

Tommy Choo, Mark Go & Partners v Kuntjoro Wibawa and other matters
[2015] SGHC 239

Case Number : Bill of Costs No 173 of 2013 (Summons No 3317 and 3318 of 2014), Originating Summons No 204 of 2014 and Bill of Costs No 173 of 2014 (Summons No 5186 of 2014)

Decision Date : 14 September 2015

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : Singa Retnam (instructed counsel) and Ling Leong Hui (Tommy Choo Mark Go & Partners) for the applicant in BC 173/2013, the defendant in OS 204/2014; Ooi Oon Tat (Judy Cheng & Co) for the respondent in BC 173/2013, the plaintiff in OS 204/2014; Bachoo Mohan Singh (Bachoo Mohan Singh Law Practice) for the applicant in BC 173/2014; Singa Retnam (instructed counsel) and Ling Leong Hui (Tommy Choo Mark Go & Partners) for the respondent in BC 173/2014.

Parties : Tommy Choo Mark Go & Partners — Kuntjoro Wibawa @ Wong Kin Tjong — Veritas Law Corporation

Civil Procedure – Costs – Taxation

14 September 2015

Judgment reserved.

Choo Han Teck J:

1 Mr Kuntjoro Wibawa engaged the services of TCMGP in July 2011 to act for him in a matter concerning his father's estate and discretionary trusts in Jersey. Mr Ling Leong Hui was the solicitor in TCMGP who advised Mr Wibawa. Mr Ling felt that he was not sufficiently familiar with the law on trusts and so instructed Mr Bachoo Mohan Singh as counsel. In August 2011, Mr Wibawa signed a warrant to act, which authorised TCMGP to act on his behalf. The warrant to act also sets out TCMGP and Mr Singh's charging rates. TCMGP commenced Suit 650 of 2011 ("Suit 650") on behalf of Mr Wibawa in respect of his claim on 21 September 2011. That suit is not before me and is not relevant for the purposes of the proceedings before me.

2 For the next two years after August 2011, Mr Singh and TCMGP acted on behalf of Mr Wibawa in Suit 650 and related matters, which included interlocutory applications arising from Suit 650, and applications for advancement of trust monies in the Royal Court of Jersey. But the parties eventually decided to terminate their solicitor-client relationship. Mr Wibawa discharged TCMGP and Mr Singh on 3 June 2013. Suit 650 was still in the interlocutory stage at that time and general discovery had just been completed. The parties had just filed their lists of documents.

3 After TCMGP was discharged, it prepared a bill of costs for their costs, based on the rates set out in the warrant to act. Mr Wibawa's new solicitors initially asked TCMGP to proceed with taxation but qualified that it was "subject to all of [Mr Wibawa's] legal rights including the agreement on costs" between them. Subsequently, Mr Wibawa resisted taxation on the basis that the terms set out in the warrant to act were superseded by an oral agreement. He asserted that the oral agreement was that he only had to pay Mr Singh a sum of \$5,000, which was later increased to \$10,000, every month. He further asserted that under this oral agreement, the terms in the warrant to act were only going to be used as a basis for taxing the party and party costs if he succeeded in Suit 650.

4 TCMGP applied in Summons No 3068 of 2013 for an order that they be allowed to draw up a bill of costs and for the bill to be taxed on an indemnity basis. Mr Wibawa resisted this application by arguing that the oral agreement should apply instead. On 30 August 2013, Andrew Ang J ordered that the bill of costs be taxed. TCMGP commenced Bill of Costs No 173 of 2013 ("BC 173/2013") on 21 October 2013.

5 On 6 March 2014, with the taxation proceedings in BC 173/2013 still ongoing, Mr Wibawa filed Originating Summons No 204 of 2014 ("OS 204") for a declaration that the warrant to act was void and that he had already paid Mr Singh all his legal fees which were incurred in accordance with the oral agreement they had. Concurrently, Mr Wibawa filed an application for a stay of BC 173/2013 in Summons No 1207 of 2014. The learned assistant registrar ("the AR") was of the view that the proceedings in OS 204 had a direct bearing on BC 173/2013 and thus allowed the stay application. TCMGP appealed against this decision in Registrar's Appeal No 94 of 2014 ("RA 94"), which was fixed before me. I allowed the appeal and ordered that the proceedings in BC 173/2013 should resume: see *Tommy Choo, Mark Go & Partners v Kuntjoro Wibawa @ Wong Kin Tjong* [2014] SGHC 79.

