**IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

**[2018] SGHC 31**

Originating Summons No 105 of 2017

In the matter of Section 122 of the
Legal Profession Act (Cap 161)

Between

**HO SEOW WAN**

*… Plaintiff*

And

**MORGAN LEWIS STAMFORD LLC
(formerly known as STAMFORD LAW
CORPORATION)**

*… Defendant*

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# GROUNDS OF DECISION

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[Legal Profession] — [Remuneration] — [Contentious business agreements] — [Section 111 Legal Professions Act (Cap 161, 2009 Rev Ed)]

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# v
# Morgan Lewis Stamford LLC (formerly known as Stamford Law Corporation)

**[2018] SGHC 31**

High Court — Originating Summons No 105 of 2017
Chan Seng Onn J
6 September 2017

6 February 2018

**Chan Seng Onn J:**

## Introduction

1 This matter threw into sharp relief the considerations for whether a fee agreement entered into between a solicitor and his or her client, which provided for an agreement as to the solicitor's charge-out rates (as opposed to a lump-sum fee), could ever in principle constitute a "contentious business agreement" ("CBA") within the meaning of s 111 of the Legal Profession Act (Cap 161, 2009 Rev Ed) ("the LPA"), and if so, what terms ought to be included for such an agreement to be considered sufficiently specific for the purposes of qualifying as a CBA.

2 Originating Summons No 105 of 2017 was an application made by the plaintiff, Mr Ho Seow Wan ("Mr Ho"), for the defendant, Morgan Lewis

Stamford LLC ("MLS"), which was previously known as Stamford Law Corporation ("SLC"), to refer various bills of costs issued to Mr Ho in respect of work done for various matters to the Registrar for taxation, and for MLS to refund to Mr Ho any costs that Mr Ho has overpaid ("the taxation application"). The bills of costs were issued for and in relation to Mr Ho's litigation in Suit No 195 of 2012 ("Suit 195"), which was later consolidated with Suit No 1267 of 2014 ("Suit 1267"), and Suit No 108 of 2013 ("Suit 108") (collectively, "the Suits").

3 Having heard the submissions of the parties, I dismissed the taxation application on the sole ground that the letters of engagement that Mr Ho had entered into with SLC in respect of both Suit 195 and Suit 108 ("the Suit 195 Engagement Letter" and "the Suit 108 Engagement Letter" respectively; collectively, "the Engagement Letters") were CBAs within the meaning of s 111 of the LPA, such that the bills of costs issued pursuant to the Engagement Letters were precluded under s 112(4) from being sent for taxation. I also ordered Mr Ho to pay to MLS the costs of the taxation application, which I fixed at S$6,500 including disbursements.

4 Mr Ho has since filed an appeal against my decision. I now furnish the grounds for my decision.

## Background

### *Mr Ho's engagement of legal services*

5 I begin with a survey of the lawyers and law firms whose services Mr Ho had engaged in relation to his dispute with his two brothers, Mr Ho Poey Wee and Mr Ho Seow Ban, and Guan Ho Construction Co (Pte) Ltd ("Guan Ho Construction").

6 In or around February 2012, Mr Ho engaged Ms Lynette Chew Mei Lin ("Ms Chew") and Mr Tan Saey Chong, Gadriel ("Mr Gadriel Tan"), who were practising in INCA Law LLC ("INCA Law") at that time, to advise and represent him.[1]

7 In June 2013, Ms Chew and Mr Gadriel Tan left INCA Law and joined SLC.[2] Mr Ho then engaged SLC to act on his behalf in the Suits. SLC filed notices of change of solicitor in the Suits on 5 June 2013.[3] Pursuant to the change of solicitors, SLC sent Mr Ho the Engagement Letters, both dated 2 August 2013, which both incorporate SLC's standard terms and conditions of engagement.[4]

8 The material portions of the Suit 195 Engagement Letter state thus:[5]

> …
>
> **Scope of Our Services**
>
> 3. Ms Lynette Chew, our Director, will be in charge of your matter. She will be assisted by Mr Gadriel Tan and Mr Leonard Chew. From time to time, she may be assisted, as and when necessary, by other lawyers or associates in the law corporation.
>
> 4. The scope of our services would be to:
>
> a. to represent you in Suit No. 195 of 2012/L;
>
> b. to attend all court hearings and conferences on your behalf;

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1 Ho Seow Wan's 1st Affidavit dated 27 July 2017 ("Ho's 1st Affidavit"), para 4; Lynette Chew Mei Lin's 1st Affidavit dated 10 March 2017 ("Lynette Chew's 1st Affidavit"), para 8; Tan Saey Chong, Gadriel's Affidavit dated 19 May 2017 ("Gadriel Tan's Affidavit"), para 5.

2 Lynette Chew's 2nd Affidavit dated 19 May 2017 ("Lynette Chew's 2nd Affidavit"), para 6; Gadriel Tan's Affidavit, para 5.

3 Lynette Chew's 1st Affidavit, para 10, pp 45–46.

4 Lynette Chew's 1st Affidavit, paras 11–12, pp 48–65.

5 Lynette Chew's 1st Affidavit, pp 57–60.

c. to review and advise you on the pleadings filed in the Suit;

d. to review and advise you on the discovery of documents in connection with the said Suit, including but not limited to the documents already set out in parties' respective lists of documents filed in this said Suit;

e. to advise on and liaise with all witnesses (and expert witnesses, if necessary) for the taking of and drafting of all affidavits of evidence-in-chief (and expert reports, if necessary);

f. to advise on and to attend all interlocutory applications arising in connection with the said Suit whenever necessary;

g. to attend and conduct your case at trial, including drafting the opening and closing written submissions;

h. advise and draft correspondence to be sent by you or by us as your solicitors as the situation may require;

i. to do all things as may be required or necessary and/or that are incidental to or arising out [of] the foregoing; and

j. to further advise you on any other matter in relation to the Suit as you may further instruct.

…

**Our Professional Fees**

6. Our legal fees will be based on actual time spent in connection with this matter by the lawyers having conduct of your matter, including the time spent in meetings with you, including any telephone conversations, emails to or from you, letters and others; preparing, reviewing and working on the matter, preparing papers including correspondence; making and receiving telephone calls and others on your behalf; preparing for and attending court on your behalf; travelling and waiting; and the overall management of this matter.

**Hourly Rates**

7. Our firm's standard hourly rates are as follows:

a. Director S$1,000 / hour

b. Associate Director from S$700 to S$900 / hour (depending on seniority)

c. Associate from S$550 to S$700 / hour (depending on seniority)

8. As a matter of goodwill, we are pleased to offer you the preferential hourly rates for the lawyers on your matter:

a. Lynette Chew, Director S$800 / hour

b. Gadriel Tan, Associate Director S$600 / hour

c. Leonard Chew, Associate S$400 / hour

9. We are mindful of the need to keep your costs under control, and will endeavour to do so by ensuring that all work is done at the appropriate levels of seniority with the requisite degree of supervision. We keep our hourly rates constantly under review and will notify you of any changes to them.

10. Please note that the above hourly rates exclude the usual and necessary disbursements. These disbursements include postage charges, telephone charges, photocopying charges. A list of disbursements will be provided in [the] bill and a further itemised list of disbursements can be provided on request.

11. As our law corporation is a business registered entity for goods and services tax ("GST"), our legal fees and certain disbursements will be subject to GST at the prevailing rate, which is currently at 7%.

**Interim Billings, Deposit of Fees and Method of Payment**

…

14. It is normal practice for law firms to require clients to pay sums of money from time to time to account of anticipated professional fees and disbursements for a matter. For your matter, we have received from INCA Law LLC the outstanding deposit amounts held by INCA Law LLC for its conduct of your matter as our initial deposit.

…

> 15. As your matter progresses, we reserve the right to ask for further deposits from you for a quantum commensurate with the anticipated professional fees and disbursements at that stage of the matter. If such a further deposit is requested, remittance of that deposit will be a condition of our continuing to act for you.
>
> 16. Please note that these sums are deposits only, and the total amount of professional fees and disbursements payable to us may exceed or fall below the total amount of deposits remitted to us. At the end of our engagement, we will utilize the outstanding deposits towards our final bill or reimburse you the balance, as the case may be.
>
> **General Terms and Conditions**
>
> 17. Our terms of engagement incorporates our law corporation's standard terms and conditions of engagement, which are, for good order, enclosed herein.
>
> …
>
> 19. Please confirm your acceptance of the terms and conditions of our engagement by signing and returning to us the copy of this letter and the enclosed Warrant to Act.

9 The Suit 108 Engagement Letter is identical to the Suit 195 Engagement Letter in all material aspects except for para 4, which describes the scope of services covered under the agreement. Paragraph 4 reads as follows:[6]

> **Scope of Our Services**
>
> …
>
> 4. The scope of our services would be to:
>
> a. to represent you in Suit No. 108 of 2013;
>
> b. to attend all court hearings and conferences on your behalf;
>
> c. to review and advise you on the pleadings filed in the Suit, including but not limited to the present pending application (Summons 3883 of 2013) for amendment of the Statement of Claim;

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6 Lynette Chew's 1st Affidavit, pp 48–51.

