submissions and not only after the judgment is delivered. I do not think that that is an undue burden to place on counsel.

Application of the law

29 It follows from what I have said above that the AR was correct in applying the *Medway* principles.

30 The bill presented on behalf of Mr Mok was for $80,000 in respect of getting up. The AR allowed only $7,000. The AR took the view that this amount represented the amount by which the getting up costs incurred in relation to the claim had been increased by the presence of the counterclaim. The question is whether she was correct in this assessment. I must therefore turn to a brief analysis of the main decision.

31 As I stated above, the plaintiff had claimed the return of money paid by mistake. The plaintiff's case was that he had paid these sums because he thought he had a liability as guarantor for the debts of his companies. Woo J (see *Ding Leng Kong v Mok Kwong Yue & Others* [2003] 4 SLR(R) 637) had, however, held that he was not a guarantor. Therefore, the plaintiff said, he had been operating under a mistake of law when he made the payments and the moneys should be returned by the defendant. There were three sums involved: $240,000, $519,000 and RM200,000. The plaintiff obtained summary judgment for the first of these amounts and therefore only the second and third amounts claimed were before me when the matters came on for trial.

32 The defendant raised the following defences:

(a) The sums of $519,000 and RM200,000 had been paid towards the satisfaction of trade debts and not by reason of a mistake.

(b) At the time of payment, the plaintiff had said he wanted to settle all debts and since no specific debts had been mentioned, the defendant appropriated the payments towards the settlement of the trade debts and the plaintiff could not recover them.

(c) The plaintiff was estopped from recovering the sums on various factual grounds.

(d) The plaintiff was estopped from recovering the sums by reason of *res judicata*.

(e) The defendant was entitled to set off the sums claimed by way of counterclaim and the defendant counterclaimed the sum of $240,000 and the sum of US$381,450.02 as being the trade debts owing to him.

33 It can be seen that most of the issues raised by the defence related to the claim. The counterclaim itself arose out of one of the defences, *ie*, that the plaintiff owed the defendant the trade debts and had paid the sums towards settlement of the same. The counterclaim also arose in connection with the defence because part of the defence was that the plaintiff had agreed to his payments being appropriated to pay the trade debts. The counterclaim was filed to obtain judgment for the trade debts so that the sums claimed by the plaintiff could, if the plaintiff succeeded, be set off against them.

34 Having considered all the circumstances of the claim and the counterclaim in connection with the application of the *Medway* principles, I agree with the way in which the AR has taxed the plaintiff's bill. The plaintiff was not entitled to claim full getting up for the counterclaim. Only the additional time and expenditure incurred because the counterclaim was presented could be recovered. In the present instance, this was relatively marginal. I therefore order that there be no change to the bill as taxed upon this review. I will see the parties on the costs of the review.