6 The AR continued hearing BC 173/2013 and gave her decision on 24 June 2014. TCMGP and Mr Wibawa were both dissatisfied with the taxation order. They filed Summons No 3317 of 2014 ("SUM 3317") and Summons No 3318 of 2014 ("SUM 3318") respectively to apply for a review of the order. As OS 204 involved the same parties and had overlapping issues with BC 173/2013, all three matters were eventually fixed together before me. The three matters are:

- (a) SUM 3317, in which TCMGP seeks a review of the AR's taxation order in BC 173/2013 on the grounds that the costs awarded are too low.
- (b) SUM 3318, in which Mr Wibawa similarly seeks a review of the AR's taxation order in BC 173/2013 but on the grounds that the costs are too high;
- (c) OS 204, in which Mr Wibawa prays for a declaration that the warrant to act is null and void, and for a declaration that all costs due and payable to TCMGP and Mr Singh, have been paid.

7 There was a fourth matter before me, namely, Summons No 5186 of 2014 ("SUM 5186"), which concerns another set of client and former solicitors: TCMGP and M/s Veritas Law Corporation ("VLC"). For the initial proceedings in OS 204, TCMGP was represented by VLC, which was Mr Singh's firm at that time, with Mr Singh acting as its counsel in court. VLC discharged itself from acting in OS 204 in August 2014. TCMGP and VLC were not able to agree on how much legal fees VLC should be paid, and eventually a bill of costs for taxation was filed on 4 September 2014. This is Bill of Costs 173 of 2014 ("BC 173/2014"), which is not to be mistaken for the other bill of costs, BC 173/2013, which is also before me. In SUM 5186, TCMGP seeks a review of the AR's taxation order in BC 173/2014 on the ground that the costs are too high. Given that SUM 5168 is not directly connected with the other matters, I address it after giving my grounds on the other matters.

OS 204

8 Although OS 204 is an originating summons and not a writ, Lee Seiu Kin J ordered on 30 June 2014 that cross-examination be carried out. This was necessary because the case involved many factual disputes, as I had already pointed out in my earlier judgment in RA 94. The cross-examination was carried out before me.

9 On the evidence before me, I am not satisfied that Mr Wibawa has proved on the balance of

probabilities that there was an oral agreement as alleged. The warrant to act signed by Mr Wibawa is a written agreement that contains clear terms. Mr Wibawa may not be very proficient in English, but the evidence shows that he is not someone who cannot understand or is completely unfamiliar with the language. I am satisfied that he understood the terms of the warrant to act when he signed it. Notwithstanding this, Mr Wibawa might still succeed had he been able to prove, on the balance of probabilities, that it was orally agreed that he pay Mr Singh \$5,000, which was later increased to \$10,000, every month and that the terms in the warrant to act did not apply to him but was only meant to be a basis for them to claim party and party costs from the defendants in Suit 650 if Mr Wibawa succeeded in his claim.

10 The evidence from Mr Wibawa to support his claim of the existence of the oral agreement is vague. Even from his affidavit filed on 6 March 2014, it is unclear when or where the alleged oral agreement was made or what its terms were exactly. According to him, Mr Singh told him during their first meeting in July 2011 that "he intended to help [Mr Wibawa who] was to raise whatever funds [he] could". The day after this meeting, Mr Singh asked him to raise a sum of \$5,000 to be paid monthly to him, but he did not answer. Thereafter, he signed the warrant to act which contained the charging structure of TCMGP and Mr Singh. Following that, on 8 February 2012, the terms of the oral agreement was altered and he was to pay \$10,000 a month instead of \$5,000. He deposed that they also agreed on that day that the other terms of the agreement "was still" that if he wins the case, Mr Singh would charge the legal costs against the trustees but if he loses, he need not pay any more legal fees apart from the monthly sums that they had agreed on. Yet in the earlier sections in the affidavit, there was no mention of these "other terms".