> d. to review and advise you on the discovery of documents in connection with the said Suit, including but not limited to the documents already set out in parties' respective lists of documents filed in this said Suit;
>
> e. to advise on and liaise with all witnesses (and expert witnesses, if necessary) for the taking of and drafting of all affidavits of evidence-in-chief (and expert reports, if necessary);
>
> g. to attend and conduct your case at trial, including drafting the opening and closing written submissions;
>
> h. advise and draft correspondence to be sent by you or by us as your solicitors as the situation may require;
>
> i. to do all things as may be required or necessary and/or that are incidental to or arising out [of] the foregoing; and
>
> j. to further advise you on any other matter in relation to the Suit as you may further instruct.

I pause at this juncture to note that while para 4(f) of the Suit 195 Engagement Letter, which concerned advising on and attending to all interlocutory applications arising from Suit 195, was excluded from the Suit 108 Engagement Letter, it was accepted during the hearing before me that both of the Engagement Letters are "[o]peratively … the same" and that their "essential terms are the same".[7] Therefore, I did not ascribe any weight to that omission, and proceeded on the assumption that the Suit 108 Engagement Letter also contained that particular term.

10 Finally, SLC's standard terms and conditions of engagement, which are incorporated within both of the Engagement Letters, further provide as follows:[8]

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7 NE 6 September 2017, 8:6 and 8:21.

8 Lynette Chew's 1st Affidavit, pp 52–55 and 61–64.

> **4. Scope of our service**
>
> 4.1 Our understanding of the scope of our engagement and the services which we will be providing you is set out in the Engagement Letter. We will not undertake any other tasks unless specified in the Engagement Letter or in subsequent written instructions which are accepted by us. When additional tasks or subsequent instructions are accepted by us, these Terms & Conditions will apply to them.
>
> …
>
> **6. Professional fees and costs & expenses**
>
> 6.1 Our invoices are based primarily on the time devoted to carrying out a given task for you and the experience level of the persons engaged in the task unless a separate agreement or arrangement with you for a given project specifies otherwise.
>
> 6.2 If you terminate our services prior to the completion of an assignment, you are required to pay our fees for any work carried out up to and including the date of termination.
>
> 6.3 In addition to our professional fees, you shall reimburse us for all expenses incurred in the performance of the assignment. Our billing policies on our main services and disbursements are set out in the Schedule hereto.
>
> …

11 Mr Ho confirmed his acceptance of the terms and conditions of both of the Engagement Letters by signing and returning each of the enclosed acceptances and warrants to act.[9]

12 In August 2014, Mr Tan Chuan Thye SC ("Mr Tan SC"), who was the head of SLC's dispute resolution at that time, took charge of the conduct of the Suits.[10]

13 On 1 April 2015, SLC underwent a change in name, and has since been

[9] Lynette Chew's 1st Affidavit, para 13, pp 56 and 65.

[10] Lynette Chew's 1st Affidavit, paras 7 and 24, p 205.

known as MLS.

14 On 6 November 2015, Mr Ho terminated MLS's services and transferred conduct of the Suits to Rajah & Tann Singapore LLP ("R&T"). Mr Tan SC, who had left MLS and joined R&T by that time, once again took charge of the conduct of the Suits.[11]

***The conduct of the Suits***

15 I now turn to provide a brief summary of the key milestones in the conduct of the Suits.

16 On 9 March 2012, Mr Ho commenced Suit 195 against his brothers and Guan Ho Construction. Suit 195 was a minority oppression claim brought on the basis of acts of oppression by Mr Ho's brothers during their management of Guan Ho Construction, which included the removal of Mr Ho as an executive director of Guan Ho Construction in February 2012.[12] The relief sought by Mr Ho was for, among other things, an order that Guan Ho Construction be wound up or for his brothers to buy out his shares in Guan Ho Construction.[13]

17 On 12 March 2012, Mr Ho filed an urgent *ex parte* application *vide* Summons No 1228 of 2012 for interim injunctions against his brothers and Guan Ho Construction, pending final judgment of the matter. On 13 March and 1 August 2012, Mr Ho obtained interim prohibitory and reinstatement injunctions against his brothers and Guan Ho Construction in relation to Mr Ho's role and powers in the management of Guan Ho Construction, and his role

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11 Lynette Chew's 1st Affidavit, pp 314–316.

12 Ho's 1st Affidavit, para 4(1).

13 Ho's 1st Affidavit, para 4(3).

and conduct as project director in two of Guan Ho Construction's construction projects.[14]

18 Subsequently, Mr Ho's brothers acted in breach of the interim injunctions previously granted. Therefore, on 18 January 2013, Mr Ho sought leave *vide* Summons No 413 of 2013 to apply for an order of committal against his brothers.[15]

19 On 5 February 2013, Guan Ho Construction commenced Suit 108 against Mr Ho on the basis of the alleged breach of his fiduciary, statutory, common law, and/or employment duties owed towards Guan Ho Construction as a director, and/or Mr Ho's negligence.[16]

20 On 21 October 2013, having successfully obtained leave to commence committal proceedings, Mr Ho proceeded to apply *vide* Summons No 5518 of 2013 for orders of committal against his brothers. The committal hearing was fixed to be heard before me in May 2015.[17]

21 In August 2014, Guan Ho Construction successfully applied for Suit 108 to be tried by the same trial judge as that for Suit 195 and for, subject to the decision of the trial judge presiding over Suit 195, Suit 108 to be heard either together with or after Suit 195, which had been fixed to be heard in July 2015.[18]

22 On 2 December 2014, Mr Ho commenced Suit 1267 against his brothers

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14 Lynette Chew's 1st Affidavit, paras 57 and 63.

15 Lynette Chew's 1st Affidavit, para 64; Plaintiff's Submissions dated 23 June 2017, para 6(8)(b).

16 Ho's 1st Affidavit, para 4(6); Defendant's Submissions dated 23 June 2017, para 9.

17 Lynette Chew's 1st Affidavit, para 81.

18 Ho's 1st Affidavit, para 4(6); Lynette Chew's 1st Affidavit, paras 54(f) and (g).

and Guan Ho Construction, in respect of further acts of oppression by his brothers' management of Guan Ho Construction after the commencement of Suit 195.

23 On 30 January 2015, Mr Ho's brothers successfully applied to consolidate the committal hearing with the trial of Suit 195.[19] Mr Ho appealed against the assistant registrar's decision to grant the consolidation. I allowed Mr Ho's appeal.[20] The committal hearing thus remained fixed to be heard before me in May 2015.

24 On 17 February 2015, Mr Ho successfully applied to consolidate Suit 1267 with Suit 195.[21]

25 On 7 September 2015, following the committal hearing held in May 2015, I found in favour of Mr Ho, holding that Mr Ho's brothers were liable for contempt of court: see *Ho Seow Wan v Ho Poey Wee and others* [2015] SGHC 235.[22] On 22 September 2015, I ordered, among other things, for Mr Ho Poey Wee to pay a fine of S$25,000, Mr Ho Seow Ban to pay a fine of S$20,000, and both brothers to pay 90% of the costs of the committal proceedings and the corresponding leave application.

26 On 9 December 2015, R&T informed MLS that a settlement had been reached for the Suits.[23]

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19 Lynette Chew's 1st Affidavit, para 64.

20 Lynette Chew's 1st Affidavit, para 80.

21 Lynette Chew's 1st Affidavit, para 54(k).

22 Lynette Chew's 1st Affidavit, p 264.

23 Lynette Chew's 1st Affidavit, p 381.

***The bills of costs in relation to the Suits***

27 In the course of acting for Mr Ho, INCA Law issued the following bills of costs in relation to the work done for the Suits ("the INCA Law bills of costs"):[24]

| S/N | Bill Date | Bill No | Suit No | Amount (S$) |
|---|---|---|---|---|
| 1 | 21 Mar 2012 | 1200094 | 195 | 40,306.48 |
| 2 | 25 May 2012 | 1200265 | 195 | 31,626.17 |
| 3 | 15 Aug 2012 | 1200430 | 195 | 43,970.74 |
| 4 | 28 Jan 2013 | 1300021 | 195 | 60,305.64 |
| 5 | 28 Jan 2013 | 1300022 | 195 | 16,689.11 |
| 6 | 15 May 2013 | 1300237 | 195 | 28,242.26 |
| 7 | 15 May 2013 | 1300239 | 108 | 6,840.14 |

28 As for SLC and MLS, a total of 25 bills of costs were issued to Mr Ho in the period from 31 August 2013 to 14 January 2016 for services rendered for and in relation to the Suits. Specifically, 19 bills were issued for Suit 195, while six bills were issued for Suit 108.[25] Of these 25 bills of costs, it was common ground between Mr Ho and MLS that the last three bills issued by MLS, which were the bills issued by MLS after R&T had taken over conduct of the Suits, would remain unpaid ("the unpaid bills of costs"). The unpaid bills of costs are listed as follows:[26]

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24 HC/OS 105/2017, Annex A.

