Chor Pee & Partners v Wee Soon Kim Anthony
[2005] SGHC 101

Case Number : POC 3/2005

Decision Date : 24 May 2005

Tribunal/Court : High Court

Coram : Lai Siu Chiu J

Counsel Name(s) : Andre Arul and Ling Leong Hui (Arul Chew and Partners) for the Petitioner; The respondent in person

Parties : Chor Pee & Partners — Wee Soon Kim Anthony

Legal Profession – Bill of costs – Petition of course for taxation of bills of costs – Whether petition should be struck out – Whether written agreement as to fees payable existing between parties – Whether petition requiring affidavit in support – Whether petition complying with s 120 Legal Profession Act – Sections 111, 120 Legal Profession Act (Cap 161, 2001 Rev Ed), O 38 r 2(2) Rules of Court (Cap 322, R 5, 2004 Rev Ed)

24 May 2005

Lai Siu Chiu J:

The background

1 M/s Chor Pee & Partners ("the Petitioner") is a firm of solicitors practising in Singapore. Anthony Wee ("the respondent") was a client of the Petitioner at the material time.

2 The respondent had sued UBS AG in July 2001 in Suit No 834 of 2001 ("the Suit") for misrepresentation. His solicitors then were M/s Engelin Teh & Partners ("Engelin Teh"). Sometime in March 2003, when the Suit was part-heard, the respondent approached Lim Chor Pee ("LCP"), the senior partner of the Petitioner, and inquired whether LCP would agree to take over conduct of the Suit from Engelin Teh with whom the respondent had a dispute on fees. The respondent and LCP had known each other for many years. LCP, who is a very senior member of the Singapore Bar, agreed. I should add that before he ceased practice and/or retired some years ago, the respondent was also a very senior practitioner at the Singapore Bar.

3 LCP took over conduct of the trial in the Suit from Engelin Teh until its conclusion. The respondent's claim was dismissed by Kan Ting Chiu J on 8 December 2003. The respondent appealed against Kan J's judgment in Civil Appeal No 1 of 2004 ("the Appeal"). LCP also acted for him in the Appeal. The appellate court heard and dismissed the Appeal on 27 May 2004.

The applications

4 On 16 March 2005, the Petitioner filed Petition of Course No 3 of 2005 ("the Petition") through another firm of solicitors. The Petitioner prayed for leave to tax bills of costs in acting for the respondent in the following five matters:

(a) the Suit;

(b) the Appeal;

(c) bill of costs of Thomas Sim (Engelin Teh LLC);

(d) complaint against Gerald Godfrey QC; and

(e) Bill of Costs No 112 of 2003 in Civil Appeal No 114 of 2002 relating to the (unsuccessful) application for the admission of Gerald Godfrey QC.

5 On 21 March 2005, the respondent applied by way of Summons in Chambers No 1480 of 2005 ("the respondent's application") for the Petition to be struck out on the following grounds:

(a) it was not supported by an affidavit to verify the truth of its contents;

(b) it was a violation of a written agreement between the parties to cap the fees for legal services at $275,000, which fees the respondent had already paid; and

(c) the tax invoices upon which the Petitioner relied were not valid bills of costs for the purposes of s 120 of the Legal Profession Act (Cap 161, 2001 Rev Ed) ("the Act").

6 The Petition and the respondent's application came up for hearing before me on 28 March and 1 April 2005. I granted the Petition but dismissed the respondent's application. The respondent wrote in for further arguments on 7 April 2005. I did not accede to his request. The respondent has now filed a notice of appeal (in Civil Appeal No 43 of 2005) against my decision.

The facts

7 In his first affidavit filed on 22 March 2005, LCP deposed to the history behind the Petition. Since he was aware (from the respondent) that the respondent had a dispute with Engelin Teh on fees (which was on-going), LCP tried in April 2003 to get the respondent to agree in writing on the legal fees payable to the Petitioner. However, the respondent was not prepared to discuss the subject. As they were on friendly terms and there was an indication from the respondent at one stage that he might join the Petitioner as a partner or consultant, LCP did not push the issue of agreed fees too hard.