11 Mr Wibawa's case in OS 204 is also contradicted by the affidavits that he had deposed in the proceedings in the Jersey courts for the advancement of \$500,000 to pay his legal fees in early 2012. In those affidavits, he deposed that he owed his lawyers large sums of monies, which were charged by hourly rates.

12 The records of the payment of the legal fees also do not follow the terms of the oral agreement. From August to December 2011, Mr Wibawa paid TCMGP a total sum of \$55,000, which does not tally with the agreement under which only \$25,000 would have been due. On March 2012, he paid a sum of \$75,000 to TCMGP on top of the monthly sum of \$10,000. Thus, even the records of payment do not support Mr Wibawa's case.

13 The transcripts of audio recording that Mr Wibawa use to support his case is also of little assistance to him. Those transcripts are incomplete and have only been selectively transcribed with many portions of the conversations cut off. They were also not done properly, with many amendments at the side in some sections.

14 I am not satisfied that there was such an oral agreement. It is unlikely for there to be an oral agreement that covers only the monthly sum due to Mr Singh with no mention of that due to TCMGP. It may be the case that Mr Wibawa had an agreement with Mr Singh or Mr Ling that he could pay \$5,000, which was later increased to \$10,000, every month for the time being as he was financially constrained. But this does not mean that the terms of the warrant to act are void in that he still has to eventually pay those legal fees though some flexibility is accorded to him. I thus dismiss Mr Wibawa's application in OS 204.

BC 173/2013 (SUM 3317 and SUM 3318)

15 In my judgment in *Tommy Choo, Mark Go & Partners v Kuntjoro Wibawa @ Wong Kin Tjong* [2014] SGHC 79 at [10], I held that the taxation proceedings in BC 173/2013 are not directly affected

by the result of the claim in OS 204. The court that taxes a bill of costs has to decide whether the amounts claimed were fair and reasonable, and this finding is made irrespective of the rates stated in the warrant to act. If TCMGP or Mr Wibawa had wanted to enforce either the cost agreement in the warrant to act or the alleged oral agreement, they have to do so before the matter was fixed for taxation. Even in cases where solicitors are relying on a costs agreement, the court has the discretion to declare the terms of the agreement void if the terms are deemed by the court to be unfair or unreasonable: s 113(3) of the Legal Profession Act (Cap 161, 1997 Rev Ed). The terms of the warrant to act or any other agreement between the parties may be taken into consideration as a factor in taxation proceedings, as the AR did in this case. But the test ultimately is still whether the amounts claimed are fair and reasonable, and in doing so, the court ought to have regard to the principle of proportionality: see O 59 r 31 read with Appendix 1 of O 59 r 31(1) of the Rules of Court (Cap 322, R5, 2014 Rev Ed) and *Lin Jian Wei and another v Lim Eng Hock Peter* [2011] 3 SLR 1052.

16 TCMGP's bill is mainly for proceedings in Suit 650. When TCMGP was discharged in June 2013, general discovery had just been completed. Prior to that, TCMGP and Mr Singh acted on behalf of Mr Wibawa in 14 interlocutory applications. These include applications for a Mareva injunction, an anti-suit injunction, leave for service out of jurisdiction, advancement of funds from the trust, as well as several summons to defend the defendants' applications to strike out Mr Wibawa's claim, one of which was followed by a registrar's appeal against the assistant registrar's decision to strike out his claim against the ninth defendant, and a few applications for further and better particulars of the defendants' defence. There were also two mediation sessions at the Singapore Mediation Centre on 19 July and 27 August 2012, which was attended by Mr Singh, Mr Ling and Mr Tommy Choo.