25 Lynette Chew's 1st Affidavit, para 22.

26 Ho's 1st Affidavit, para 7(2); Lynette Chew's 1st Affidavit, para 29.

| S/N | Bill Date | Bill No | Suit No | Amount (S$) |
|---|---|---|---|---|
| 1 | 16 Oct 2015 | B18119 | 195 | 71,010.29 |
| 2 | 14 Jan 2016 | 40300131 | 108 | 14,277.01 |
| 3 | 14 Jan 2016 | 40300132 | 195 | 83,005.92 |

29 As for the bills of costs issued by MLS that had been paid in full by Mr Ho ("the fully paid bills of costs"), they are listed as follows:[27]

| S/N | Bill Date | Bill No | Suit No | Amount (S$) |
|---|---|---|---|---|
| 1 | 31 Aug 2013 | B13928 | 195 | 74,618.71 |
| 2 | 30 Sep 2013 | B14036 | 108 | 31,295.55 |
| 3 | 31 Oct 2013 | B14223 | 195 | 61,812.71 |
| 4 | 29 Nov 2013 | B14436 | 195 | 92,975.64 |
| 5 | 30 Nov 2013 | B14464 | 108 | 31,497.58 |
| 6 | 18 Dec 2013 | B14564 | 195 | 51,163.27 |
| 7 | 28 Feb 2014 | B14832 | 195 | 32,747.92 |
| 8 | 28 Mar 2014 | B14958 | 108 | 12,078.96 |
| 9 | 28 Mar 2014 | B14959 | 195 | 47,659.93 |
| 10 | 26 May 2014 | B15242 | 195 | 67,038.38 |
| 11 | 30 Jun 2014 | B15474 | 195 | 31,866.82 |
| 12 | 29 Aug 2014 | B15806 | 195 | 88,854.61 |
| 13 | 29 Sep 2014 | B15940 | 108 | 25,211.70 |
| 14 | 31 Oct 2014 | B16108 | 195 | 54,834.24 |

[27] Lynette Chew's 1st Affidavit, para 30, pp 67–193; OS 105/2017, Annex A.

| | | | | |
|---|---|---|---|---|
| 15 | 30 Jan 2015 | B16722 | 108 | 6,091.19 |
| 16 | 30 Jan 2015 | B16723 | 195 | 55,133.01 |
| 17 | 16 Mar 2015 | B16906 | 195 | 72,195.95 |
| 18 | 16 Apr 2015 | B17106 | 195 | 17,000.00 |
| 19 | 29 Apr 2015 | B17194 | 195 | 57,234.09 |
| 20 | 26 May 2015 | B17370 | 195 | 190,109.14 |
| 21 | 29 Jun 2015 | B17570 | 195 | 108,188.52 |
| 22 | 8 Sep 2015 | B17919 | 195 | 61,139.60 |

30 In the course of acting for Mr Ho, Opus 2 International Singapore Pte Ltd ("Opus 2") and Litigation Edge Pte Ltd ("Litigation Edge") were also engaged sometime in the latter half of 2013 to assist in the conduct of the Suits.[28] The bills of costs issued by Opus 2 and Litigation Edge are listed as follows ("the Opus 2 bills of costs" and "the Litigation Edge bills of costs" respectively):[29]

| S/N | Bill Date | Bill No | Issuer | Amount (S$) |
|---|---|---|---|---|
| 1 | 11 Sep 2015 | 10698 | Opus 2 | 6,300 |
| 2 | 13 Oct 2015 | 10915 | Opus 2 | 1,000 |
| 3 | 13 Nov 2015 | 11125 | Opus 2 | 800 |
| 4 | 2 Dec 2015 | SG-20150219 | Litigation Edge | 1,056.32 |
| 5 | 2 Dec 2015 | SG-20150220 | Litigation Edge | 1,232.37 |

[28] Ho's 1st Affidavit, para 7(4).

[29] OS 105/2017, Annex A.

| | | | | |
|---|---|---|---|---|
| 6 | 21 Jan 2016 | 11382 | Opus 2 | 1,200 |

31 On 20 January 2016, Mr Ho informed MLS that he had engaged Advocatus Law LLP ("Advocatus") to advise him in respect of the bills of costs issued by INCA Law, SLC, and MLS for the Suits.[30]

32 On 21 January 2016 and 23 March 2016, MLS requested for payment of the unpaid bills of costs from Mr Ho. On 29 April 2016, MLS indicated that it would use the monies that Mr Ho had paid to account to make payment towards the bills of costs issued by Opus 2 and Litigation Edge, and for partial settlement of the unpaid bills of costs. On 28 September 2016, MLS again requested for payment of the unpaid bills of costs.[31]

33 On 20 October 2016, Advocatus wrote to inform MLS that Mr Ho felt that he had been grossly overcharged in respect of the conduct of the Suits. On 24 October 2016, MLS replied, denying any allegations of gross overcharging.[32]

34 On 11 November 2016, Advocatus wrote to MLS, requesting MLS to waive the sums payable under the unpaid bills of costs and tax all the remaining bills that had been issued in respect of the work done for the Suits.[33] On 18 November 2016, MLS replied, rejecting Mr Ho's proposal. MLS indicated that: (a) it would not tax the remaining bills of costs because those bills had been paid and the time limit for taxation of those bills had expired, and (b) it would not waive the unpaid bills of costs but would proceed to tax the unpaid bills of costs instead.

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30 Ho's 1st Affidavit, para 6(1); Lynette Chew's 1st Affidavit, para 43.

31 Ho's 1st Affidavit, paras 6(2)–6(4).

32 Ho's 1st Affidavit, paras 6(5)–6(6).

33 Ho's 1st Affidavit, para 6(7); Lynette Chew's 1st Affidavit, para 45.

35 On 28 November 2016, MLS proceeded to file Bill of Costs No 192 of 2016 ("BC 192"), which was an application to tax the unpaid bills of costs.[34] At the hearing of BC 192 on 20 December 2016, the court adjourned the matter pending the outcome of the taxation application that is now before me.[35]

**The taxation application**

36 On 27 January 2017, Mr Ho filed the taxation application, which was an application under s 122 of the LPA to have MLS refer the following bills of costs to taxation:[36]

(a) 21 of the fully paid bills of costs issued by both SLC and MLS from 31 August 2013 to 8 September 2015, which comprised all of the fully paid bills of costs except Bill No B14436 dated 29 November 2013;[37]

(b) The INCA Law bills of costs, *ie*, the seven bills of costs issued by INCA Law from 21 March 2012 to 15 May 2013;

(c) The Opus 2 bills of costs, *ie*, the four bills of costs issued by Opus 2 from 11 September 2015 to 21 January 2016; and

(d) The Litigation Edge bills of costs, *ie*, the two bills of costs issued by Litigation Edge dated 2 December 2015.

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34 Ho's 1st Affidavit, para6(9).

35 Ho's 1st Affidavit, paras 6(10)–6(11); Lynette Chew's 1st Affidavit, paras 48–49.

36 HC/OS 105/2017, Annex A.

37 Lynette Chew's 1st Affidavit, para 30.

**The parties' submissions**

37 In his written submissions dated 23 June 2017, counsel for Mr Ho, Mr Christopher Anand s/o Daniel ("Mr Daniel"), made the sole submission that the bills of costs may be sent for taxation even though 12 months have expired since the delivery of the bills and even though Mr Ho has already paid the bills, because there are special circumstances that allow the bills to be sent for taxation under s 122 of the LPA. The special circumstances include: (a) gross overcharging by MLS on the basis of the excessive charge-out rates of the solicitors having conduct of the matter and the failure to particularise the disbursements charged;[38] (b) MLS's failure to provide accurate fee estimates, if they were even provided at all;[39] and (c) the failure to fully provide the bills issued by Opus 2 and Litigation Edge, which apparently overlapped with the disbursements that were chargeable by SLC and MLS.[40]

38 In response, counsel for MLS, Mr Tan Gim Hai, Adrian ("Mr Adrian Tan"), made the following arguments in his written submissions that were also dated 23 June 2017:

> (a) First, the bills of costs are not subject to taxation because the Engagement Letters are CBAs as defined under s 111 of the LPA, which are generally precluded under s 112(4) from being sent for taxation. The Engagement Letters not only meet the formal requirements of a CBA as stated under s 111, but are also sufficiently specific.[41] Given that the bills of costs were issued pursuant to the Engagement Letters, Mr Ho is now

[38] Ho Seow Wan's Written Submissions dated 23 June 2017 ("Ho's Written Submissions"), paras 13–24.

[39] Ho's Written Submissions, paras 25–28.

[40] Ho's Written Submissions, paras 29–34.

