VJZ and another *v* VKB and others

[2021] SGHCF 15

Case Number	: Originating Summons Probate No 3 of 2019 (Summonses Nos 36 and 58 of 2020)
Decision Date	: 09 June 2021
Tribunal/Court	: General Division of the High Court (Family Division)
Coram	: Choo Han Teck J
Counsel Name(s)	: Tan Xeauwei, Afzal Ali and Marrissa Miralini Karuna (Allen & Gledhill LLP) for the applicants; Devinder Kumar s/o Ram Sakal Rai and Leong Wen Jia Nicholas (ACIES Law Corporation) for the 1st to 5th and 15th respondents; Kanyakumari d/o Veerasamy and Loh Weijie Leonard (Tan Kok Quan Partnership) for the 10th to 14th respondents; The 6th and 7th respondents in person; The 8th and 9th respondents absent and unrepresented.
Parties	: VJZ — VKA — VKB — VKC — VKD — VKE — VKF — VKG — VKH — VKI — VKJ — VKK — VKL — VKM — VKN — VKO — VKP

Probate and Administration – Personal representatives – Remuneration

9 June 2021

Judgment reserved.

Choo Han Teck J:

1 The applicants are the former joint administrators ("Administrators") of the estate of the deceased (the "Estate"). They seek remuneration for their work in administering the Estate and for solicitors' fees from 2018 to 2020.

2 The deceased died on 31 October 2012, leaving a will dated 24 November 1995 ("the Will"). The 15 beneficiaries under the Will split into three factions, comprising the 1st to 5th and 15th respondents ("Family [A]"), the 10th to 14th respondents ("Family [B]") and the 6th to 9th respondents (the "Unrepresented Beneficiaries"). Family [B] estimates the Estate is worth US$200 million to US$300 million. The factions disagreed as to who should administer the Estate after all three executors named in the Will renounced their rights in May 2015. Eventually, on 19 March 2018, Foo Tuat Yien JC appointed the applicants as joint administrators of the Estate.

3 The beneficiaries entered into a settlement agreement with each other on 18 April 2018 (the "First Settlement Agreement") to settle their differences. On 13 August 2019, Tan Puay Boon JC ordered in HCF/ORC 253/2019 ("ORC 253") that the applicants were to administer the Estate in accordance with the First Settlement Agreement. He held that the applicants were entitled to be reimbursed from the Estate "such reasonable expenses properly incurred by the [a]pplicants in the administration of the Estate in all jurisdictions", and to receive "reasonable remuneration for services performed in the administration of the Estate in all jurisdictions". Under Schedule 2 of ORC 253 ("Schedule 2"), the applicants were to render an interim bill to the respondents with a statement of work, setting out the work done on the matter ("Interim Bill"). If the majority of the respondents did not object to the Interim Bill within ten working days, the applicants could proceed to satisfy it from the Estate and render an account of the sums accordingly. If there were objections from a majority of the respondents, the applicants were to make an application to the Singapore Court for a determination on the Interim Bill.

4 On 13 December 2019, the beneficiaries entered a new settlement agreement (the "Second Settlement Agreement") for the 1st respondent and another person to take over the administration.

On 3 August 2020, Tan Puay Boon JC ordered in HCF/ORC 212/2020 ("ORC 212") that the Second Settlement Agreement replace the First Settlement Agreement, and that the applicants "shall be entitled to be reimbursed from the Estate, all costs and expenses already approved in accordance with Schedule 2", as well as "all other reasonable costs and expenses incurred in the administration of the Estate and in the handover to the [new administrators]".

5 On 29 January and 1 February 2021, the applicants' solicitors wrote to the beneficiaries referring to ORC 212 and requesting payment of the applicants' and solicitors' fees. Both Family [A] and Family [B] objected that the fees were too high. On 23 February 2021, Mr Rai, counsel for Family [A], filed HCF/SUM 36/2021 ("SUM 36"). He argues that the matter should be sent for taxation under Rule 863 of the Family Justice Rules 2014 (S 813/2014) or Section 66 of the Probate and Administration Act (Cap 251, 2000 Rev Ed), as "reasonableness" under Schedule 2 has to be determined through an assessment exercise, not a declaration. The court can be guided by the principles set out by VK Rajah JC (as he then was) in *Re Econ Corp Ltd (in provisional liquidation)* [2004] 2 SLR(R) 264 ("*Re Econ*"). On those principles, Mr Rai argues there is insufficient material before me to conclude that the costs claimed are reasonable.

6 On 16 March 2021, the applicants' solicitors filed HCF/SUM 58/2021 ("SUM 58"), seeking a declaration that the applicants' fees of S$2,611,138.86 for administering the Estate from 1 February 2018 to 30 October 2020 and their solicitors' legal costs of S$649,957.75 from 2 February 2018 to 31 December 2020 are reasonable, and that they are entitled to be reimbursed out of the Estate. Counsel for the applicants, Ms Tan, argues that the remuneration claimed is reasonable under Section 41R(6) of the Trustees Act (Cap 337, 2005 Rev Ed). It is consistent with the previous estimate given in August 2017, and the administration of the Estate was complex and contentious.