8 LCP acted for the respondent for 27 days of trial in the Suit, for which the Petitioner issued invoice no 99001 to the respondent in the amount of $367,915. For the Appeal, the Petitioner issued invoice no 99002 in the sum of $183,645. For work done in the taxation of the bill of costs of Thomas Sim, the Petitioner issued invoice no 99003 in the sum of $20,160. For work done in relation to the complaint against Gerald Godfrey QC, the petitioner billed the respondent $39,060 under invoice no 99004. For Bill of Costs No 112 of 2003 and Civil Appeal No 114 of 2002, the Petitioner billed the respondent $24,958.50. The first four invoices were hand-delivered to the respondent on 13 January 2005 whilst invoice no 99005 was delivered to him on 1 February 2005. The five invoices totalled $635,738.50 (LCP's computation of $634,780.50 is incorrect).

9 LCP added that for the Suit, the Petitioner had rendered interim bills to the respondent in respect of the retainer in the sum of $275,000 which sum had been paid by the respondent, along with disbursement bills. The Petitioner had also rendered interim bills (for disbursements incurred) to the respondent for the other four matters.

10 LCP further deposed that disputes arose between him and the respondent over loans made by the respondent to him and over the Petitioner's legal fees to the respondent. This resulted in the respondent issuing statutory demands dated 3 January 2005 under s 62 of the Bankruptcy Act (Cap 20, 2000 Rev Ed) against LCP and Marc Lim, the other partner of the Petitioner.

11 LCP applied in Originating Summons in Bankruptcy Nos 3, 4 and 5 of 2005 (collectively referred to as the "OSBs") to set aside the respondent's bankruptcy notices. At the hearing of the OSBs (on 16 February 2005), the respondent's solicitor raised the issue of agreed fees for invoices 99001 and 99002 but not for the other three invoices.

12 On 2 March 2005 the Petitioner's solicitors wrote to the respondent's solicitors acting for him in the OSBs (M/s KK Yap & Partners) and inquired if the respondent would consent to taxation of the five invoices of the Petitioner. KK Yap & Partners replied to say they only acted for the respondent in the OSBs. On 4 March 2005, the respondent's secretary sent a fax to the Petitioner's solicitors stating, *inter alia*, that the respondent did not consent to the taxation of all five invoices of the petitioner. Hence, the Petition was filed.

13 In his affidavit filed in support of the respondent's application, the respondent asserted that the Petition was defective because it was not supported by an affidavit, as required under O 38 r 2(2) of the Rules of Court (Cap 322, R 5, 2004 Rev Ed) ("the Rules"). Without such a supporting affidavit, the respondent asserted that the Petition was not proved.

14 The respondent deposed that Engelin The SC withdrew from acting for him in the Suit because he complained bitterly against her legal assistant who was not carrying out his instructions. As Engelin Teh sided with her legal assistant, the respondent said he was forced to discharge her and engage Goh Aik Leng ("Goh") who mainly practised in the Subordinate Courts, as his counsel.

15 Goh found it difficult to handle the Suit as he was swamped by interlocutory applications filed by the defendant's solicitors, Drew & Napier. Goh wanted to stop acting for the respondent but the latter persuaded him to carry on. It was in those circumstances that the respondent approached LCP, an old friend, for help.

16 The respondent complained that when LCP agreed to take over conduct of the Suit from Goh (provided the respondent gave him full authority to run the case as LCP saw fit), LCP did not reveal that he had financial problems. Had the respondent been told, he would not have retained LCP, let alone lent LCP two sums of $307,000 and $84,000. The respondent claimed that LCP did not understand his case and was intransigent.

17 In relation to legal fees, the respondent claimed that the parties had agreed by an exchange of e-mails that the Petitioner would charge a global fee of $275,000 for work done for the Suit. The respondent had a second meeting with LCP at the time the latter took over the conduct of the Suit. After that meeting, the respondent received an e-mail from LCP on 2 April 2003 at 4.45pm; it stated:

> Dear Tony,
>
> Please see attachment
>
> Regards
>
> Lim Chor Pee

18 The attachment read as follows:

> Suit No 843 of 2001
>
> Fee agreement between A S K Wee and Chor Pee & Partners

Global Brief Fee	$275,000
Payable as follows:	
1st instalment upon conformation of retainer	$50,000
2nd instalment upon filing Notice of Change of Solicitors and SIC to amend Statement of Claim on or before 30 April 2003	$50,000
3rd instalment on or before 15 May 2003	$50,000
4th instalment on or before 30 May 2003	$50,000
5th instalment on or before 15 June 2003	$50,000
6th instalment on or before 30 June 2003	$50,000
Total	$275,000

