

Derrick Wong & Lim BC LLP v Zhu Haibei
[2020] SGHCF 1

Case Number : Registrar's Appeal No 37 of 2019
Decision Date : 10 January 2020
Tribunal/Court : High Court (Family Division)
Coram : Choo Han Teck J
Counsel Name(s) : Adrian Tan and David Aw (TSMP Law Corporation) (instructed) and Lau Kah Hee (Derrick Wong & Lim BC LLP) for the appellant; Cheng Hiu Lam Larisa (Drew & Napier LLC) for the respondent.
Parties : Derrick Wong & Lim BC LLP — Zhu Haibei

Legal Profession – Bill of costs – Taxation

10 January 2020

Judgment reserved.

Choo Han Teck J:

1 The respondent, Zhu Haibei, having signed a “contentious business agreement” with his solicitors, applied to the court for a taxation of the solicitors’ bills of costs. The district judge (“DJ”) allowed his application on 31 July 2019. The solicitors (“the appellant law firm”) appealed against the DJ’s decision.

2 The respondent was going through divorce proceedings with his wife. On 14 October 2017, he was introduced to Lau Kah Hee (“Lau”) through Lau’s wife who was the respondent’s colleague. Lau is a lawyer with the appellant law firm. The respondent expressed his unhappiness with his divorce proceedings and told Lau that he was represented by Eversheds Harry Elias LLP (“EHE”).

3 On 4 and 5 November 2017, the respondent sent the divorce documents including the first affidavits of both parties to Lau. He then met Lau for an hour on 8 November 2017. The meeting ended with the respondent stating his intention to discharge EHE. Lau emailed the respondent the next day, 9 November, attaching a Letter of Engagement and a Warrant to Act. He then met the respondent personally at the latter’s request and handed hard copies of the two documents to him.

4 On 20 November 2017, the respondent wrote to Lau to say that he would think about the Letter of Engagement, but in the meantime, he would pay Lau for consultation thus far. Lau then emailed the respondent with his bill for consultation amounting to \$2,500. The respondent paid the bill.

5 From January 2018 to 21 April 2018, the respondent contacted Lau occasionally, and even met for lunch. The respondent expressed his concern that the divorce proceedings were still stuck at the “first affidavit” stage. Lau advised the respondent to consider acting in person since the respondent’s wife had just discharged her solicitors. “But first, you should find out how much your EHE lawyers are going to charge you; get a fee estimate,” he advised.

6 On 24 April 2018, the respondent told Lau that he wanted to engage the appellant law firm to take over from EHE in acting for him in his divorce proceedings. He met Lau the next day to say that although he would pay a \$40,000 deposit (which he did), he would defer signing the Letter of

Engagement. Lau denied this, claiming that the respondent signed the Letter of Engagement that day, 25 April 2018, even though the letter required only a deposit of \$30,000.

7 On 26 April 2018, the respondent told Lau that he (the respondent) had negotiated a consent order with his wife and requested that Lau draw up the consent order. Lau advised the respondent that the appellant should take over the case soon in case there is no settlement. On 29 April 2018, the respondent told Lau that there would be a mediation on 3 May 2018 regarding a maintenance summons, Maintenance Summons No 1496 of 2018 ("MSS 1496"), taken out by the wife. Lau told the respondent that he would attend the MSS 1496 mediation on his behalf. The respondent, on his own account, wrote to the Family Court expressing his concerns of a duplicity of action with the maintenance application. The respondent claims that he had decided to engage Lau on 30 April and told him so by telephone that day. He also sent Lau the Letter of Engagement and Warrant to Act, duly signed, and another sum of \$40,000.

8 On 3 May 2018, the respondent met Lau who advised that the respondent contest MSS 1496 with full vigour as it was a matter of "life and death". Lau had written to the court on 2 May 2018 requesting that the hearing for MSS 1496 be adjourned, and it was adjourned to 17 May 2018. Lau attended the first hearing on that day and no substantive orders seemed to have been made — neither party explained what happened at the mention of MSS 1496 on 17 May 2018 — but the next day, Lau sent the respondent an invoice for \$45,000 (excluding goods and services tax ("GST")).

9 When the respondent expressed his shock at the bill for that one letter and a 45-minute appearance in court, Lau assured the respondent that there was little chance that the final fees would exceed the agreed sum. The respondent discharged Lau on 22 May 2018.

10 On 30 May 2018, Lau sent his final invoice of \$8,125 (excluding GST). His staff (one Jennifer) told the respondent that the firm would transfer the balance deposit of \$27,849.75 to Ho Wong Law Practice LLC who had been instructed by the respondent to take over from Lau. A cheque for that amount was sent to Ho Wong Law Practice LLC on 31 May 2018.

11 The Letter of Engagement, which incorporated the Warrant to Act, is a four-page document. The relevant parts are, first, the subject matter, which is "Representation in Divorce Proceedings". The relevant terms are then set out in cll 6 to 11, and cl 15. These clauses are set out in full below:

6. The scope of our services which we foresee following our initial discussion will extend to taking in your instructions, reviewing the case file provided by your previous solicitors, and assisting you in the rest of the Divorce proceedings up to and including Stage 2 (the Ancillaries hearing). As we understand from you that the Defendant (your ex-wife) is currently unrepresented, we foresee that there may be further complications in the Divorce proceedings in the process leading up to the Ancillaries hearing, but will endeavour to assist you expeditiously.