[41] Morgan Lewis Stamford LLC's Written Submissions dated 23 June 2017 ("MLS's Written Submissions"), paras 21–34.

time-barred under s 113(7) from re-opening the bills of costs, which he has already paid.[42]

(b) Secondly, there are in any event no special circumstances that justify, under s 122 of the LPA, sending the bills of costs for taxation even if 12 months have not expired since the delivery of the bills. Mr Ho's general allegations of overcharging are insufficient in themselves to constitute the "special circumstances" necessary to send the bills for taxation.[43] Mr Ho's specific allegations of overcharging are also not borne out by the evidence, and in any event have no rational connection to his failure to apply to have the bills of costs taxed within 12 months of their delivery, or before he had made payment.[44]

(c) Finally, Mr Ho's application to refer the INCA Law bills of costs, Opus 2 bills of costs and Litigation Edge bills of costs to taxation is misconceived. Given that the taxation application is brought by Mr Ho against MLS, the court has no jurisdiction to order taxation of bills of costs for services rendered by entities other than MLS. Also, the court has no power to tax bills of costs drawn up by parties other than solicitors or law corporations.[45]

39 At the hearing before me, Mr Daniel responded to Mr Adrian Tan's threshold argument that the Engagement Letters amount to CBAs by orally submitting that the Engagement Letters are not sufficiently specific to qualify as CBAs. However, Mr Daniel did not take me through his arguments in respect of the other matters covered by Mr Adrian Tan's written submissions.

42 MLS's Written Submissions, paras 35–40.

43 MLS's Written Submissions, paras 51–55.

44 MLS's Written Submissions, paras 56–88.

45 MLS's Written Submissions, paras 89–93.

**Issues to be determined**

40 To my mind, the parties' submissions – both written and oral – presented the following two main issues for my determination:

(a) whether the Engagement Letters qualify as CBAs within the meaning of s 111 of the LPA ("the CBA Issue"); and

(b) even if they do not qualify as CBAs, whether there are special circumstances to refer the bills of costs to taxation pursuant to s 122 of the LPA ("the Special Circumstances Issue").

41 Having said that, as I have alluded to in my earlier summary of the parties' submissions (see [37]–[39] above), Mr Daniel did not in fact address me on both issues during the hearing for this application. Rather, Mr Daniel merely made oral submissions on the CBA Issue before proceeding to make an oral application for my ruling on only the CBA Issue. Mr Daniel explained that this was a preferable course of action because if I were to find that the Engagement Letters are CBAs, Mr Ho would make a subsequent application under s 113(2) read with s 113(4) of the LPA to have the Engagement Letters declared void on the ground that the terms therein are unfair or unreasonable.[46]

42 I refrained from offering any view in respect of whether, on the facts of this case, it was indeed still open to Mr Ho to make an application pursuant to s 113(2) read with s 113(4) of the LPA to declare the Engagement Letters void. However, in the interest of the efficient resolution of the taxation application, I allowed Mr Daniel's oral application and limited myself, in disposing of the taxation application, to dealing only with the CBA Issue.

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[46] NE 6 September 2017, 73:9–30.

**The applicable legal principles**

43 I shall now set out the general legal principles that guided my analysis before turning to consider the specific arguments raised by the parties.

44 Section 111 of the LPA permits a solicitor or law corporation to enter into CBAs. The significance of entering into a CBA is that pursuant to s 112(4) of the LPA, the client would lose his or her right to request for a bill of costs issued pursuant to the CBA to be sent for taxation. The only exceptions to this general preclusion against the taxation of bills of costs issued pursuant to CBAs are if:

> (a) the CBA is declared void by the court under s 113(4) of the LPA on the ground that the terms of the agreement are deemed to be unfair or unreasonable, following which the court may order the bill to be taxed pursuant to s 113(5); or
>
> (b) the amount agreed under the CBA has been paid, but the client applies under s 113(7) of the LPA within 12 months of the payment being made, and special circumstances so require, for the court to reopen the CBA, order the bill to be taxed, and order the relevant amounts to be repaid to the client.

45 On the other hand, if a solicitor or law corporation did not enter into a CBA with the client pursuant to s 111 of the LPA, then neither s 112 nor s 113 would be engaged, and the client would retain the right to have his or her bills of costs sent for taxation under the regime outlined in Part IX of the LPA.

46 Turning then to consider the requirements that must be met in order for a fee agreement to be a CBA, it is necessary to take guidance from the language of s 111 of the LPA, which reads as follows:

> **Agreement as to costs for contentious business**
>
> **111.**—(1) Subject to the provisions of any other written law, a solicitor or a law corporation or a limited liability law partnership *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 or the limited liability law partnership, 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 or the limited liability law partnership 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.
>
> [emphasis added]

From the foregoing provisions, the requirements for a CBA are that first, the agreement must be put in writing (s 111(1)), and secondly, the agreement must be signed by the client (s 111(2)): see *Chancery Law Corp v Management Corporation Strata Title Plan No 1024* [2016] 4 SLR 480 ("*Chancery Law*") at [25].

47 The third (and final) requirement for a CBA is a judge-made one, which is that there must be *sufficient certainty or specificity* of the terms governing the fees: *Chancery Law* at [25], citing *Shamsudin bin Embun v P T Seah & Co* [1985-1986] SLR(R) 1108 ("*Shamsudin*") at [22]. The provenance of this requirement lies in the English Court of Appeal decision of *Chamberlain v Boodle & King (a firm)* [1982] 1 WLR 1443 ("*Chamberlain*"), which was referred to with approval by both George Wei J in *Chancery Law* (at [57]–[61]) and Chan Sek Keong JC (as he then was) in *Shamsudin* (at [18]–[22]).

48 In *Chamberlain*, Lord Denning MR (with whom Dunn and O'Connor LJJ agreed), in setting out the requirements that an agreement had to meet in order to constitute a CBA under s 59 of the Solicitors Act 1974 (c 47) (UK) ("the English Solicitors Act"), described the specificity requirement in the following terms (at 1445):

> … I should like to say that, to satisfy its terms, ***the agreement should be clear and represent an agreement in writing by both parties to the whole of its terms.*** In *In re Raven; Ex parte Pitt* (1881) 45 L.T. 742, 743, Fry J. said:
>
> > "The words of the Act are 'an agreement in writing.' What is an agreement in writing? *It must be a document which shall show all the terms of the bargain between the parties*, and show by writing the accession of both parties to those terms."
>
> To that I would add the subsequent case of *Pontifex v. Farnham* (1892) 62 L.J.Q.B. 344.
>
> … Further *the agreement must be* ***sufficiently specific – so as to tell the client what he is letting himself in for by way of costs***.
>
> [emphasis added in italics and bold italics]

The guidance of Lord Denning MR is highly instructive, given that s 59 of the English Solicitors Act is *in pari materia* with s 111 of the LPA.

**My decision**

49 In my judgment, the bills of costs could not be sent for taxation because the Engagement Letters that Mr Ho had entered into with SLC in respect of the Suits, which contained agreements as to the charge-out rates of the solicitors that were to be applied to the actual number of hours eventually utilised by the respective solicitors for the work specified in the agreements, were CBAs within the meaning of s 111 of the LPA. This, pursuant to s 112(4), precluded the bills of costs rendered pursuant to the Engagement Letters from being sent for taxation. Accordingly, I dismissed the taxation application.[47]

50 In the present case, it was common ground that the Engagement Letters were both in writing and had both been signed by Mr Ho.[48] The crux of the disagreement thus resided in whether the terms within the Engagement Letters that govern the solicitor's fees were sufficiently certain or specific.

51 Before me, Mr Daniel made, to my mind, two types of objections regarding why the Engagement Letters were not sufficiently specific to qualify as CBAs.

52 First, Mr Daniel's primary submission was a blanket objection in principle against *any* agreement as to charge-out rates being found to be sufficiently specific to constitute CBAs ("the Broad Objection"). In this regard, Mr Daniel argued that an agreement as to charge-out rates of the solicitors handling the matter could *never* be considered sufficiently specific to constitute a CBA, and that a CBA had to contain an agreement as to a lump-sum fee that was to be charged for the entire matter.[49]

53 Secondly, Mr Daniel appeared to submit, in the alternative, that the agreements as to the charge-out rates provided for in the Engagement Letters were *on the facts* not sufficiently specific to constitute CBAs ("the Narrow Objection"). To this end, Mr Daniel suggested that an agreement as to charge-out rates had to also be accompanied by an agreement as to the fixed number of hours (which would essentially make the agreement a lump-sum fee agreement) or the maximum number of hours (which would essentially make the agreement a capped lump-sum fee agreement) that will be committed by the lawyers to the matter in order to be sufficiently specific.[50] In this case, the agreements in the

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47 NE 6 September 2017, 76:3–16.

48 NE 6 September 2017, 12:15–21.

49 NE 6 September 2017, 4:15–20, 10:26–11:6 and 11:12–22.

Engagement Letters provided that the charge-out rates of the lawyers assigned to take charge of the conduct of the Suits were to be multiplied by the actual number of hours utilised by the respective lawyers in order to obtain an ascertainable total fee on completion of handling the matter. This, Mr Daniel argued, was insufficiently specific.