19 At 5.10pm on 2 April 2003, the respondent replied to LCP's above e-mail as follows:

> Dear Chor Pee,
>
> I thank you for your proposal. Please let me know if you prepared to cap your professional fees and not on a per day basis because one of Davinder Singh's object is to take days over cross-examination and if things are allowed to go his way we will never be able to finish the case.
>
> In the circumstances, I will be comfortable if we cap costs on a global basis.
>
> Hope to hear from you
>
> Regards
>
> Tony

20 At 7.12pm that same day, LCP replied to the respondent's e-mail as follows:

> Subject: Re Suit No. 843 of 2001
>
> Dear Tony,
>
> Herewith revised fee agreement on a lump sum basis up to conclusion of trial including any settlement or discontinuance but excluding all court fees and disbursements.

However, there was no attachment to the e-mail.

21 The respondent submitted that e-mails generated by computers could not be signed as that

was technically impossible. Nevertheless he contended they constituted an agreement under s 111(1) of the Act and precluded the Petitioner from presenting the Petition to tax its costs. He further asserted that the Petitioner was estopped by his payments from presenting the Petition.

22 According to the respondent, it was after the respondent had made substantial payments towards the agreed fee of $275,000 that LCP commenced borrowing various sums of money from him. The respondent alleged that the underlying motive of the Petition was to seek a "backdoor" order for the taxation of four invoices used as a set-off by LCP against, and to circumvent, the respondent's bankruptcy notices.

23 In reply to the respondent's affidavit, LCP filed a second affidavit on 24 April 2005. LCP contended there was no agreement on fees as the respondent had alleged, either orally or in writing, in relation to any or all of the five invoices issued by the Petitioner.

24 LCP pointed out that his second e-mail of 2 April 2003 to the respondent had no attachment and he had no records of the attachment. However, what was clear was that his e-mail referred to a proposal as regards fees for the Suit only and nothing else. As far as LCP was aware, the proposal ended there without the matter being pursued.

25 LCP deposed that a year later (on 16 March 2004), his secretary faxed on the Petitioner's behalf to the respondent's secretary, Lynda, a draft invoice for Civil Appeal No 1 of 2004 hoping to resolve the issue of fees with the respondent. The fax stated:

> Dear Lynda,
>
> I refer to your fax of 11 March 2004 and enclosures.
>
> Enclosed please find our draft tax invoice which we would like to set off against the outstanding loan
>
> Yours sincerely,
>
> Jasee Ng

The invoice was for $78,750.00. The document was faxed back to the Petitioner with the respondent's handwritten words, "No, I did not agree."

26 On 12 April 2004, LCP, under the letterhead of the Petitioner, wrote the following letter to the respondent:

> Re: High Court Civil Suit No. 834 of 2001/R
>
> Civil Appeal No. 1 of 2004
>
> We refer to our discussions and exchange of emails.
>
> For the avoidance of doubt, we would like to confirm the following terms of our retainer:
>
> 1 As regards Civil Suit No 834 of 2001R in respect of which we were instructed to take over in the middle of the trial, the agreed fee was $275,000 (which we have received).
>
> 2 Our retainer for the appeal is $75,000 +GST (excluding disbursements) provided that if

party and party costs are recovered, we will be entitled to render a further bill to the extent of such costs (less costs previously incurred by you).

3 The Written Submissions will be prepared by us in consultation with LP Thean who will approve the final draft (after considering your input).

4 As counsel, my oral contribution will be based on the Appellant's Case and the Written Submissions.

5 Kindly confirm the above by signing and returning to us a copy of the letter.

27 The respondent did not confirm the above contents by returning the duplicate copy of the above letter duly signed. Instead, against the column which contained the words "I confirm ASK Wee", the respondent wrote these words: "No!! for what?" and cancelled his typed name, ASK Wee.

28 LCP deposed that it was clear that the respondent himself did not think there was an agreement as regards legal fees for the Suit and the Appeal, let alone for the three other matters he handled for the respondent.

