Rockwills Trustee Ltd (suing as administrators of the estate of and on behalf of the dependants of Heng Ang Tee Franklin, deceased) *v* Wong Meng Hang and others [2018] SGHCR 16

Case Number : Bill of Costs No 157 of 2018

Decision Date : 12 November 2018

Tribunal/Court : High Court

Coram : James Elisha Lee AR

Counsel Name(s) : Ms Kuah Boon Theng SC and Ms Chain Xiao Jing Felicia (M/s Legal Clinic LLC) for the applicant; Mr Melvin See Hsien Huei (M/s Dentons Rodyk & Davidson LLP) for the first respondent; Mr Edward Leong (M/s MyintSoe & Selvaraj) for the second respondent.

Parties : Rockwills Trustee Ltd suing as Administrators of the Estate of & on behalf of the Dependants of Franklin Heng Ang Tee — Wong Meng Hang — Zhu Xiu Chuan @ Myint Myint Kyi — Reves Clinic Pte Ltd

Civil Procedure – Costs – Taxation

12 November 2018 Judgment reserved.

James Elisha Lee AR:

Introduction

1 The present application for taxation of Bill of Cost No 157/2018 ('the Bill') is brought by the Administrators of the Estate of Heng Ang Tee Franklin ('the Deceased') and representatives of the dependents of the Deceased, Rockwills Trustee Ltd, against Dr Wong Meng Hang, Dr Zhu Xiu Chun ('the Respondents') and Reves Clinic Pte Ltd ('Reves Clinic') in respect of the costs in Suit 165/2011.

2 Suit 165/2011 was commenced by the Applicant against the Respondents and Reves Clinic for medical negligence in the conduct of a liposuction procedure which resulted in the death of the Deceased. The case was high profile as it was the first liposuction death in Singapore and the Deceased was the CEO of a prominent property management company at the time of his demise. The Applicant sought damages under section 10 of the Civil Law Act, Chapter 43 ('CLA') and on behalf of the dependents, namely the Deceased's ex-wife, 2 children and elderly mother, under section 20, 21 and 22 of the CLA. Default judgment was entered against Reves Clinic on 30 March 2011 when it did not enter an appearance in the suit. Interlocutory judgment was entered against the Respondents on 15 August 2012 after they conceded liability. The matter then proceeded for Assessment of Damages ('AD'). By way of a judgment dated 25 May 2015, Choo J ('the Judge') awarded damages amounting to $5,323,253.58 in favour of the Applicant. On appeal to the Court of Appeal ('CA'), the amount of damages was reduced to $3,293,652.50 by way of a judgment dated 1 September 2016. On 3 April 2017, the Judge directed for costs to be taxed on the standard basis if parties are unable to agree.

3 The Applicant filed the Bill on 30 July 2018 claiming the following:

(a) Section 1 : $450,000 (before GST);

(b) Section 2 : $5,000 (before GST); and

(c) Section 3 : $505,185.84 (before GST on items for which

GST is chargeable)

4 The Respondents disputed the Bill by way of a Notice of Dispute filed on 20 and 21 August 2018 respectively.

5 I heard the substantive arguments by the parties on 28 August 2018. At the hearing an issue regarding the breakdown of the accounting expert's fees, one of the items under section 3 arose and I gave directions for the Applicant to provide the breakdown. I heard the parties again on 25 September 2018 and reserved my decision.

Applicable Legal Principles

6 In taxation proceedings, the court will have regard to all relevant circumstances, and in particular, the factors as set out in Appendix 1 of Order 59 which are as follows:

(a) the complexity of the item or of the cause or matter in which it arises and the difficulty or novelty of the questions involved;

(b) the skill, specialised knowledge and responsibility required of, and the time and labour expended by, the solicitor;

(c) the number and importance of the documents (however brief) prepared or perused;

(d) the place and circumstances in which the business involved is transacted;

(e) the urgency and importance of the cause or matter to the client; and

(f) where money or property is involved, its amount or value.

7 In *Lin Jian Wei and another v Lim Eng Hock Peter* [2011] 3 SLR 1052 at [78], the Court of Appeal stated that "the approach that should be adopted in taxation is that the Court should first assess the relative complexity of the matter, the work supposedly done against what was reasonably required in the prevailing circumstances, the reasonableness and proportionality of the resulting aggregate costs. In this exercise, all the Appendix 1 considerations are relevant. In the general scheme of things, no single consideration ordinarily ought to take precedence. In every matter, this calls for careful judgment by reference to existing precedents and guidelines."