7 I first consider the approach of Rajah JC in *Re Econ*. After considering Singapore legislation and case law from other jurisdictions, Rajah JC set out the principles to be taken into account in the court's determination of remuneration for insolvency practitioners (at [48]–[61]). He observed that the affidavits in that case were inadequate as the focus was on time spent without spelling out the complexity of the matter, the effectiveness of what was done, the responsibilities of each of the persons discharged, and their qualifications, expertise and experience (at [62]). There should be "disclosure in proportion to the remuneration sought" (at [69]). Next, he held that "the taxing master is in the best position to determine remuneration", citing the comments of Hoffmann J in *Re Potters Oils Ltd* [1986] 1 WLR 201 at 207 that the court "is ill-equipped to conduct a detailed investigation of receivers' charges on an itemised basis" and "[a] judge could not do so without being expensively educated by expert evidence" (at [26], [70]). Rajah JC directed the parties to file a fresh affidavit including further information and for the taxing master to hear the application (at [72]).

8 I agree with Mr Rai's submission that, although *Re Econ* concerned the remuneration of insolvency practitioners, that case is relevant to the present matter since it discussed principles of "general application" to the remuneration of fiduciaries (*Re Econ* at [25]), which includes administrators. I hence consider whether the applicants have provided sufficient material to justify the remuneration claimed, including, *inter alia*, the identity, seniority and years of experience in the relevant area of expertise of the person who has done the work, and the need for and the role of the various team members, explaining and justifying, if necessary, why no outsourcing was undertaken (*Re Econ* at [61]).

9 After considering the affidavits and submissions before me, I agree with Mr Rai that the matter should be sent for taxation. Although the "fee narratives" provide a detailed description of the tasks performed and a summary of the hours of work done by each person, they do not state each person's years of experience, qualifications, or the need for the 10 team members. They also do not state who

did what task and why that person's role was necessary. For example, the first item on the "fee narratives" list under "Singapore", which concerns the appointment of the applicants' solicitors, states: "Received and perused the email dated 2 February 2018 from A&G regarding their letter of engagement, letter of appointment and standard terms of business". According to the summary, 1.5 hours were spent on appointment of solicitors by a partner, 3 hours by a director, 4 hours by a manager, and 1.5 hours by an associate — a total of 10 hours. But neither the fee narrative nor the summary explains who was involved in receiving and perusing that email, the qualification and experience levels of each of these persons, or why their involvement in the task was necessary. There are other similar examples. Given that the amount claimed is not insubstantial, the applicants have an obligation to provide further details (*Re Econ* at [63]).

10 The same applies to the solicitors' invoices. The invoices do not consistently indicate the nature, complexity and urgency of the various phone calls, meetings or emails listed. For example, some entries just state "Drafting email to clients" or "Drafting correspondence" without further elaboration of the complexity of the subject or urgency of the matter. Similarly, these invoices do not state the experience and qualification of each person in the team, and why those particular persons were required for a particular task.

11 I next consider whether I should direct the parties to file further affidavits for my review, or send the matter for taxation. I agree with Rajah JC that the taxing master is in the best position to assess the reasonableness of the applicants' remuneration, being "equipped with a wealth of experience in determining solicitors' remuneration and litigation costs" (*Re Econ* at [71]). There is no evidence before me as to the usual industry rate for professional administrators, though, as a point of comparison, I note that in *VIK v VIL and others* [2021] 3 SLR 857 (at [2]), where the administrator was a trust corporation, the unpaid administration and legal fees amounted to a total of about S$1,800,000.00 for about five years of work (though taken together with projected statutory liabilities, future costs and fees, the administrator estimated that a total of around S$2,300,000.00 in expenses and liabilities for the estate would remain outstanding). I also note that, upon the acceptance by the Public Trustee of a trust, there shall be paid to the Public Trustee a fee of 0.85% on the gross capital value of trust property in excess of S$750,000.00 (Rule 6(1)(*i*) of the Public Trustee (Fees) Rules S 248/2010).

12 Second, I note that the parties' affidavits disputed specific items listed in the invoices and focused on explaining why the work for that particular item was reasonable or not. I therefore think that, rather than ordering the parties to file further affidavits for my review, which they may then dispute further, it would be more appropriate for the parties to resolve the reasonableness of each item in a taxation hearing.

13 For the reasons above, I grant SUM 36 and dismiss SUM 58, and order that this matter proceed for taxation without prejudice to the Registrar to allow further evidence. I reserve the issue of costs till after the taxation hearing.