29 LCP pointed out that as at 2 April 2003 (when the e-mails were exchanged with the respondent), there was only one matter in existence, *viz* the Suit. The four other matters arose subsequently. Consequently, there could not have been an agreement in regard to legal fees for the Appeal or the three other matters because:

(a) the subject matter of the bill of costs of Thomas Sim (solicitor from M/s Engelin Teh & Partners) only arose in July 2003;

(b) instructions to LCP regarding the respondent's claim for a refund of fees paid to Gerald Godfrey QC were given in late April 2003; the matter only became very contentious in October 2003 when LCP worked on the respondent's complaint to the Bar Council of England and Wales; and

(c) Bill of Costs No 112 of 2003 and Civil Appeal No 114 of 2002 regarding the application for admission of Gerald Godfrey QC only arose in April 2004.

30 As for the respondent's plea of estoppel, LCP pointed out that all the bills on which the respondent made payment to the Petitioner (*eg* invoice no 835270) simply stated:

Re: Suit No 834 of 2001

To account of retainer

or

To further account of retainer

Consequently, there was no basis for the respondent to claim that in April 2003, LCP had agreed to a fee of $275,000 for all future work described in the five invoices.

31 In the light of his complaint that he did not have an opportunity to respond to the second affidavit filed by LCP, I adjourned the hearing to 1 April 2005 to enable the respondent to file a reply affidavit. The respondent filed his second affidavit on 30 March 2005 ("the respondent's second

affidavit").

32 Essentially, the respondent's second affidavit reiterated what he had deposed to in his first affidavit. He claimed that he was never informed that the agreement he had with LCP on legal fees was subject to a formal document. His signature was never a condition to the agreement and this was evident in the e**l**mails.

33 As for the fact that LCP's second e-mail to him on 2 April 2003 did not have an attachment, the respondent argued that the words *revised fee agreement* must mean that LCP was agreeing not to charge on a per day basis whilst at the same time providing further clarification that if a settlement agreement was concluded, the fee of $275,000 would nevertheless still be paid.

34 As for the Appeal, the respondent deposed he had paid $36,771 to the firm of M/s Khattar Wong & Partners for the work done by L P Thean in drafting the Appellant's Case. The Petitioner's draft invoice (in [25] above) for $78,750 covered the work done by L P Thean. When he wrote the words "I did not agree" on the Petitioner's fax dated 16 March 2004, the respondent explained that he meant the Appeal, not the Suit. Again, when he wrote the word "NO" on the petitioner's letter dated 12 April 2004 (in [26] above), the respondent meant it to apply to item 2 and not to item 1.

35 The respondent accused LCP of incompetence. Hence, when LCP faxed to him on 11 March 2004 the bill of M/s Khattar Wong & Partners (from L P Thean), his secretary Lynda faxed the respondent's response dated 18 March 2004 which said:

> Mr Wee feels that Mr Thean did all the work. How about Mr Lim contribute towards the costs?

36 LCP sent the fax back to the respondent on the same day with the following handwritten reply:

> Mr Thean's draft is based substantially on the draft Appellant's Case which I prepared in Dec 03 together with the discussion I had with him. If Mr Wee does not appreciate my work ¾ he need not pay me & I will stop all further work.

The respondent claimed that thenceforth, all future work done by LCP (including Bill of Costs No 112 of 2003 and Civil Appeal No 114 of 2002) was understood to be on a *pro bono* basis as LCP had botched up the respondent's case in the Suit. He claimed LCP also felt indebted to the respondent for extending loans that prevented bankruptcy proceedings being brought against LCP by the latter's creditors.

37 The respondent claimed he was personally responsible for recovering the fees he had paid to Gerald Godfrey QC and the Bar Council was looking into his complaint against the Queen's Counsel.

38 To support his contention that LCP/the Petitioner had agreed not to charge for work done for the Appeal, the respondent relied on the Petitioner's letter dated 16 August 2004 wherein Susanna Soh, the firm's litigation manager, had requested him to make payment of additional disbursements incurred totalling $7,824 for the Appeal *but not* fees.

The law

39 I turn next to the law, in particular ss 111, 112(1) and 120 of the Act. The sections state:

> **111.**—(1) Subject to the provisions of any other written law, a solicitor or a law corporation 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, 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 would otherwise be entitled to be remunerated.

(2) Every such agreement shall be signed by the client and shall be subject to the provisions and conditions contained in this Part.

112.—(1) Such an agreement as is mentioned in section 111 shall not affect the amount of, or any rights or remedies for the recovery of, any costs recoverable from the client by, or payable to the client by, any other person, and that person may, unless he has otherwise agreed, require any costs payable or recoverable by him to or from the client to be taxed according to the rules for the time being in force for the taxation of those costs.