8 It is also pertinent to note the interplay between reasonableness, proportionality and necessity as set out by the CA at [56]:

> "We think that costs that are plainly disproportionate to, inter alia, the value of the claim cannot be said to have been reasonably incurred. Thus, in assessing whether costs incurred are reasonable, it needs to be shown that the costs incurred were not just reasonable and necessary for the disposal of the matter, but also, in the entire context of that matter, proportionately incurred."

9 In *Shorvon Simon v Singapore Medical Council* [2006] 1 SLR(R) 182 at [20], the CA stated that the Court "ought to ascertain the amount of costs allowed for similar cases" and that "a departure from the norm invariably warrants justification by reference to the reasons necessitating the exercise

of such judicial discretion."

10 With these principles in mind, I will address each section of the Bill.

Section 1 Costs

The Applicant's submissions

11 The Applicant has sought $450,000 (before GST) for section 1 costs. Counsel for the Applicant Ms Kuah Boon Theng SC ('Ms Kuah') submitted that there were complex and novel issues arising in both the liability and assessment of damages aspects of the case. These relate respectively to the determination of the cause of death of the Deceased, and the methodology for quantifying the claim for loss of inheritance, this being the first case involving such a claim following the amendments to the CLA in 2009 and which came into effect on 2 March 2010.

12 Although the Respondents eventually conceded liability and interlocutory judgment was entered on 15 August 2012, this had taken place only about 1 month before the scheduled commencement of trial which had been set for 20 days. The Applicant was ready to call a total of 10 witnesses, including 3 expert witnesses. According to Ms Kuah, the Affidavits of Evidence-in-Chief ('AEICs') of the witnesses had already been prepared by the time the Respondents confirmed their decision to concede liability and enter interlocutory judgment. Travel arrangements had also been made for the foreign expert witness.

13 Ms Kuah submitted that the Appellant had to work through technical and complex medical issues in order to plead and present its case. The Coroner's Inquiry ('CI'), which had established the cause of death to be asphyxia due to airway obstruction, secondary to the intravenous Propofol administered, had also revealed severe deficiencies in the medical care, treatment and advice provided to the Deceased and the Applicant had to analyse and obtain expert input on all these issues. Voluminous medical documents, records, literature and protocols were obtained from various clinics/hospitals and reviewed. It also involved an in-depth understanding of the pharmacodynamics and effects of Propofol. One of the experts engaged by the Appellant was a leading world authority on Propofol, Dr Paul White. Due to the unreliability of the Respondent's medical records, there was lack of clarity regarding how much Propofol had in fact been administered to the Deceased during the liposuction procedure. Dr White was able to derive the amount of Propofol which had been introduced into the Deceased's system based on the levels of Propofol reported in the Deceased's toxicology report and factoring in the breakdown and half-life of the drug. Ms Kuah clarified that the present bill covers only the work done in respect of S 165/20111 and does not overlap with the work done for the CI for which a separate bill has been taxed.

14 The AD was heard over 6 days. Ms Kuah submitted that novel points of law were raised as this was the first case to be heard involving a claim for loss of inheritance or savings which had been allowed following the amendments to the CLA. There were no legal precedents to indicate what methodology the Court would adopt to quantify such a claim. The Appellants had to retrieve and review voluminous financial documents relating to the Deceased. The Deceased's financial affairs were not straight forward, as he held various accounts, and had multiple properties and assets, including shares. The process of discovery of documents was long and tedious, after which it was necessary to try to work out the Deceased's expenditure versus his investments, and whether he had excess income and if so, how much. The Applicant had to consult an expert witness to assist with the financial projection of the loss of inheritance or savings and to offer different models of how such losses should be quantified in the Deceased's case. The expert witness had to rely on teams of technical staff to assist with the calculations.

15 The complexity of the financial calculations is highlighted by the fact that the Respondents' expert had during the course of the trial revised his estimated cash flow value from a deficit of more than $4m to a surplus of almost $2m and then to a net surplus of slightly more than $2m. According to Ms Kuah, the Respondent's expert had mistakenly opined that the Deceased had been spending way beyond his means. The error came to light after the Applicant's expert had met with the Respondent's expert to point out the mistakes, and the Respondent's expert conceded eventually that he and his team had made an error in the accounting treatment of payments. The complexity of the AD is further demonstrated by the fact that the trial Judge required the assistance of an assessor during the AD hearing.

16 The Applicant and Respondents subsequently appealed/cross-appealed against parts of the trial Judge's award. The CA allowed the appeal and cross-appeal in part and reduced the total damages payable from $5,323,253.58 to $3,293,652.50. (The CA had ordered the parties to each bear their own costs of the appeal and the appeal costs are not relevant for the present taxation proceedings.)