54 I now turn to address the CBA Issue by dealing with both objections raised, beginning first with the Broad Objection.

***The Broad Objection***

55 Having carefully considered the applicable legal provisions, the terms of the Engagement Letters, and the relevant foreign and local case precedents, I took the view that agreements as to the *charge-out rates* of the solicitors in charge of a matter (as opposed to lump-sum fee agreements) *could*, as a matter of principle, be considered agreements that are sufficiently specific to constitute CBAs. This position on the Broad Objection, to my mind, found support in both the text of s 111(1) of the LPA and some of the case precedents that the parties had brought to my attention.

56 Beginning first with the text of the provision in question, I agreed with Mr Adrian Tan's submission that a plain and literal reading of the language of s 111(1) of the LPA strongly suggests that a CBA does not necessarily have to be an agreement as to a lump-sum fee, but could also include an agreement on charge-out rates.[51] To this end, I set out once again for convenient reference the text of s 111(1) of the LPA as follows:

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50 NE 6 September 2017, 45:8–24.

51 NE 6 September 2017, 24:13–26:19.

> **Agreement as to costs for contentious business**
>
> **111.**—(1) Subject to the provisions of any other written law, a solicitor or a law corporation or a limited liability law partnership 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 or the limited liability law partnership, *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 or the limited liability law partnership would otherwise be entitled to be remunerated.
>
> [emphasis added in italics and bold italics]

57 I make two observations about the text of s 111(1) of the LPA. First, the provision's express reference to an agreement as to the *manner* of payment, and not only as to the *amount* of payment, suggests that it is open to solicitors and clients to agree to different modes of payment. Any suggestion that solicitors and clients are only permitted to agree to a single manner of payment, *ie*, by lump-sum fee, was thus clearly misconceived. Secondly, the provision expressly provides that the mode of payment adopted in the CBA could be "either by a gross sum or otherwise". To my mind, this particular reference in the provision made it abundantly clear that Parliament had intended for CBAs within the meaning of s 111(1) to include agreements between solicitors and clients as to charge-out rates. Specifically, insofar as an agreement to pay "by a gross sum" clearly corresponds to an agreement for a lump-sum fee, an agreement to pay "by … otherwise" would therefore point towards solicitors and clients being allowed to agree on any other method of payment in a CBA, including charge-out rates.

58 I was also of the view that the relevant case precedents did not preclude the finding that agreements as to the charge-out rates of solicitors could be sufficiently specific to constitute CBAs. In the *Chamberlain* decision, Lord Denning MR, in holding that the agreement in question was not a CBA, was

careful in refraining from coming to a view in this regard when he made the following remarks (at 1445):

> We discussed in the course of the argument the sort of *method of remuneration* which could be covered by a contentious business agreement. *Such as whether an hourly rate would come within it. I need say nothing as to that.* Also, whether it should be such as to say whether it is the higher or lower rate of remuneration. I say nothing as to that either. Because, to my mind it is plain that this agreement was not a contentious business agreement in writing such as to satisfy the statute. … [emphasis added]

It was thus necessary to look beyond the *Chamberlain* decision for more instructive guidance on this point.

59 Mr Daniel put forward the case of *Chancery Law* as a decision that offered strong support for the Broad Objection. I did not agree. In *Chancery Law*, the letters of engagement that the solicitors and the clients had entered into were described in the following terms (at [65]):

> … the LOEs provide for *hourly rates of the lawyers in charge*. The LOEs further provide that the professional fees charged may take account of a range of factors including the complexity of the matter, the urgency and importance of the matter and the skill or specialized knowledge expended by the lawyer. In addition to pre-trial and post-trial work, the LOEs set out what was described as the "minimum" court attendance fees. The LOEs made further provision for chargeable disbursements. [emphasis added]

Wei J held that the letters of engagement were *not* sufficiently specific or certain to constitute CBAs under s 111 of the LPA because although they identified the charging rates of the lawyers involved, their terms were not sufficient to allow the client to make a "reasoned forecast as to what it was letting itself in for in respect of fees and disbursements; they merely set out the relevant rates of charging" (at [66]). While this particular holding might appear to be construed as a blanket disapproval of agreements as to charge-out rates ever being

sufficiently specific to constitute CBAs, I did not think that there was sufficient information regarding the exact contents of the letters of engagement in *Chancery Law* to draw such an inference. Instead, what seemed to me to be the key principle in *Chancery Law* was found in the following passage (at [64]):

> It is clear from the above cases that the *fee agreements specifying only the rate of charging such as hourly rates* ***run the risk*** *of being found to be insufficiently certain and specific to constitute valid CBAs.* The CBA in question must make it clear to the client what he is letting himself in for in respect of legal fees. Merely setting out an indication or guide as to the rate of charging upon which the bill is to be drawn may not be enough to constitute a CBA that would fall within s 111. As O'Connor LJ commented or impliedly queried in the *Chamberlain* case …, how is the agreement to be construed as a CBA if it does not set out any plan by which the client can make a reasoned calculation as to what his monthly or quarterly liability might be? [emphasis in original removed; emphasis added in italics and bold italics]

From this extract, it was clear that Wei J indeed did not hold that agreements as to solicitor charge-out rates could *never* in principle be sufficiently specific to constitute CBAs. All that was observed was that agreements as to charge-out rates had a greater *risk* of being found to be insufficiently certain, presumably as compared to lump-sum fee agreements.

60 The next case that I considered was the Singapore High Court decision of *Shamsudin*. In *Shamsudin*, the solicitor and client entered into an agreement for the client to pay the solicitor a lump-see fee of S$15,000 for the solicitor's costs. Chan JC held that the lump-sum fee agreement was not an agreement that came within the scope of s 111(1) of the Legal Profession Act (Cap 217, 1970 Rev Ed), which was in all material aspects identical to the current iteration of that provision under s 111(1) of the LPA, "by reason of its uncertain scope and its failure to contain the full terms of the bargain between the solicitor and the applicant" (at [22]). In my view, the fact that the agreement as to costs in

*Shamsudin* was adjudged to be insufficiently specific despite being a lump-sum agreement spoke volumes of the fact that the key inquiry was not whether the fee agreement was a lump-sum fee agreement or an agreement as to charge-out rates. Rather, the only indicia that mattered was whether the fee agreement was specific or clear enough for the client to know what he is letting himself in for in respect of legal fees.

61 Finally, I was also referred to the English High Court (Senior Courts Costs Office) decision of *Addleshaw Goddard LLP v Nicholas Stewart Wood, Kevin John Hellard as General Administrators of the Estate of Platon Elenin (formerly Boris Abramovich Berezovsky)* [2015] EWHC B12 (Costs) ("*Addleshaw Goddard*"). In this case, one of the issues considered by the Costs Judge, Master Campbell, was whether an engagement letter was a CBA enforceable under s 61 of the English Solicitors Act, which was *in pari materia* with s 113 of the LPA. One of the clauses contained in the engagement letter provided for hourly expense rates for the solicitors whilst reserving the right to increase its rates (at [30]). Hence, Master Campbell, in finding that the engagement letter was sufficiently specific to constitute a CBA, clearly held that a fee agreement that sets out the hourly rates of the solicitors would be sufficiently specific to constitute a CBA (at [74]).

62 I thus concluded from the relevant authorities surveyed that it was not contrary to any longstanding or well-established jurisprudence for me to hold that an agreement as to the solicitor's charge-out rates could in principle be sufficiently specific to constitute a CBA.

63 For the sake of completeness, I turn now to address Mr Daniel's reliance on the Law Society's Sample Letter of Engagement at Appendix 11C of the Law Society's Practice Management Manual. Specifically, Mr Daniel brought

to my attention the first suggested para 12 of the Sample Letter of Engagement, which reads as follows:[52]

> **Hourly rate**
>
> 12 The hourly rates of the lawyers who will be handling your matter are as follows: The hourly rate of the partner / director is S$ _____ per hour; our junior partners / director is S$ _____ per hour and that of our associates is S$ _____ per hour. We are mindful of the need to keep your costs under control, and will endeavour to do so by ensuring that all work is done at the appropriate levels of seniority with the requisite degree of supervision.
>
> We keep our hourly rates constantly under review and will notify you of any changes to them.

Mr Daniel argued that it was clear that the Engagement Letters in the present case could not constitute CBAs because the relevant portions of the Engagement Letters were highly similar to this paragraph of the Sample Letter of Engagement, and hence this showed that the Engagement Letters were only meant to represent a "normal act of engagement, the fees for that engagement being subject to taxation".[53]

64 I was not able to comprehend the logic underlying this submission, and found that this Sample Letter of Engagement had little, if any, relevance to the present analysis. Crucially, the Sample Letter of Engagement also contains a second alternative clause, which provides a suggested template for a lump-sum fee agreement. Reducing Mr Daniel's submission *ad absurdum*, any agreement as to costs featuring a lump-sum fee agreement also ought not to constitute a CBA, since the Sample Letter of Engagement also features a lump-sum fee agreement, which would represent a "normal act of engagement". That position

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52 Ho Seow Wan's Supplementary Bundle of Authorities dated 6 September 2017, Tab 15, Law Society's Practice Management Manual, p 89.

