# Lim Mey Lee Susan *v* Singapore Medical Council
# [2016] SGCA 14

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| **Case Number** | : Civil Appeal No 154 of 2015 |
| **Decision Date** | : 09 March 2016 |
| **Tribunal/Court** | : Court of Appeal |
| **Coram** | : Andrew Phang Boon Leong JA; Tay Yong Kwang J; Quentin Loh J |
| **Counsel Name(s)** | : Lee Eng Beng SC, Paul Tan and Amy Seow (Rajah & Tann Singapore LLP) for the appellant; Melanie Ho, Chang Man Phing, Joycelyn Ngiam and Tan Kia Hua (WongPartnership LLP) for the respondent. |
| **Parties** | : DR SUSAN LIM MEY LEE — SINGAPORE MEDICAL COUNCIL |

*Civil Procedure – Costs – Taxation*

[LawNet Editorial Note: This was an appeal from the decision of the High Court in [2015] SGHC 129.]

9 March 2016 Judgment reserved.

**Andrew Phang Boon Leong JA (delivering the oral judgment of the court):**

**Introduction**

1 This appeal was brought by Dr Susan Lim Mey Lee ("the Appellant") against the decision of the High Court Judge ("the Judge") in *Singapore Medical Council v Lim Mey Lee Susan* [2015] SGHC 129 ("the Judgment"), concerning the party-and-party costs payable by her to the Respondent, the Singapore Medical Council ("the SMC"), in a Bill of Costs which was rendered for work done for hearings before two Disciplinary Committees. The issue on appeal is a narrow one: it concerns the fees of the second legal assessor ("2nd LA") to the second Disciplinary Committee ("2nd DC") appointed by the SMC for the disciplinary inquiry of the Appellant.

**Our decision**

2 It is settled law that, on a taxation of costs on a standard basis, a party shall be allowed a reasonable amount in respect of all costs reasonably incurred and that doubts will be resolved in favour of the paying party (see O 59 r 27(2) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("the Rules")). However, every exercise of this nature is necessarily granular, fact-sensitive and context-sensitive.

3 We now turn to examine the decisions of the assistant registrar ("the AR") and the Judge, respectively.

***The AR's decision***

4 In respect of the 2nd LA's work, the AR awarded $22,000 in costs against the Appellant. In our view $22,000 was, with respect, an overly low figure.

5 First, we think that the hourly rate to be applied should have been $1,050 (which was the rate agreed between the SMC and the 2nd LA) and not $570 which was the rate charged by the first legal

assessor ("1st LA") and which the AR seems to have taken into consideration in arriving at her decision. Both the 1st LA and the 2nd LA are Senior Counsel. The agreed hourly rate of $1,050 which was charged by the 2nd LA was, in our view, a reasonable one, taking into account his seniority. It was apparent from the Respondent's solicitors' letter dated 23 May 2014 (which was in response to the Appellant's solicitors' letter dated 4 March 2014 requesting more information about the SMC's disbursement items) that the 1st LA had given the SMC a discounted hourly rate instead of "his usual charge out rate of $1,000/hour". Counsel for the Appellant, Mr Lee Eng Beng SC ("Mr Lee"), accepts that $1,000 per hour for a Senior Counsel would be reasonable if a matter is between a solicitor and his client. Counsel for the Respondent, Ms Melanie Ho, points out that the 2nd LA was acting as solicitor for his client, the SMC, in the disciplinary proceedings. We think that is correct and that the agreed rate of $1,050 cannot therefore be said to be unreasonable. We should add that we do not see any reason in principle why a distinction in the hourly rate charged should vary between court work on the one hand and work performed as a legal assessor on the other. Further, as the Judge pointed out in [81] of the Judgment, the Appellant had to bear the risk of a higher hourly rate because she, being the paying party, also stood to benefit from any lower hourly rates.

6 Secondly, in our view, this was a complex case from both legal and factual perspectives – both of which were inextricably connected with each other. The 2nd LA would therefore have spent a lot of time on preparatory work. This ought to have been taken into account, but was not reflected in the $22,000 that the AR awarded. On the twin assumptions that the AR applied an hourly rate of $570 and that 32 hours were spent in the hearings proper, it would mean that only 6.6 hours of time was catered for the 2nd LA's preparatory work. With respect, we do not feel that this was a reasonable figure, even though the 2nd LA did not assist in the writing of the 2nd DC's decision. The AR's decision may have been partly due to her view that the Appellant should not be made to bear the cost of work done by the 2nd DC which duplicated the work done by the first Disciplinary Committee ("1st DC"). However, we agree with the Judge's view at [82] of the Judgment that the Appellant is liable for all the costs associated with the recusal of the 1st DC and must therefore bear the cost of any duplicative efforts.

***The Judge's decision***

7 We now turn to the Judge's decision. On a review of the taxation, he disagreed with the AR and awarded the full sum of $235,200. In our view, the number of hours spent by the 2nd LA was reasonable and, as we have stated, we agree that the hourly rate to be applied is $1,050. This is especially so bearing in mind the history of the disciplinary proceedings. It would be natural for the 2nd LA to be conscious of the history and therefore to do more work in order to avert further procedural or legal errors. Accordingly, we generally see no reason to interfere with the Judge's exercise of his discretion.