The Respondents' Submissions

17 Counsel for the 1st Respondent Mr Melvin See argued that the amount claimed for section 1 by the Applicant was excessive having regard to the cost guidelines set out in Appendix G of the Supreme Court Practice Directions. Although he does not dispute that this case involved novel issues, Mr See submitted that the cost guidelines at Appendix G should be the starting point. He referred to the tariff for party and party costs for matters settled after AEICs have been filed and exchanged and the daily tariff for trials for medical negligence cases and submitted that a fair amount for the liability aspect should be $40,000.

18 For the AD, Mr See referred to the daily tariff for trials for non-motor accident cases and submitted that a daily tariff of $10,000 to $11,000 be applied. He argued that while this is a complex case, it is not the most complex. He submitted further that even if this case was novel and complex, it would not warrant a sum of 4.5 times that of the amounts set out in the cost guidelines. He submitted that the total amount for section 1 should therefore not exceed $120,000.

19 Counsel for the 2nd Respondent Mr Edward Leong indicated that they take the same position as the 1st Respondent and did not make any further submissions.

Decision

20 I am of the view that this case involved both technical and complex medical issues regarding the liability aspect, as well as complex and novel legal issues arising during the AD.

21 As interlocutory judgment was entered and the issue of liability did not proceed to trial, it would be necessary in my view to look at the scope and extent of the CI, and in this case what transpired during the CI proceedings as well for guidance on the nature and complexity of the medical issues involved, notwithstanding the Applicant's clarification that the current bill does not cover the work done for the CI. This would in turn shed light on the amount of work which would have been required on the part of counsel for the Applicant to prepare for trial for S 165/2011.

22 The CI was heard over 15 days and involved 6 medical experts from different areas of specialty such as aesthetic surgery, forensic pathology, and anaesthesiology. The detailed findings of the State Coroner comprised 195 paragraphs. It is also pertinent that the initial certified cause of death by the forensic pathologist from the HSA was eventually shown to be erroneous. The autopsy findings

had confirmed that the Deceased had sustained multiple iatrogenic perforations of the intestines caused by the instruments used in the liposuction procedure and the initial certified cause of death was "multiple iatrogenic punctures of the intestines due to liposuction." The CI revealed, however, that there was no conclusive evidence of any peritonitis settling in from the intestinal punctures and given the short proximity of time between the injuries and the Deceased's demise, the cause of death became the subject of scrutiny. It was eventually found that during the procedure, the Deceased had become restless due to the pain from the numerous perforations, but this was mistakenly recognised as inadequate sedation. The dosage of Propofol was subsequently increased which then caused the Deceased to enter into a state of deep sedation. The State Coroner eventually certified the cause of death to be asphyxia due to airway obstruction, secondary to the Propofol administered. The CI proceedings highlighted the complex and technical medical issues involved in ascertaining the cause of death. These issues would similarly have to be canvassed at the trial on liability, had the trial proceeded.

23 Ms Kuah has referred to 2 precedent taxation cases to support her submission that for medical negligence cases, consideration should be given to the complexities involved. The first is S 1066/2009 *Lim Jun Xi Kaydon (BC NO xxx), A Person Under Disability Suing By His Litigation Representative v Dr Koh Gim Hwee & Anor*, and the second is S 433/2006 *Zainab Bte Muhammad, A Person Under Disability, Suing by Her Litigation Representative Azizah D/O Mangarath Mohamed v National HealthCare Group Pte Ltd Trading As Alexandra Hospital & 4 Ors.* Both suits were settled before commencement of trial, after AEICs have been filed and exchanged. I note further that both suits had not been bifurcated as well. Lim's case involved injury suffered by the baby due to alleged negligence in the delivery process. The Section 1 cost was taxed at $296,175. Zainab's case involved alleged negligence in the provision of tracheostomy care resulting in a blocked tracheostomy tube and brain damage suffered due to oxygen starvation. The section 1 cost was taxed at $302,800. On review, this was reduced to $240,000. I am of the view that the complexities involved in the present case is greater than that involved in the 2 precedent cases cited by the Applicant.

24 I am of the view, however, that there would invariably have been some overlap in the expert evidence adduced at the CI and the expert evidence to be adduced at the trial on liability had it proceeded. This is supported by the fact that the notes of evidence of the CI hearing, the Coroner's report as well as the medical reports adduced had been included in the bundle of documents for S 165/2011. I note, however, that none of the 3 expert witnesses for S 165/2011 had been involved in the CI. The AEICs of these 3 experts amounted to nearly 300 pages, which reflect the complexities involved and preparation required on the part of counsel. I also acknowledge that the preparation for the trial would have differed quite significantly from the work done for the CI given the different nature of the proceedings. I further assume, and it would be a fair assumption in my view, that work would have been required to refresh the witnesses and review the evidence in preparation for the trial, given that the trial would have commenced nearly a year after the CI.