53 NE 6 September 2017, 22:7–12.

was patently untenable, since it was Mr Daniel's own case that a lump-sum fee agreement *could* constitute a CBA. It was thus clear that any inference about the requisite specificity of a CBA that was to be drawn from the inclusion of a reference to an agreement as to charge-out rates in the Sample Letter of Engagement was entirely speculative.

65 Accordingly, I concluded that the mere fact that a solicitor's fee agreement contained an agreement as to the charge-out rates of the solicitors involved in the matter should not preclude a possible finding that the fee agreement was a CBA within the meaning of s 111 of the LPA.

***The Narrow Objection***

66 Having said all that, it was also equally clear to me that not *all* agreements that provided for agreements as to the charge-out rates of the solicitors in charge of the case would necessarily be considered sufficiently specific to constitute a CBA. As alluded to earlier, the key principle in this regard may be distilled from Wei J's decision in *Chancery Law*. I set out once again the material passage (at [64]) for convenient reference as follows:

> It is clear from the above cases that the fee agreements specifying only the rate of charging such as hourly rates run the risk of being found to be insufficiently certain and specific to constitute valid CBAs. ***The CBA in question must make it clear to the client what he is letting himself in for in respect of legal fees.*** Merely setting out an indication or guide as to the rate of charging upon which the bill is to be drawn may not be enough to constitute a CBA that would fall within s 111. As O'Connor LJ commented or impliedly queried in the *Chamberlain* case …, ***how is the agreement to be construed as a CBA if it does not set out any plan by which the client can make a reasoned calculation as to what his monthly or quarterly liability might be?***
>
> [emphasis in original removed; emphasis added in bold italics]

In other words, whether an agreement as to charge-out rates was sufficiently specific to constitute a CBA depended on whether the agreement was specified in sufficiently clear terms so that the client would be in a position to make a reasoned calculation based on the agreement as to what his legal fees would eventually be upon completion of the contentious legal matter. What was to be regarded as sufficiently clear for such purposes would naturally be an intensely fact-specific inquiry.

67 Applying this principle to the present facts, I found the Narrow Objection to be without merit. Contrary to Mr Daniel's submissions, I did not think that the terms of the Engagement Letters were insufficiently specific. While it would certainly be helpful for an agreement as to charge-out rates to also specify either a fixed or a maximum number of hours to be utilised by the solicitor for the scope of work as set out in the agreement, I did not think that these terms were necessary in order for an agreement as to charge-out rates to qualify as a CBA. To my mind, it was sufficient that the Engagement Letters had specified: (a) the specific scope of the matters that were covered under the fee agreement, (b) the solicitors that were assigned to take charge of the conduct of the Suits, (c) the specific charge-out rates of each of the solicitors in charge of the matter, and (d) the fact that the charge-out rates were to be applied to the actual number of hours utilised by the respective solicitors concerned. I drew this conclusion from both an evaluation of the relevant precedents that had been brought to my attention, as well as my reading of the appropriate remedies that were available to cover instances of overcharging under agreements as to charge-out rates that were to be applied to the actual number of hours utilised.

*Survey of relevant precedents regarding specificity of solicitor fee agreements*

68 I now direct my mind to a survey of the relevant precedents in this area. We begin with the Singapore High Court decision of *Shamsudin*, which, as may be recalled, involved a lump-sum fee agreement of S$15,000 (see [60] above). In *Shamsudin*, Chan JC held that the lump-sum fee agreement could not pass muster as a sufficiently specific agreement as to costs particularly because it was unclear whether "the fee of [S]$15,000 [was] payable for work done from 2 May 1980 to 20 September 1985 or for any future period and if so, what period", and whether "the fee of [S]$15,000 include[d] disbursements" (at [14]). *Shamsudin* thus demonstrated the significance of specifying clearly the scope of matters encompassed by the fee agreement. Comparing the facts of *Shamsudin* with those of the present case, the deficiencies that plagued the lump-sum fee agreement in *Shamsudin* clearly did not present themselves within the Engagement Letters. The Engagement Letters clearly specified the scope of SLC's services at para 4 of each of the Engagement Letters. Paragraph 4.1 of SLC's standard terms and conditions of engagement also provided that SLC would avoid undertaking any other tasks unless it received further instructions. Further, para 10 made it clear that the charge-out rates did not include disbursements, while para 6.3 specified that Mr Ho had to reimburse SLC for all expenses incurred in the performance of the assignment. See [8]–[10] above.

69 Next, in the English Court of Appeal decision of *Chamberlain*, the claimant applied for the bills of costs issued by his solicitors to be taxed. The solicitors demurred, arguing that the claimant had no right to have them taxed because there had been an agreement in writing between themselves and the claimant that amounted to a CBA within the meaning of s 59 of the English

Solicitors Act. The letter, which supposedly encapsulated the CBA, read as follows (at 1444):

> Boodle & King will bill you for its services rendered on the basis of the standard hourly rates applicable to the particular attorneys or solicitors involved in the litigation. *These rates range from £60 to £80 per hour for lawyers of partner status and from £30 to £45 per hour for associates who may be involved.* These standard rates are reviewed for adjustment on a regular basis, ordinarily at the conclusion of the firm's fiscal year. Statements will be rendered by the firm to you on a regular basis, either monthly or quarterly, depending upon the activity generated during the applicable period.
>
> At this time we would appreciate your sending to us a check [sic] representing a retainer in the amount of £2,000 in accordance with our prior telephone conversation. This will be treated as an advance payment; our fees in accordance with the foregoing schedule will be applied against this retainer. We would appreciate your always remitting to us in pounds sterling if that is convenient.
>
> [emphasis added]

Lord Denning MR, in coming to the view that the agreement was not sufficiently specific to constitute a CBA, held thus (at 1445):

> … Further the agreement must be sufficiently specific – so as to tell the client what he is letting himself in for by way of costs. It seems to me that the letters in this case do not give the client the least idea of what he is letting himself in for. … *Take, for instance, the rate.* It certainly seems high enough to me. *It is £60 to £80 an hour.* ***What rate is to be charged? And for what partner? Of what standard?*** *Then £30 to £45 an hour for associates who may be involved.* ***Which legal executives? Of what standard? Which associates? Does it include the typists?*** *That is one of the broad bands which is left completely uncertain by this agreement.* …
>
> I only make those observations because *it seems to me that this is not an agreement as to remuneration at all.* ***It is simply an indication of the rate of charging on which the solicitors propose to make up their bill.*** *It is by no means an agreement in writing as to the remuneration.* …
>
> [emphasis added in italics and bold italics]

70 The *Chamberlain* decision was thus a useful example of an agreement as to charge-out rates that was insufficiently specific in two key ways. First, the agreement in *Chamberlain* merely provided the charge-out rates that generally applied to the partners or associates in the firm that might be assigned to the matter. In contrast, the Engagement Letters in the present case go out of the way to identify the solicitors that are assigned to take charge of the conduct of the Suits and specify the charge-out rates that corresponded to each assigned solicitor in the following manner:

> 3. Ms Lynette Chew, our Director, will be in charge of your matter. She will be assisted by Mr Gadriel Tan and Mr Leonard Chew. From time to time, she may be assisted, as and when necessary, by other lawyers or associates in the law corporation.
>
> …
>
> 8. As a matter of goodwill, we are pleased to offer you the preferential hourly rates for the lawyers on your matter:
>
> | | | | |
> |---|---|---|---|
> | a. | Lynette Chew, Director | S$800 | / hour |
> | b. | Gadriel Tan, Associate Director | S$600 | / hour |
> | c. | Leonard Chew, Associate | S$400 | / hour |

Secondly, the agreement in *Chamberlain* merely provided the *ranges* of the charge-out rates that could apply to the matter in question. In contrast, the Engagement Letters in the present case, as seen in the above extract, provide clear and discrete charge-out rates for each individual lawyer, leaving no room for any doubt as to the precise charge-out rates that would apply to the conduct of the Suits. Accordingly, while the agreement in *Chamberlain* was rightly found to be "simply an *indication* of the rate of charging on which the solicitors propose to make up their bill" [emphasis added], the agreements as to charge-

out rates present in the Engagement Letters were significantly more specific, and thus could constitute CBAs.