…

120.—(1) An order for the taxation of a bill of costs delivered by any solicitor may be obtained on a petition of course by the party chargeable therewith, or by any person liable to pay the bill either to the party chargeable or to the solicitor, at any time within 12 months from the delivery of the bill, or, by the solicitor, after the expiry of one calendar month and within 12 months from the delivery of the bill.

(2) The order shall contain such directions and conditions as the court thinks proper, and any party aggrieved by any such order may apply by summons in chambers that the order be amended or varied.

(3) In any case where a solicitor and his client consent to taxation of a solicitor's bill, the Registrar may proceed to tax the bill notwithstanding that there is no order therefor.

(4) Section 39 of the Subordinate Courts Act (Cap. 321) shall not apply to proceedings brought under this section.

40 The Petition complied with s 120(1) of the Act as more than one month but less than 12 months had lapsed since the five invoices in dispute were delivered to the respondent. Section 120(3) did not apply as the respondent quite obviously did not agree to taxation.

41 I did not accept the respondent's contention that there was an agreement on legal fees reached with the Petitioner/LCP on 2 April 2003 by the exchange of e-mails because there had *not* been compliance with s 111(2).

The decision

42 This case was unusual in that it was not the solicitor who sought to enforce an agreement on legal fees (as in *Shamsudin bin Embun v PT Seah & Co* [1986] SLR 510) but the client. A case cited by both parties on the determination of an agreement on legal fees was *Chamberlain v Boodle & King* [1982] 3 All ER 188 ("the *Chamberlain* case") while the respondent cited Prakash J's (unreported) decision in *SM Integrated Transware Pte Ltd v Schenker Singapore Pte Ltd* [2005] SGHC 58 when he wrote in for further arguments.

43 The headnote of the *Chamberlain* case reads as follows:

In November 1978 the plaintiff retained the defendant firm of solicitors to act for him in a complex piece of litigation. On 4 January 1979, the defendants sent him a letter informing him they would charge for their services 'on the basis of the standard hourly rates applicable to the particular attorneys or solicitors involved in the litigation', that the rates would 'range from £60 to £80 per hour for lawyers of partner status and from £30 to £45 per hour for associates', and that they would render statements at regular intervals. In the meantime they asked him for an advance payment of £2,000. On 24 January the plaintiff sent them a cheque for £1,000 with a covering letter in which he made no reference to the proposed charges but promised to remit the balance in two weeks' time. The defendants continued to act for him and delivered to him bills of costs dated 19 February, 20 March, 30 April and 11 May 1979. Each of the last three bills referred to the account rendered by the preceding one. The litigation was settled between the delivery of the third and fourth bill. The plaintiff failed to pay the sums demanded and applied, within a month of receiving the fourth bill, for the bills to be taxed pursuant to s 70(1) of the Solicitors Act 1974. The defendants contended (i) that the bills were not subject to taxation because the letters of 4 and 24 January constituted a 'contentious business agreement' within ss 59 and 60 of the 1974 Act, or (ii) alternatively that the four bills were separate bills for the purposes of s 70 and, accordingly, since the plaintiff had not demanded taxation of each of the first three bills within a month of their receipt, no order could be made for their taxation pursuant to s 70(1). The master found that there was a contentious business agreement and gave the defendants liberty to enforce it. The plaintiff appealed to a judge, who held that there was not a contentious business agreement and made an order for taxation, but, in the exercise of his discretion, directed that each side should bear its own costs of the appeal. The defendants appealed to the Court of Appeal on the substantive issue and, by leave of the judge, the plaintiff cross-appealed against the order as to costs.

44 In dismissing the defendants' appeal, the UK Court of Appeal, *inter alia*, held that an agreement by letter could only amount to a contentious business agreement if it was specific in its terms and signed by the client. The defendants' letter to the plaintiff and his reply could not constitute such an agreement because the defendants' letter was imprecise as to the amount for which the plaintiff might expect to be liable and was silent as to disbursements, and the plaintiff in his reply did not expressly assent to the rates of charging which the defendants proposed.