8 Our only reservation is the fact that work appeared to have been done during an 18-day period before the 2nd DC was formally constituted: the 2nd DC was formally constituted on 14 September 2010 whereas the 2nd LA had billed for "work done from 27 August 2010 to 17 July 2012". However, this is really an issue of substance and not form. Looking at the substance of the matter, it was clear to us that hardly any work was done during this period. We say this based on what transpired at the first Pre-Inquiry Conference (which was held on 24 September 2010, that is, 10 days after the 2nd DC had been formally constituted). There, the 2nd LA decided to maintain an information barrier until it was decided that the disciplinary inquiry should proceed, and declined to receive material from either party. In the absence of material, it seems to us that hardly any work could have been done and that the 2nd LA's invoice stated the starting date as 27 August 2010 because, in all probability, that was the date he was first approached by the SMC to act as Legal Assessor. In any case, whatever little preliminary work was done would have been done in any event and would not be extra work

unconnected to the 2nd LA's duties. In the circumstances, we do not think that a doubt is raised as to the reasonableness of the costs or the amount thereof by the mere fact that the billing was said to commence on 27 August 2010. For the avoidance of doubt, however, we stress that it is incumbent on the SMC to ensure in the future that a legal assessor's work commences only *after* the formal constitution of the Disciplinary Committee which he or she is advising, save for any preliminary work which may be necessitated by the special facts of a case.

9 Mr Lee criticised the SMC's bill of costs as lacking sorely in particulars where the disbursement items for the legal professionals were concerned. In our opinion, the bill of costs accords with the procedural rules and practice. It is permissible to state the 2nd LA's fees as a disbursement item without elaboration. However, when the paying party requests particulars or proof of such fees, the claiming party should furnish reasonable particulars. This the SMC's solicitors have done in their abovementioned letter dated 23 May 2014 where they stated that the hourly rate of $1,050 was the agreed rate and then reproduced in essence the particulars in the 2nd LA's invoice dated 16 Sep 2013. It would have been equally acceptable for the SMC's solicitors to have merely provided a copy of the 2nd LA's invoice to the Appellant's solicitors because that invoice contains sufficient particulars for the purpose of assessing the reasonableness of the 2nd LA's costs. The relevant portion of the invoice is in the following terms:

**RE: ADVICE ON THE DISCIPLINARY INQUIRY FOR DR. LIM MEY LEE SUSAN ("DR. SUSAN LIM")**

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| **TO OUR PROFESSIONAL CHARGES** for work done from **27 August 2010** to **17 July 2012** in connection with our Mr. Vinodh Coomaraswamy, SC's appointment as the Legal Assessor on the disciplinary inquiry for Dr. Susan Lim, in particularly:<br>Attending nine Pre-Inquiry Conferences;<br>Attending five Inquiry hearings on 21 to 23 May 2012, 21 June 2012 and 17 July 2012;<br>Attending internal meetings with DC members; and<br>Reviewing Inquiry submissions.<br>and (where necessary), perusing and reviewing documents, correspondence, telephone calls, conducting research and all other incidental works necessary to carry out the conduct of the matter entrusted to us. | |
| **Professional charges** (224 hours at $1,050 per hour) | **$235,200.00** |
| DISBURSEMENTS SUBJECT TO GST | |
| Printing, transport, postages and other incidentals | 435.40 |
| **TOTAL:** | 235,635.40 |
| **Add GST @ 7%** | 16,494.48 |
| | 252,129.88 |

[emphasis in original]

10 Mr Lee took issue also with the words "(where necessary)" in the 2nd LA's invoice. He argued that this did not state in what situations or for which issues the 2nd LA eventually found it necessary to do the work described in that general paragraph or whether the 2nd LA did the work at all. We think that is really reading too much into the two words. They constitute a general term to cover all the myriad occasions when documents had to be referred to, for instance, to check certain particulars or to confirm the date of an event, telephone calls made or answered, and research work to deal with any issue that arose. It would be unduly onerous to have to record each such occasion.

11 Mr Lee also referred to Order 59 Appendix 1 para 2(2) of the Rules, which provides as follows:

> Where attendances, telephone conversations and correspondence are concerned, it shall be sufficient to state only the number of such attendances, telephone calls and correspondence, and, where possible, the total number of hours of such attendances and telephone calls.

He submitted that the invoice failed to state the number of the internal meetings and of the telephone calls. The first point to note is that para 2(2) applies to a bill of costs and not to invoices within a bill of costs. This paragraph was introduced many years ago to simplify bills of costs by abolishing the practice of bills of costs setting out the date of every meeting, every telephone call and every letter because it was an unnecessarily laborious task which added very little to the exercise of the taxing registrar's discretion during taxation but added an inordinate amount of unnecessary work and costs to the preparation of bills of costs. We accept that the 2nd LA could have stated the number of "internal meetings with DC members" which he attended but that should not be a critical factor in assessing the overall reasonableness of his fees. The taxing registrar had more than enough material to gauge all matters relevant to the disciplinary proceedings (see the non-exhaustive factors listed in O 59 Appendix 1 para 1(2) to guide the taxing registrar in the exercise of her discretion).

**Conclusion**

12 For the reasons set out above, we dismiss the appeal. The usual consequential orders will apply. We will hear the parties on costs.