71 In the British Columbia Supreme Court decision of *Nash v Swann* [1994] BCJ No 1824 ("*Nash*"), the client had engaged the services of the solicitor pursuant to a letter of agreement dated 29 July 1991, which stated as follows:

> I confirm that at our initial meeting I advised you that my hourly rate is [C]$190.00 for all work done on your file, including but not limited to consultations, telephone calls, correspondence, preparing documents and pleadings, research, Court appearances (excluding trial) or negotiating with other lawyers. I further confirm that my fee for trial is [C]$2,050.00 per day. Disbursements (out-of-pocket expenses) are charged separately and will be indicated on my statements of account which will be sent to you at periodic intervals. Time spent independently on the file by my secretary (i.e., matters handled by my secretary which would otherwise have to be performed by me) is billed at the rate of [C]$65.00 per hour. *In the event that I am unusually successful, I may charge an additional fee at the time the matter is completed which will be discussed with you at the time of billing.* [emphasis added]

There were thus four different modes of remuneration that were specified within the letter of agreement, namely, an hourly rate of C$190 for all matters except court appearances for trial, a *per diem* (*ie*, daily) rate of C$2,050 for court appearances for trial, an hourly rate of C$65 for matters handled by the secretary, and an additional lump-sum fee for the event where the solicitor was "unusually successful" ("the Unusual Success Fee"). The issue in this case was whether the letter of agreement was "unfair or unreasonable" within the meaning of s 78(9) of the Legal Profession Act, SBC 1987, c 25 (Can) ("the Canadian LPA"), such that the letter of agreement would be liable to be set aside. Whether the letter of agreement constituted a "contract for remuneration to be paid" within the meaning of s 78(1) (*ie*, a CBA), such that the fees were beyond taxation unless the contract was set aside as "unfair or unreasonable" under s 78(9), was strictly speaking not in issue because the impugned solicitor

did not assert that the letter of agreement was a CBA (see *Nash* at [59] and [67]). However, *Nash* remained instructive because Master Brandreth-Gibbs nevertheless proceeded to conduct a general survey of the attendant legal principles in this regard and proffer his opinion as to whether the letter of agreement was a "contract for remuneration" as defined under s 78(1).

72 Master Brandreth-Gibbs found that the letter of agreement was *not* a "contract for remuneration" within the meaning of s 78(1) of the Canadian LPA. Whereas the hourly and *per diem* rates were not objectionable *per se*, Master Brandreth-Gibbs determined that it was impermissible for the solicitor's fee agreement to include the Unusual Success Fee because the latter caused the entire fee agreement to amount to no more than "an agreement to render services at a rate to be fixed later" (*Nash* at [60]–[61], citing *Fiddes v Cowan* 34 BCLR (2d) 38 at 41 *per* Spencer J). This resulted in the client having "no way of estimating with any degree of certainty what her exposure in fees would ultimately be, at the time the agreement was made" (*Nash* at [64], citing *DS Moir v Trenciansky* [1989] BCJ No 564 *per* Shaw J).

73 It was clear to me that the letter of agreement in *Nash* was found to be insufficiently specific to amount to a CBA, not because it contained hourly or daily charge-out rates, but *only* because it provided for the Unusual Success Fee. In this respect, not only was the meaning of "unusual success" undefined, but the quantum of the additional fee was also unspecified. The Unusual Success Fee was thus not specified in sufficiently clear terms so that the client would be in a position to make a reasoned calculation based on the agreement as to what her legal fees would eventually be upon completion of her contentious legal matter. Given that the Engagement Letters did not contain such a fee component, they were factually distinguishable from the letter of agreement in *Nash*, and could be upheld as being sufficiently specific to constitute CBAs.

74 Next, I was also referred to the case of *DM Davidson v Seltzer* Vancouver Registry No J820268 ("*Seltzer*"), which Master Brandreth-Gibbs' had referred to in *Nash* (at [64]). In *Seltzer*, Registrar Turriff held that an agreement whereby the lawyer would be paid a specific hourly rate did *not* constitute a "contract as to remuneration" because:

> ***There is nothing in the document which suggests that the parties had agreed about which of them, if either of them, would decide how much of [the solicitor's] time would be spent****. Without agreement on that point, or the number of hours that would be spent it could not be said that an agreement about remuneration to be charged had been made.* This is so because, on the basis of [the solicitor's] own document, no amount of fees was calculable at the time the agreement was signed. [emphasis added in italics and bold italics]

75 Although *Seltzer* was referred to with approval by Wei J in *Chancery Law* (at [63]) in the course of his discussion of the *Nash* decision, I harboured certain reservations about the learned registrar's observations in *Seltzer*. In particular, insofar as it was suggested in *Selzter*, as a matter of principle, that an agreement on the number of hours that would be spent had to be reached in order for an agreement as to charge-out rates to amount to a CBA, I disagreed. In my view, it was sufficient for an agreement as to charge-out rates to contain an agreement that the charge-out rates would be applied to the actual time utilised by the solicitor. I considered such an agreement to be specified in sufficiently clear terms so that the client would be in a position to make a reasoned calculation based on the agreement as to what the legal fees would eventually be upon completion of his or her contentious legal matter. And that was indeed what the Engagement Letters in the present case had provided for (at para 6), when it was stated that the legal fees would ultimately be governed by the:

> … ***actual time spent in connection with this matter by the lawyers having conduct of your matter***, including the time spent in meetings with you, including any telephone

> conversations, emails to or from you, letters and others; preparing, reviewing and working on the matter, preparing papers including correspondence; making and receiving telephone calls and others on your behalf; preparing for and attending court on your behalf; travelling and waiting and the overall management of this matter. [emphasis added]

76 As for the observation in *Seltzer* that the fee agreement could not amount to a CBA as it lacked any agreement as to which party would decide how much time the solicitor should allocate to the case, I agreed with the learned registrar in this regard. Indeed, it was on this specific basis that the agreement in *Seltzer* was one step removed from the Engagement Letters in relation to the specificity of its terms. The agreement as to charge-out rates in *Seltzer* did not appear to provide for any mechanism to determine the amount of time that the solicitor should spend on the matter. In contrast, pursuant to para 6 of the Engagement Letters as set out above, the costs billed by SLC would ultimately be premised on the *actual time spent* on the matter by the solicitors in charge, which would clearly be dictated by the total amount of time needed and actually spent by the respective assigned solicitors themselves in order to perform the scope of works as specified in the agreement. This made all the difference because there was now certainty and specificity as to *how* the total amount of legal fees would be arrived at. *Seltzer* thus demonstrated the significance of providing in the fee agreement that the charge-out rates specified in the agreement were to be applied to the actual time that the assigned solicitors had in fact spent to handle all the work as specified in the agreement.

77 Finally, in the English High Court (Senior Courts Costs Office) decision of *Addleshaw Goddard*, which I had briefly dealt with earlier when addressing the Broad Objection (see [61] above), the engagement letter entered into between the solicitor and the client contained a clause that provided for hourly expense rates for the solicitors whilst reserving the right to increase its rates,

and also contained a clause that reserved the right to bring in additional fee earners as work progresses (at [30]). However, the latter clause provided no indication as to the partners' seniority, skills or disciplines, nor did it provide any information about the grades, rates, seniority or other information about any additional solicitors who might be brought in to handle the matter (at [51]). In spite of the presence of those clauses, the Costs Judge, Master Campbell held that the terms of the engagement letter were still sufficiently certain to constitute a CBA (at [74]). Specifically, Master Campbell pointed out that the clause that reserved the right on behalf of the solicitors to bring in additional fee earners was "not a term that is either uncertain or unreasonable" because it was plain from the evidence that the client had been involved in discussions with his solicitors regarding which personnel to deploy in the case. Finally, Master Campbell even found that the clause that reserved the solicitor's right to increase his hourly charging rate was not uncertain or unreasonable because the clause was accompanied by the caveat that any changes would be discussed with the client before implementation, and such clauses were in any event ubiquitous in solicitors' engagement letters.

78 *Addleshaw Goddard* thus demonstrated that an agreement as to the charge-out rates of the solicitors to be applied on the actual number of hours used could be regarded as being permissibly specific *even if* there were clauses that permitted the *alteration* of the solicitors involved in the matter or of even the charge-out rate of the solicitors, *as long as* the client had been suitably apprised of those arrangements and there were adequate safeguards in place to protect the interests of the client. But it was unnecessary for me in the present case to endorse unreservedly the conclusion derived from *Addleshaw Goddard*, given that the terms of the Engagement Letters in the present case did not go quite as far as those of the engagement letters in *Addleshaw Goddard*. Nevertheless, *Addleshaw Goddard* was undoubtedly helpful in showing, by way

of a more extreme example, that the terms in the Engagement Letters in the present case were certainly not quite as uncertain as Mr Daniel was attempting to make them out to be.

79 From the foregoing survey of the relevant precedents, it was clear that none of the authorities supported Mr Daniel's suggestion that an agreement as to charge-out rates had to be accompanied by either the fixed or the maximum number of hours that the solicitors involved would spend on the matter in order to be sufficiently specific. At the end of the day, the only relevant inquiry was whether the fee agreement was specified in sufficiently clear terms so that the client would be in a position to make a reasoned calculation based on the agreement as to what his legal fees would eventually be upon completion of the contentious legal matter. In that regard, I had no doubt that the agreements as to the charge-out rates of SLC's solicitors in the Engagement Letters that were to be applied to the actual hours spent on the agreed scope of work by the respective solicitors were sufficiently specific to constitute CBAs.