45 In *Shamsudin bin Embun v PT Seah & Co* ([42] *supra*), the client made an application under s 113 of the Legal Profession Act (Cap 217, 1970 Ed) ("the 1970 Act") to set aside an agreement on costs of $15,000 dated 20 September 1985 ("the agreement") and made between the applicant and the respondent solicitors. The application was based on two grounds: (a) the agreement was unfair or unreasonable under s 113 of the 1970 Act; and (b) the applicant did not know that the agreement was an agreement for costs, *ie*, the plea of *non est factum*. Chan Sek Keong JC (as he then was) declared the agreement null and void and held that:

(a) the applicant did not understand the scope of the agreement when he signed it; and

(b) the agreement, by reason of its uncertain scope and its failure to contain the full terms of the bargain between the solicitor and the applicant, was not such an agreement that would come within the terms of s 111 of the 1970 Act.

46 The agreement in the case read as follows:

Agreement on costs

Re: Industrial accident on 24 April 1980 Suit No. 1874 of 1983

> I, Shamsudin bin Embun of block 11, No 74-H Teban Garden Singapore (2260) hereby agree to pay my solicitors PT Seah & Co the sum of Dollars fifteen thousand only ($15,000) for acting for me in the above matter.
>
> Dated the 20 day of September 1985
>
> Sd: Shamsudin bin Embun/RTP of the abovenamed.

47 The judge had this to say (at 513, [14]):

> Against the background of the respondent having been retained to act on 2 May 1980, my first observation is that on the face of the agreement, it is not apparent that the fee of $15,000 is payable for work done from 2 May 1980 to 20 September 1985 or for any future period and if so, what period. Second, it is not apparent that the fee of $15,000 includes disbursements.

He added (at 515–516, [22]):

> Applying the test of certainty in *Chamberlain v Boodle & King* to this case, it is clear that the agreement, by reason of its uncertain scope and its failure to contain the full terms of the bargain between the solicitor and the applicant, is not such an agreement that comes within the terms of s 111 of [the 1970 Act].

48 Based on the test propounded in the *Chamberlain case* as well as s 111(2) of the Act, it is clear that an agreement on legal fees must be certain, it must contain the full terms of the bargain between a solicitor and his client and it must be signed by the latter.

49 In his letter of 7 April 2005 requesting further arguments, the respondent relied on Prakash J's decision in *SM Integrated Transware Pte Ltd v Schenker Singapore (Pte) Ltd* ([42] *supra*) wherein she had, *inter alia*, held that the requirement under s 6(d) of the Civil Law Act (Cap 43, 1999 Rev Ed) for a lease to be signed by the person to be charged therewith was satisfied by e-mails from the defendants/landlord which contained the typed names of their authorised representatives/agents. She held (at [91]):

> I am satisfied that the common law does not require handwritten signatures for the purpose of satisfying the signature requirements of s 6(d) of the [Civil Law Act]. A typewritten or printed form is sufficient. In my view, no real distinction can be drawn between a typewritten form and a signature that has been typed onto an e-mail and forwarded with the e-mail to the intended recipient of that message.

50 The respondent argued that by extension of Prakash J's decision, the e-mails from LCP dated 2 April 2003 that contained his typed name amounted to a signature. This was to counter the argument of counsel for LCP that there was no electronic signature on the e-mails as required under s 8 of the Electronic Transactions Act (Cap 88, 1999 Rev Ed) which states:

> (1) Where a rule of law requires a signature, or provides for certain consequences if a document is not signed, an electronic signature satisfies that rule of law.
>
> (2) An electronic signature may be proved in any manner, including by showing that a procedure existed by which it is necessary for a party, in order to proceed further with a transaction, to have executed a symbol or security procedure for the purpose of verifying that an electronic record is that of such party.

51 The respondent's argument missed a fundamental point; I did not arrive at my decision based on the fact that LCP and the respondent had not signed their respective e-mails; it was because there was no agreement reached at all. I accept that the criterion established in cases (requiring a client to sign an agreement on legal fees before he and his solicitor are bound) before the advent of electronic communication must now be re-evaluated in the light of Prakash J's judgment. However, that was not the deciding factor in this case.

52 The respondent's reliance on LCP's e-mails of 2 April 2003 as evidencing an agreement was misconceived. The first e-mail from LCP timed at 4.45pm ([17] above) asked for the respondent's agreement or confirmation of his proposed brief fee of $275,000; the respondent did not confirm. Instead, in his response timed at 5.10pm, the respondent asked for a variation of LCP's proposal by his request that the latter cap his professional costs and not charge on a per diem basis. At 7.12pm, LCP responded with a revised fee proposal which details we will never know, because it is common ground that the attachment referred to in the e-mail was never sent. The respondent did not respond to this revised proposal. Just on basic contract principles alone, the revised offer of LCP was never accepted by the respondent. Hence, no agreement came into effect.