17 Additionally, there were four applications filed in the Royal Court of Jersey, which include an application for stay of proceedings and an application for an advancement of \$500,000 from the trust towards payment of Mr Wibawa's legal fees. Mr Singh spent about seven days in January 2012 in Jersey to assist Mr Wibawa in the applications. It also appears that Mr Singh did some investigative work and provided advice to Mr Wibawa on his interest in accounts and assets in Hong Kong. Mr Wibawa disputes this and alleges that he did not give any instructions to TCMGP or Mr Singh to carry out any such work in relation to the accounts and assets in Hong Kong.

18 In total, TCMGP and Mr Singh acted on behalf of Mr Wibawa for a period of 22 months, from late July 2011 to end May 2013. As with the majority of cases, there were lull periods interspersed throughout the 22 months when the matter was relatively inactive. It is undisputed that Mr Singh did the bulk of the work whilst Mr Ling was hardly involved in the substantive part of the matter due to his unfamiliarity with the subject matter of the dispute. Mr Ling played a largely clerical role and even then, the bulk of his work was done by his clerk, Mr Jeffrey Lim.

19 In section 1 of the bill of costs, TCMGP claims a total of \$344,300. Specifically, it claims \$266,300 for the work done by Mr Ling, the agreed fee of \$15,000 for Mr Choo's attendance at the mediation sessions, and \$63,000 for the work done by its clerk, Mr Lim. According to TCMGP, Mr Ling had spent 68 hours on court and mediation sessions, and 486 hours on work outside of court. It asserts that according to the terms of the warrant to act, Mr Ling, who was at that time a lawyer with 9 years of legal experience, charged \$700 per hour for court work and \$450 per hour on work outside of court. It asserts that its clerk, Mr Lim, spent 700 hours on work for Mr Wibawa, and each hour was charged at \$90. TCMGP acknowledges that \$75,000 has already been paid by Mr Wibawa for TCMGP's fees.

20 In section 2 of the bill, TCMGP asks for \$3,500 for the costs of work done for the taxation. In section 3, TCMGP claims a total of \$944,310.80. Apart from typical disbursements which amount to \$7,310.80, the remaining costs claimed in section 3 (*ie*, \$937,000) are for Mr Singh's fees for acting

for Mr Wibawa as instructed counsel and for drawing up the bill of costs for taxation. According to TCMGP and the fee note tendered by Mr Singh, Mr Singh spent 68 hours attending court and mediation sessions, 1,000 hours on work outside of court and made a trip to Jersey for about a week. He charged \$1,000 per hour for attending court and mediation sessions, \$800 for work outside of court and \$7,000 per day for overseas work. The charging rates of the time spent in court and work outside of court are contained in the warrant to act but the rate for overseas work is not documented. TCMGP and Mr Singh acknowledge that Mr Wibawa has already paid \$280,000 towards Mr Singh's fees.

21 Although counsel for Mr Wibawa argued that Mr Singh's fees should not be taxed in this bill, the AR decided to allow Mr Singh's fees to be included under section 3 of the bill as disbursements. She was of the view that the alternative to this would be undesirable as Mr Singh's only recourse would be to sue TCMGP for fees or to sue Mr Wibawa for work done, which would only cause the litigation regarding legal costs to be more protracted than it already was. I agree with the AR on this issue and will adopt the same approach.

22 The AR declined to allow TCMGP's claim for legal costs for the work done by its clerk, Mr Lim. As for the other costs, the AR's decision was as follows:

(a) For section 1, for work done other than for taxation by TCMGP from 30 July 2011 to 28 May 2013, the costs were taxed at \$127,500. She arrived at this sum by applying the rate of \$450 per hour for Mr Ling, and multiplying that by 250 hours, before adding \$15,000 which was the agreed fees for the mediation sessions.

(b) For section 2, for work done for taxation, the costs were taxed at \$3,000. Having regard to the history of the matter and the numerous adjournments for the matter for which costs were reserved, she decided not to exercise her power under O 59 r 8(7) of the Rules of Court to disallow the costs in this section even though more than one-half of the total amount of the bill had been taxed off.

(c) For section 3, a sum of \$486,000 was allowed out of TCMGP's claim for \$944,310.80. The AR allowed \$480,000 for work done by Mr Singh in court, in the mediation session, in preparation for the case as well as overseas. The figure \$480,000 was arrived at by applying the rate of \$800 per hour for Mr Singh, and multiplying that by 600 hours. As agreed by the parties, the AR fixed the other disbursements at \$6,000.

