

Tommy Choo, Mark Go & Partners v Kuntjoro Wibawa
[2014] SGHC 79

Case Number : Bill of Costs No 173 of 2013 (Registrar's Appeal No 94 of 2014)
Decision Date : 17 April 2014
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Bachoo Mohan Singh (Counsel) and Ling Leong Hui (Tommy Choo, Mark Go & Partners) for applicant; Ooi Oon Tat (Judy Cheng & Co) for respondent.
Parties : Tommy Choo, Mark Go & Partners — Kuntjoro Wibawa

Civil Procedure – Costs – Taxation

17 April 2014

Judgment reserved.

Choo Han Teck J:

1 This was an appeal by the applicant, a law firm named “Tommy Choo, Mark Go & Partners”, against the order of the assistant registrar staying an order for the taxation of costs. The respondent was a client of the applicant since July 2011 and the applicant was retained under a warrant to act dated 20 August 2011, signed by the respondent.

2 The matter in which the applicant was retained to act concerned certain trusts and payments out of those trusts. The matter had not been resolved when the respondent changed solicitors and appointed Mr Almenoar to act in place of the applicant. The applicant then raised a bill of costs for the solicitor and client costs, based on rates of charges set out in the warrant to act.

3 The applicant was told to have its bill taxed. The respondent subsequently alleged that the bill should not be taxed on the terms set out in the warrant to act because it was superseded by an oral agreement to the effect that the terms in the warrant to act were to be used only as a basis for taxing the party and party costs should the respondent succeed in the pending litigation.

4 The applicant applied by Summons No 3068 of 2013 for an order that the applicant be allowed to draw up a bill of costs for its solicitor and client costs and for the bill to be taxed on an indemnity basis. On 30 August 2013, despite the respondent’s claim of an oral agreement, Andrew Ang J ordered that the applicant’s bill be taxed.

5 The taxation proceedings was due to be heard on 19 November 2013, but was adjourned to 3 December 2013. On 3 December 2013, Mr Almenoar informed the assistant registrar that he intended to apply to be discharged as the respondent’s solicitor. The assistant registrar, according to counsel, suggested that parties attend before Andrew Ang J for clarification of the orders made by him on 30 August 2013. The clarification was fixed to be heard on 8 January 2014 by Andrew Ang J, who held that he was *functus officio* and that a clarification of that nature should not be determined by him.

6 The applicant’s bill of costs was then re-fixed for taxation on 27 January 2014. The hearing was adjourned at the request of Mr Ooi, counsel for the respondent. The assistant registrar informed parties that the taxation will proceed on the new date if a formal application was not filed to stay the

taxation. On 27 February 2014, Mr Ooi obtained another adjournment for him to file the application for a stay. This was Summons No 1207 of 2014, filed on 6 March 2014. On 13 March 2014, the assistant registrar heard Summons No 1207 and adjourned the taxation. The assistant registrar, believing that the concurrent proceedings in Originating Summons No 204 of 2014 ("OS 204") – which was brought by the respondent, seeking, amongst other things, a declaration that the warrant to act between respondent and applicant was of no effect – would have "a direct bearing on [the] taxation proceedings... and to avoid any possible conflict in the outcome of both proceedings, that it is both practical and just for [the taxation] to be stayed". It was against this order that the applicant appealed before me.

7 Mr Bachoo Mohan, counsel for the applicant, submitted that the assistant registrar had no power to order a stay of an order made by a judge. In principle, he was right, although the assistant registrar would have the power to adjourn the hearing. In that event, the applicant might still have appealed but on the different ground that it was wrong to adjourn the taxation proceedings.

8 Mr Bachoo Mohan argued that the bill of costs was properly and validly drawn up, and there was no reason to deny the applicant its duly deserved costs. Mr Ooi argued that the bill of costs was improperly drawn up because it was based on a warrant to act that was not intended to apply. He submitted that, for that reason, the respondent filed OS 204 to determine whether there was an oral agreement between the applicant and the respondent that superseded the warrant to act, or in any event, agreeing that the rates of charges there should not be used. The applicant denies any oral agreement of that nature.

9 In my view, the allegation by the respondent cannot be resolved by an Originating Summons application. It is clearly a contractual claim which is disputed on the facts if not in law as well. The application in OS 204 should have been begun by writ, but that is a technical and legal issue.

10 I see no reason why the applicant's bill of costs cannot be taxed even if the respondent had filed a contractual claim. The assistant registrar who taxes the bill will have to decide whether the amounts claimed were fair and equitable. That finding has to be made irrespective of the rates stated in the warrant to act. I am mindful that Mr Ooi had submitted before me that the costs were orally agreed, on the basis of the respondent paying "what he can" and then to a sum fixed at \$5,000 a month, before finally agreeing on \$10,000 a month. None of these submissions seemed to be made before Andrew Ang J when he first heard the application on 30 August 2013 and ordered that the costs be taxed on an indemnity basis.

11 In conclusion, I am of the view that the respondent's action in OS 204 is not likely to succeed without it being converted into a writ action and in any event, will not be resolved for some time. In the meantime, the assistant registrar can take the respondent's arguments into consideration as to whether the costs can be fairly taxed on that, or some other basis.

12 For the reasons above, I order that Bill of Costs No 173 of 2013 be restored for taxation. The costs of this appeal to be costs to the applicant, to be fixed before me should parties fail to agree.