7. This letter countersigned by you constitutes your Warrant to Act in favour to us with respect to representing you generally in Singapore in connection with the above matter.

Information on our professional fees

8. Our legal 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 court on your behalf; travelling and

waiting; and the overall management of this matter.

9. As agreed, our ballpark fee estimate therefore will be in the range of S\$80,000 to 140,000 (excluding disbursements and taxes). As discussed, this is only a fee estimate as we are not able to predict with absolute certainty how the proceedings will develop and the degree of complications that may arise from the fact that the Defendant (your ex-wife) is currently unrepresented.

Hourly Rate

10. The hourly rates of the lawyer who will be handling your matter are as follows:-

Mr Lau Kah Hee \$650/hr

11. 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.

12. All disbursements incurred, such as postage, telephone charges, photocopying charges, court fees and costs of transport, accommodation and travel outside Singapore (where applicable) and GST are to be borne by the client. A list of disbursements is usually provided in our bill.

Payment of deposit of fees

...

15. Please note that these sums are deposits only, and the total amount of professional fees and disbursements payable to us may exceed or fall below the total amount deposits remitted to us.

12 The Letter of Engagement was dated by hand on 30 April 2018 even though it was first given to the respondent on 9 November 2017. The letter was not amended although the respondent paid the initial deposit of \$40,000 and not \$30,000 as stated in cl 13.

13 Lau had submitted two invoices to the respondent. On the facts, largely undisputed, the sole issue before the court was whether the respondent, notwithstanding the Letter of Engagement, was entitled to have the two invoices taxed. The first was on 18 May 2018, an interim bill for \$45,000 (\$48,435 including GST), and the final invoice was on 30 May 2018 for \$8,125 (\$8,715.15 including GST).

14 Mr Adrian Tan, counsel for the appellant law firm, submits that the Letter of Engagement constituted a "contentious business agreement" under s 111(1) of the Legal Profession Act (Cap 161, 2009 Rev Ed) and therefore, the respondent is not entitled to have it taxed. Counsel relies on s 112(4). The provisions are set out below for convenience:

Agreement as to costs for contentious business

111.—(1) Subject to the provisions of any other written law, a solicitor or a law corporation or a limited liability law partnership may make an agreement in writing with any client respecting the amount and manner of payment for the whole or any part of its costs in respect of contentious business done or to be done by the solicitor or the law corporation or the limited liability law

partnership, either by a gross sum or otherwise, and at either the same rate as or a greater or a lesser rate than that at which he or the law corporation or the limited liability law partnership would otherwise be entitled to be remunerated.

...

Effect of agreements with respect to contentious business

...

112.—(4) Subject to the provisions of this Part, the costs of a solicitor or law corporation or limited liability law partnership, in any case where there is such an agreement as is referred to in section 111, shall not be subject to taxation nor to the provisions of section 118.

15 Sections 111 and 112 are provisions intended to regulate the charging and payment of fees by a client to his lawyer. When it comes to legal fees, the parties are generally entitled to negotiate their own fee arrangements. That practice has been in place since time immemorial. Occasionally disputes had arisen, and so the Legal Profession Act and the Rules of Court (Cap 322, R 5, 2014 Rev Ed) have provisions for the taxation of unsettled costs. A contentious business agreement under s 111 is a specific fee arrangement between a client and his lawyer.

16 The provision specifies some special conditions for its application. First, it applies only in contentious business. Second, it may apply either in respect of a fixed gross sum or by way of an agreed rate of payment.

17 To the extent that s 112 provides that such an agreement shall not be subject to taxation under s 111, it is unclear because if, as in the present case, the agreement specified the rate as \$650 an hour, and there is a dispute as to how many hours of work the lawyer had actually done, surely, the client is entitled to have the bills taxed.

18 In this case, the agreement refers only to work in respect of the divorce proceedings. Some of the work concerned the summons brought under the MSS 1496 proceedings, which was filed as a separate originating process under s 69(1) of the Women's Charter (Cap 353, 2009 Rev Ed). It is a process for a claim by a wife, and divorce proceedings are not a prerequisite for such an application. The Letter of Engagement was drafted by solicitors and so it behoves them to be clear. MSS 1496 is a separate action, but if consolidated with the divorce action it might be considered part of the divorce proceedings, but not until that happens.

19 Clause 7 of the Letter is ambiguous in that while purporting to be a warrant for the appellants to represent the respondent "generally in Singapore", it goes on to state "in connection with the above matter". And the above matter can only refer to the "divorce proceedings". MSS 1496 was not relevant at the time the Letter of Engagement was sent to the respondent.

20 Furthermore, cll 8 and 9 of the Letter of Engagement are important because they provide that the fees are to be based on the "actual time spent", and that the agreed fee was only "our ballpark fee" in the range of \$80,000 to \$140,000. It goes on to state that this is only "a fee estimate". There is no definite figure and in the face of a challenge over the hours spent, the bill must be taxed.

21 In the circumstances, the DJ below was perfectly entitled to order that the two invoices be taxed. The appeal is therefore dismissed and I will fix the costs of the appeal on another date if parties are unable to agree on costs.

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