23 I agree with the AR that there is no basis for TCMGP to claim legal costs for the work done by its clerk, Mr Lim. The expenses incurred in employing support staff such as clerks and secretaries are part of a firm's general expenses.

24 I am of the view that the costs awarded in sections 1 and 3 are still too high. Even though the claim in Suit 650 is for a total sum of \$10.8m, the issues involved, such as trusts and fiduciary duties, are not exceptionally difficult or complex. Mr Singh, who was instructed for his expertise in the area, repeatedly reassured Mr Wibawa that the matter was simple and that his case was strong. It is also clear that the costs claimed for Mr Ling and Mr Singh overlap almost entirely. These costs should not be claimed twice, especially given that it is undisputed that Mr Singh did the substantive work with Mr Ling only playing a clerical role. Importantly, it must be borne in mind that the proceedings in Suit 650 were only at discovery stage at the time TCMGP and Mr Singh were discharged. Although 14 interlocutory applications had taken place in Suit 650 and other applications have been taken up in the courts in Jersey, it is disproportionate for them to be claiming more than \$1m for the work done even before the matter was anywhere near trial. TCMGP and Mr Singh have not produced

contemporaneous timesheets or attendance notes that accurately record the hours they spent working on Mr Wibawa's case. Although Mr Singh produced some time sheets and a fee note, I am not satisfied that these were made contemporaneously and have doubts as to their reliability. Further, these documents do not contain helpful information. They only state the hours that he spent on the respective dates but not the details of work done. In a letter to TCMGP dated 13 April 2012, Mr Singh himself revealed that his timesheet is "not comprehensive" and that he would "reconstruct all time spent [or] work done and render a comprehensive timesheet if need be" in due course. In the absence of reliable, credible and contemporaneous documents that support and substantiate their claim, TCMGP and Mr Singh cannot expect the court to accept the large figures in their bills of cost.

25 Having regard to the circumstances of the case and in particular, to the factors listed in Appendix 1 to O 59 r 31(1), I am of the view that the costs in section 1 should be taxed at \$50,000, inclusive of the agreed fee of \$15,000 for Mr Choo's attendance at mediation. I would have been minded to reduce this sum if not for the fact that it is undisputed, given that three solicitors were sent to attend the mediation sessions. The fact that Mr Ling played a secondary and clerical role in the proceedings is an important factor to consider in taxing his costs. As for section 2 of the bill of costs, I agree with the AR that the sum of \$3,000 is fair and reasonable. For section 3 of the bill, I will tax the costs at \$206,000, inclusive of the agreed sum of \$6,000 for the disbursements of the typical items. In coming to this figure, I have taken into account the work that Mr Singh undertook for the 14 interlocutory applications in Suit 650, the preparatory work leading up to the commencement of the claim, as well as his trip to Jersey. For the Jersey proceedings, I note that the time Mr Singh spent in Jersey after the hearing on 16 January 2012 was for his own leisure and enjoyment and must thus be disregarded. Given that Mr Wibawa has already paid \$75,000 to TCMGP and \$280,000 towards Mr Singh's fees, the excess sum of \$96,000 has to be returned to Mr Wibawa.

26 Mr Wibawa has also alleged that Mr Singh and TCMGP committed numerous breaches of professional conduct rules. I have not dealt with these allegations in these proceedings as this is not the appropriate forum and the issues, which may carry serious consequences, have not been properly ventilated. Mr Wibawa may wish to lodge these complaints with the Law Society of Singapore for the complaints to be properly dealt with.

27 I thus dismiss TCMGP's application in SUM 3317 and allow Mr Wibawa's application in SUM 3318. The costs in BC 173/2013 are taxed as follows:

- (a) Section 1: \$50,000;
- (b) Section 2: \$3,000; and
- (c) Section 3: \$206,000.