25 In the light of the technical and complex medical issues involved, I am of the view that it would not be appropriate to adopt the range for matters settled after exchange of AEICs under the cost guidelines in Appendix G. For the work done in respect of the CI, the cost has been taxed at $176,500 (section 1). Taking that as a reference point, and having considered the circumstances, I am of the view that the appropriate amount for the work done in preparation for the trial on liability should be taxed at $120,000.

26 With respect to the AD, there are clearly novel issues regarding the methodology for quantifying the loss of inheritance claim, this being the first case to be heard involving a claim for loss of inheritance following the amendments to the CLA in 2009. The process is also complicated, as evidenced by the appointment of an assessor to assist the Judge during the AD. The complexity is

further underscored by the fact that a material error was committed by the Respondents' expert which was only pointed out by the Applicant's expert subsequently. It is also noteworthy that the Judge had not adopted fully either of the approaches proposed by the respective experts and had instead applied the conventional multiplier-multiplicand based on the information contained in the experts' reports. On appeal to the CA, the Judge's approach was further adjusted and the eventual award was reduced from $5,323,253.58 to $3,293,652.50, a reduction of nearly 40%. Given the novel and complex issues involved in the AD, I am of the view that it would not be appropriate to adopt the daily tariff for trials for non-motor accident cases as set out in the cost guidelines in Appendix G as proposed by the Respondents.

27 In the circumstances, I am of the view that the appropriate amount for the work done for the AD should be taxed at $200,000. The total cost for section 1 is therefore taxed at $320,000 (before GST).

Section 3 Costs

28 The main contention in relation to Section 3 costs is the Applicant's expert fees for the AD which amounted to $336,300. The Respondents argued that the amount is excessive in comparison with the fees charged by the court assessor, which was $176,000, although they acknowledge that the work of the assessor would be lesser than that of the Applicant's expert. The Respondents also raised the issue that there was no breakdown of the fees set out in the relevant invoices. I then directed the Applicant to furnish a breakdown of the expert fees to the Respondents and for the breakdown to be adduced by way of a supplementary affidavit. Ms Kuah pointed out that based on the actual number of hours spent, the amount was $747,572.76, but the expert had only billed for $336,300.

29 The Respondents maintained their objection to the amount after having reviewed the breakdown on the ground that it did not show the details of the time spent for each work item set out. The Respondents referred to the case of *Trans Eurokars Pte Ltd v Koh Wee Meng* [2015] SGHCR 6 where the AR had found the expert fees to be excessive and taxed off 20% from the amount and submitted that the same be done for the present case.

30 I agree with the Respondents that the breakdown furnished by the expert does not contain sufficient details of the time spent for the various work items. This is quite unlike the breakdown for the work done by the court assessor furnished by the Applicant. As such, I am unable to ascertain the reasonableness of the expert fees for the AD. What is clear to me is that the amount of $747,572.76 would have been clearly excessive. The fact that the expert had only billed for a sum which is less than half of what their system had recorded would have provided some mitigation, although it would still not be possible to ascertain the basis for the various entries in the expert's system based on what has been adduced before me. In the circumstances, having regard to the complexities and novelty of the issues involved, the fees of the court assessor, and bearing in mind that the scope of the work done by the Applicant's expert would have been significantly wider, I am of the view, that the amount for the expert fees is somewhat excessive. Accordingly, I taxed off 20% of the said fees ($67,260)

31 Parties have been able to resolve their dispute over the majority of the remaining items under Section 3 save for the costs of obtaining default judgment against Reves Clinic for which I will allow having considered the circumstances.

32 The total amount for disbursements is therefore $433,906.84 (with GST for items on which GST is chargeable).

Section 2 Costs

33 The Applicant has claimed the sum of $5,000 for Section 2 costs. The Respondents have objected on the ground that the amount is excessive having regard to the cost guidelines at Appendix G and proportionality.

34 Although the taxation took place over 2 hearings, this was necessitated by the failure on the part of the Applicant to provide a breakdown for the expert fees for the AD. I therefore fixed costs for Section 2 at $2,500.

Conclusion

35 In summary, I taxed the Bill as follows:

(a) Section 1 : $320,000 (before GST)

(b) Section 2 : $2,500 (before GST); and

(c) Section 3 : $433,906.84 (with GST for items on which GST is chargeable)