*Remedies for overcharging under agreements as to charge-out rates that were to be applied to the actual number of hours utilised*

80 My finding that an agreement as to charge-out rates was sufficiently specific, especially when the agreement also provided that that charge-out rates were to be applied to the actual number of hours utilised by the solicitors, was also fortified by my reading of the appropriate remedies that an aggrieved client could turn to in the event of overcharging carried out under such agreements. Mr Daniel contended that such agreements as to charge-out rates ought not to be precluded from taxation by dint of being considered sufficiently specific to constitute CBAs, because this would deprive clients like Mr Ho of their fundamental right to have their fees taxed, and they would be left with very limited recourse.[54] While there was indeed a veneer of attractiveness to Mr

Daniel's submission, I did not think that it was a principled reason to find that agreements as to charge-out rates cannot be considered CBAs, especially when the agreements also specified that the charge-out rates were to be applied to the actual number of hours utilised.

81 In the first place, I recognised that it was entirely possible for overcharging to occur even when there had been an agreement as to the solicitor's charge-out rate. As usefully observed by Chan Sek Keong CJ (delivering the judgment of the Court of Three Judges) in the decision of *Law Society of Singapore v Andre Ravindran Saravanapavan Arul* [2011] 4 SLR 1184 ("*Andre Arul*") at [30]:

> … where fees are charged on a time basis, overcharging can also occur even where the client has agreed to the tariff of charges … ***if the number of hours billed for has been inflated or if work unnecessary to achieve the purpose of the retainer has been billed for***. This is because *while the client has contractually agreed to the tariff of charges, he has not agreed to the number of hours which he may be charged for.* … [emphasis added in italics and bold italics]

I would supplement Chan CJ's observations in *Andre Arul* by adding that overcharging by inflation of the number of hours billed for would typically occur when: (a) the solicitor had dishonestly set out to cheat the client by falsifying the actual number of hours used, or (b) the solicitor had not set out to cheat the client, but had failed to keep proper records of the actual number of hours used and subsequently proceeded to specify or estimate a number of hours larger than the actual number of hours utilised. Also, overcharging might also occur when the actual number of hours utilised had in fact been honestly recorded and presented in the bill, but the solicitor had enlarged the size of the total bill by: (a) deliberately engaging in work unnecessary to achieve the purpose of the retainer (as pointed out by Chan CJ), or (b) taking an

[54] NE 6 September 2017, 20:15–21.

unnecessarily long time for the work by failing to act with reasonable due diligence in order to slow down and increase the actual time taken for the work. These were but some examples of factual overcharging that could occur if the bills were based on the actual number of hours utilised, but the solicitor had not been diligent or honest.

82 One might thus argue that agreements as to charge-out rates ought not to be construed as CBAs because taxation would be precluded by virtue of s 112(4) of the LPA, and this would seriously prejudice clients in instances of overcharging. I acknowledged that a client's right under s 120 of the LPA to refer his solicitor's bills to taxation is indeed "a powerful right" because it is "the only judicial process designed specifically to assess and fix the reasonable fees which a solicitor is entitled to charge a client": *Kosui Singapore Pte Ltd v Thangavelu* [2015] 5 SLR 722 ("*Thangavelu*") at [56]. However, I was similarly mindful of the fact that a client's *prima facie* right to have his fees taxed under s 120 was never meant to be absolute, and that one clear, statutorily-defined way in which this right may be given up is if the client enters into a CBA under s 111: *Thangavelu* at [59].

83 Also, insofar as it was suggested that taxation is "the client's *only* protection against overcharging" [emphasis added] (*Thangavelu* at [56]), I would disagree. It is true that s 113(1) of the LPA precludes any party to the fee agreement from bringing or instituting any action or suit upon the fee agreement. However, the client who is a victim of overcharging is not completely without recourse. Indeed, "[t]he fact that no action may be maintained in respect of a contentious business agreement … essentially means that all such agreements will have to survive the scrutiny of the court and it reflects the particular jealousy with which the court regards work done in court": Tan Yock Lin, *The Law of Advocates and Solicitors in Singapore and West*

*Malaysia* (Butterworths Asia, 2nd Ed, 1998) at p 691, cited in *Wong Foong Chai v Lin Kuo Hao* [2005] 3 SLR(R) 74 at [29] *per* Andrew Phang Boon Leong JC (as he then was).

84 One obvious remedy would be for the aggrieved client to *not* pay any amount reflected in the bill of costs issued by the solicitor, and proceed to apply pursuant to s 113(2) of the LPA for a declaration under s 113(4) that the fee agreement is void on the grounds that "the terms of the agreement are deemed by the court or Judge to be unfair or unreasonable", whereupon the court would then have the discretion under s 113(5) to direct the impugned bill to be sent for taxation: *Lin Jian Wei and another v Lim Eng Hock Peter* [2011] 3 SLR 1052 at [26]; see also *Andre Arul* at [29].

85 It might be contended that where there was an agreement as to charge-out rates that were to be applied to the actual number of hours utilised, it would *not* be open to the court to declare the fee agreement void under s 113(4) of the LPA when the solicitor has been accused of overcharging (using the methods stated at [81] above) because the "terms" of this fee agreement *per se* were not in fact unfair or unreasonable. I disagreed for the following two reasons:

(a) First, "reasonableness" in the context of s 113(4) has been defined as being "not excessive in relation to the amount of work done, taking into account the nature of the work, the duration of his [or her] work, the standing of the solicitor concerned, and also the range of fees payable in a High Court action" (*Shamsudin* at [28] and [33]). From the foregoing definition, it seemed clear to me that the instances of overcharging described earlier (at [81] above) were precisely the type of misconduct that fell squarely within the ambit of s 113(4). Any overcharging by inflating the actual number of hours utilised or

engaging in unnecessary work or slowing down the work to increase the actual number of hours utilised would thus fall afoul of the "reasonableness" requirement under s 113(4).

(b) Secondly, "the terms of the agreement" as provided for under s 113(4) of the LPA ought to be read broadly when the fee agreement concerned was an agreement as to charge-out rates, so as to encompass a review of how the solicitor had in fact utilised his time on the agreed scope of work to be done by him. This was because s 113(4) was clearly meant to be read in concert with s 113(2), which provides that the court may examine and determine every "question respecting the validity or *effect* of the agreement" [emphasis added]. Hence, considerations of the *effect* of an agreement as to charge-out rates that were to be applied to the actual number of hours utilised should, in turn, naturally encompass considerations of how the actual number of hours utilised were arrived at by the solicitor based on the agreed scope of work.

86 Having said that, even if the aggrieved client *has* paid the amount under the fee agreement, he or she would still not be without further recourse. The next option open to the aggrieved client would be for him or her to apply pursuant to s 113(7) of the LPA, within 12 months after making payment under the fee agreement, for the court to reopen the fee agreement, order the fees to be taxed, and order the amount that has been paid to be repaid to the client, provided he or she is able to prove that there are "special circumstances" within the meaning of s 113(7). In respect of what kind of circumstances would be considered sufficiently "special" to justify reopening the fee agreement and sending it for taxation, it is well established that there is no rigid rule, and it is for the court to determine on the facts of each case whether there are special circumstances that make it right to reopen the fee agreement: *Wee Harry Lee v*

*Haw Par Brothers International Ltd* [1979-1980] SLR(R) 603 at [15], cited in *Thangavelu* at [61] and *Sports Connection Pte Ltd v Asia Law Corp and another* [2010] 4 SLR 590 at [31] (in the context of defining what kind of circumstances are sufficiently special to justify taxation of a solicitor's bill under s 122 of the LPA). I would also note at this point that given that a disciplinary committee's finding that the solicitor had in fact overcharged has been regarded as one of the circumstances that satisfies the "special circumstances" requirement (*Thangavelu* at [61(b)], citing *Ho Cheng Lay v Low Yong Sen* [2009] 3 SLR(R) 206 at [5]), it would to my mind be prudent for the aggrieved client to, alongside the s 113(7) application, lodge a complaint with the Law Society of Singapore regarding alleged overcharging by the solicitor in question in breach of rules 17(7) and 17(8) of the Legal Profession (Professional Conduct Rules) 2015 (S 706/2015).

87 In the final analysis, I found this contention by Mr Daniel on behalf of Mr Ho – that the risk of overcharging should preclude me from construing an agreement on a charge-out rate to be applied to the actual hours utilised for the agreed scope of work as a CBA within the meaning of s 111 of the LPA – to be a specious one. The various options that an aggrieved client could avail himself or herself of in the face of an incident of overcharging by his or her solicitor showed that there were, in my view, sufficient safeguards against overcharging for agreements as to charge-out rates to be applied on the actual number of hours utilised by the solicitor on the scope of work as agreed. This was thus another ground on which I rejected the Narrow Objection advanced by Mr Daniel.

**Conclusion**

88 For the reasons aforesaid, I found that the Engagement Letters were CBAs within the meaning of s 111 of the LPA, such that the bills of costs in

question were precluded under s 112(4) from being sent for taxation. In the result, I dismissed the taxation application, with costs fixed at $6,500 (inclusive of disbursements) to be paid by Mr Ho to MLS.

Chan Seng Onn
Judge

Christopher Anand s/o Daniel and Arlene Foo Li Chuan (Advocatus Law LLP) for the plaintiff;
Tan Gim Hai, Adrian and Lu Huiru, Grace (Morgan Lewis Stamford LLC) for the defendant.

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