BC 173/2014: SUM 5186

28 That leaves me with the final matter: SUM 5186. This summons is brought by TCMGP for a taxation review of the orders of the learned assistant registrar in BC 173/2014 ("the AR in BC 173/2014"), on the basis that the taxed costs were too high.

29 VLC, which was the firm that Mr Singh was in up till April 2015, represented TCMGP in OS 204, with Mr Singh being the lead counsel on the case. OS 204 was the summons for the court to determine the validity of the terms of the warrant to act between Mr Wibawa and TCMGP. VLC discharged itself from acting for TCMGP five months after the commencement of OS 204, possibly due to concerns that there may be a conflict of interest. Both TCMGP and VLC consented to taxation of

VLC's costs on a solicitor and client indemnity basis.

30 The bill of costs states that Mr Singh and Mr Too Xing Ji were the solicitors from VLC who worked on OS 204 on behalf of TCMGP. The total sum claimed in section 1 of the bill of costs is \$41,680. VLC's claim is that Mr Singh spent 10 hours in court and 51 hours out of court, while Mr Too spent 11 hours in court. The hourly rate of Mr Singh is fixed at \$800 and Mr Too's at \$300. The sum of \$41,680 is derived from these rates, after applying a "goodwill discount" of 20%. VLC claims \$2,000 and \$2,069.80 for sections 2 and 3 of the bill respectively.

31 TCMGP's position is contradictory. It argues that strictly speaking, VLC and TCMGP were not in a client-solicitor relationship and there was no agreement to pay fees. It argued that this was because by acting in OS 204, Mr Singh was merely protecting his own interest in the legal fees that are to be obtained from Mr Wibawa. Yet, it had consented to taxation and conceded before the AR in BC 173/2014 that Mr Singh "has done work" and should be paid, but the legal costs "should be something that is reasonable" and not the large amount that VLC was claiming.

32 The AR in BC 173/2014 took into account the fact that VLC represented TCMGP for a period of five months and was involved in a few interlocutory applications which included an application to strike out the claim that led to a registrar's appeal, and an application for security of costs. She also considered that Mr Singh had to review four affidavits filed by Mr Wibawa in OS 204 as well as five affidavits of Mr Ling and Mr Singh himself. Taking all these factors into consideration, the AR in BC 173/2014 taxed the costs as follows:

- (a) Section 1: \$30,000;
- (b) Section 2: \$1,400; and
- (c) Section 3: \$2,069.80 as agreed.

33 Mr Singh is undoubtedly an interested party in OS 204, where the sole issue was whether he had made an oral agreement with Mr Wibawa. Mr Singh was also the principal solicitor from VLC who acted in OS 204. Even on VLC's own account in its bills of costs, apart from appearing in court assisting Mr Singh. Mr Too did not spend any time outside of court working on the matter. Although I accept that VLC and TCMGP may have been in a client-solicitor relationship in the five months, I am of the view that in OS 204 Mr Singh was acting principally in his own interest. This makes the issue of legal costs in this case a more unusual one. I do not think that the AR in BC 173/2014 was fully aware of Mr Singh's involvement in OS 204 or had sufficiently taken the fact that Mr Singh was very much acting for himself in OS 204 into consideration.

34 OS 204 is not a complex claim. It is a very straightforward matter that has been unnecessarily complicated by all the parties involved. There is only a simple issue: was there an oral agreement that superseded the terms of the warrant to act? The bulk of the material in OS 204 that was presented by the parties is peripheral and irrelevant.

35 In view of the nature of OS 204, the fact that VLC only acted in it for five months, and that Mr Singh was a representative of both TCMGP and himself and not a solicitor from a separate firm who was representing a client in a matter that he had no interest in, I order costs in section 1 of BC 173/2014 to be fixed at \$5,000. The costs in sections 2 and 3 are to remain as taxed by the AR in BC 173/2014.

36 To summarise, I allow the application in SUM 5186 and tax the costs as follows:

- (a) Section 1: \$5,000;
- (b) Section 2: \$1,400;
- (c) Section 3: \$2,069.80 as agreed.

37 Given the protracted disputes over costs, so far as to costs of the four matters before me, I order that each party is to bear his own costs.

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