53 My view that no agreement on legal fees existed as at 2 April 2003 was reinforced by the respondent's own subsequent conduct. He disagreed with the Petitioner's letter dated 12 April 2004 (in [27] above) with an emphatic "NO", even for item 1 which confirmed that the agreed fee for the Suit was $275,000 which sum had been received by the Petitioner. In his submissions, the respondent sought to say that his negative response was confined to his disagreement with item 2 where LCP/the Petitioner sought his agreement on the retainer fee of $75,000 for the Appeal. This argument was untenable. The respondent was himself a lawyer and was in practice for decades before his retirement; he ought to have known better. If his disagreement was indeed only confined to item 2, the respondent could or should have written "NO" against item 2 and "YES" or "AGREED" or "CONFIRMED" against item 1. His "NO" written against the column meant for his signature can only be reasonably interpreted to mean he disagreed with the entire contents of the letter. Consequently, no agreement on legal fees existed as at 12 April 2004 either.

54 The next letter I considered was the fax dated 18 March 2004 from the respondent's secretary to LCP to which the latter responded in his handwriting (see [36] above). The last sentence of LCP's reply is significant. It states: "If Mr Wee does not appreciate my work – he need not pay me & I will stop all further work." LCP did not cease working for the respondent thereafter. Instead, after 18 March 2004, LCP acted for the respondent on Bill of Costs No 112 of 2003 and Civil Appeal No 114 of 2002 (see [29] above). He also argued the Appeal before the Court of Appeal on 27 May 2004.

55 The respondent did not counter LCP's statement that the alleged agreement on 2 April 2003 could not in any event cover legal fees for his or the Petitioner's future services in the Appeal and the three other matters. Indeed, it would appear that he accepted this fact as, in the hearing of the OSBs, the respondent (according to LCP) raised the issue of agreed fees *vis a vis* the Suit and the Appeal only. The argument to rebut LCP's statement was first raised in the respondent's second affidavit. The respondent contended that it was understood that all future work done by LCP would be on a *pro bono* basis because LCP had botched up the respondent's case in the Suit. That was not my understanding of LCP's statement that "[Mr Wee] need not pay me and I will stop all further work". LCP would not have continued acting for the respondent after 18 March 2004 had the respondent indicated he was unhappy with LCP's conduct in any way. He did not and hence the respondent led LCP to believe that the Petitioner or LCP should carry on acting for him in the Appeal and in the three other matters. If the respondent was unhappy with LCP's conduct of the Suit and/or the Appeal as he now claimed, he had his recourse elsewhere. It did not mean the Petitioner was not entitled to be paid for the services LCP had previously rendered.

56 I turn now to address the final issue. Item (a) of the respondent's application prayed for the Petition to be struck out on the basis that it was not supported by an affidavit. Order 38 r 2(2) of the Rules on which the respondent relied states:

> In any cause or matter begun by originating summons, originating motion or petition, and on any application made by summons or motion, evidence shall be given by affidavit unless in the case of any cause, matter or application any provision of these Rules otherwise provides or the Court otherwise directs, but the Court may, on the application of any party, order the attendance for cross-examination of the person making any such affidavit, and where, after such an order has been made, the person in question does not attend, his affidavit shall not be used as evidence without the leave of the Court.

57 I was of the view that the above rule had no application to a Petition of Course which was a creature of statute that appeared in s 120(1) of the Act. In any case, LCP's first affidavit did support the Petition.

58 There was no merit in the respondent's application. Conversely, it was clear from the events which transpired before the filing of the Petition that the respondent himself did not accept there was an agreement on legal fees for the Petitioner's or LCP's conduct of the Suit. Even if I am wrong on this issue, it was clear that the alleged agreement could not in any case extend to the services rendered by the Petitioner or LCP pertaining to the Appeal; the taxation of the bill of costs of Thomas Sim; the application for admission to the Singapore Bar of, and the complaint against, Gerald Godfrey QC; and Bill of Costs No 112 of 2003 for Civil Appeal No 114 of 2002.

59 Consequently, I granted an order in terms of the Petition with costs.