

Lau Liat Meng & Co v Lum Kai Keng
[2003] SGCA 24

Case Number : CA 147/2002
Decision Date : 28 May 2003
Tribunal/Court : Court of Appeal
Coram : Chao Hick Tin JA; Judith Prakash J; Yong Pung How CJ
Counsel Name(s) : Andre Arul (C Arul & Partners) for the Appellant; Wong Siew Hong for the Respondent
Parties : Lau Liat Meng & Co — Lum Kai Keng

Legal Profession – Bill of costs – Taxation of paid bill of costs at client's request – Whether solicitor entitled to render larger bill of costs for work already paid for by client – r 28(1), r 28(4) & r 28(5) Rules of Court (Cap 322, R5, 1997 Rev Ed) O59

Delivered by Judith Prakash J

Background

1 This appeal relates to the taxation of a solicitor's bill of costs for non-contentious work. In 1998, the respondent, Madam Lum Kai Keng needed legal advice in connection with various issues relating to the administration of her late husband's estate. She therefore consulted Mr Lau Liat Meng of the appellant firm of advocates and solicitors, M/s Lau Liat Meng & Co ('the firm'). Mr Lau gave Madam Lum advice from 26 February 1998 up to 28 February 2000. In November 1999, Mr KS Chung was engaged as counsel in respect of potential litigation. When she discharged the firm, Madam Lum immediately entrusted the further conduct of her matter to Mr Chung. The next day, Madam Lum commenced action in the High Court against her two children and a bank.

2. In the course of their solicitor-client relationship, Mr Lau had rendered Madam Lum two bills. The first was dated 4 December 1999 and was in respect of an amount of \$30,000 which was described as 'paid to account'. The second bill, dated 14 December 1999, purported to cover the period from March 1998 to 26 October 1999 and was for an amount of \$16,077.06 of which \$15,000 represented fees and the balance disbursements. The bill stated that \$15,000 had been paid on 26 October 1999.

3 In November 2000, Madam Lum's new solicitors wrote to the firm stating that she had decided to make an application to tax their bills and asking whether the firm would agree to the taxation without the necessity of an application to court. The firm subsequently agreed to this request. In November 2001, the firm filed its bill of costs. In Section 1 of the bill, the firm claimed \$220,000 on the basis that 446 hours had been spent over the two years on Madam Lum's matter and Mr Lau's charge out rate was \$500 per hour.

4 The bill was taxed by Assistant Registrar Chong Chin Chin. The taxation process took three half days. At the end of the hearing, the Assistant Registrar taxed \$110,000 off Section 1 and thus allowed it at \$110,000. Upon review, she declined to alter this figure. Neither party was satisfied with this decision and both applied for a review by a judge in chambers. The judge dismissed the firm's request for a review. He, however, accepted arguments made on behalf of Madam Lum that since she had already paid the firm's bills for work done up to December 1999, the firm was not entitled to render a larger bill for this work upon taxation, and reduced the Section 1 figure even further to \$12,000 (over and above the sum of \$47,293.26 already paid pursuant to the earlier bills rendered by the firm). The judge's assessment was that \$12,000 was a reasonable figure to cover

work done in January and February 2000. The firm was dissatisfied and thus lodged the present appeal.

5 The arguments on appeal revolved mainly around the proper application and interpretation of O 59 r 28(1), (4) and (5) of the Rules of Court (1997 Ed). These provide as follows:

Costs payable to a solicitor by his own client

28. – (1) This Rule applies to every taxation of a solicitor's bill of costs to his own client.

...

(4) The delivery of a bill of costs by a solicitor to his client shall not preclude the solicitor from presenting a bill for a larger amount or otherwise for taxation, if taxation is ordered by the Court or is consented to by the solicitor and his client.

(5) Upon a taxation mentioned in paragraph (4), the solicitor shall be entitled to such amount as is allowed by the Registrar, notwithstanding that such amount may be more than that claimed in any previous bill of costs delivered to his client.

6 In the court below, counsel for the firm argued that as the two bills it had rendered Madam Lum in December 1999 had been interim bills, by reason of r 28(4) the firm was entitled to submit a larger bill subsequent to an interim bill. The judge rejected this argument. In his view, that rule was intended to allow a solicitor to put up a larger bill for taxation notwithstanding that his original bill was for a smaller sum. The rule had no relevance when the client had accepted the original bill and paid the sum stipulated. It did not seem proper to the judge for a solicitor to render an interim bill (ie a bill for services rendered up to the date specified even though the matter had not been completed) and, by implication, reserve the right to present a further bill covering the same period. The judge therefore took the view that by reason of Madam Lum's payment of the two interim bills, the firm was not entitled on taxation to revise its charges for the periods covered by those bills.

7 Order 59 r 28(4) appears to be straightforward. It permits a solicitor who has rendered a bill to his client to present a bill for a larger amount for taxation if taxation is ordered by the court or is consented to by the solicitor and the client. It is reinforced by r 28(5) which permits the solicitor to collect the amount awarded on taxation even if such amount is larger than the fee charged in his previous bill to the client. The first sub-rule of r 28 makes it plain that all parts of this rule are to apply to each and every taxation of a solicitor's bill to his client. The rule does not discriminate between the taxation of bills that have been paid and bills that have not been paid. It would therefore appear that whether or not a bill has been paid is irrelevant to the application of sub-rule (4) and that even in a case where a solicitor's bill has been paid, if the bill is thereafter to be taxed, the solicitor is entitled to present a larger bill for the purposes of taxation. In *The Law of Advocates and Solicitors in Singapore and West Malaysia* by Tan Yock Lin, Professor Tan in commenting on O 59 r 28(4) (at p 703) does not draw any distinction between a paid and unpaid bill. He says only that by reason of O 59 r 28(4) 'In Singapore, the question whether a solicitor who has delivered what purports to be a complete bill can subsequently deliver a second complete bill now receives a straightforward answer'. That answer, obviously, is yes. In contrast, the position in West Malaysia in respect of non-contentious business is still governed by English rules which preclude delivery of a second bill for a larger itemised amount.

8 The difficulty with giving such a straightforward interpretation to r 28(4) is the discomfort felt at the licence solicitors apparently have to increase their fees even after they have rendered

their bill for their services and the client has accepted it by paying the amount billed. This discomfort was expressed by the judge in the following words:

It does not seem to me proper for a solicitor to render an interim bill and, in this case, by implication, reserve the right to present a further bill covering the same period ... A lawyer owes a duty to his client to draw up his bill clearly and accurately, and with such attention to detail as he would do in undertaking any work on behalf of his client. A client is entitled to engage a lawyer within his means, and therefore must not be led to believe that the fees he or she was paying were only a fraction of the actual fees incurred. If he had realised that the fees had been more than he could afford he should be entitled to seek alternative assistance.

In our view, however, such a reaction may not be appropriate to the circumstances in which this bill was taxed.

9 The tension in this case is in getting the balance correct between the right of a lawyer to receive reasonable remuneration for his professional services and the right of his client to be sure that he has been charged a reasonable amount in relation to the work done and has not been overcharged. It has been the practice of the legal profession for many years to try to attain that balance through the procedure of taxation of the lawyer's bill. The circumstances in which taxation of a bill can be obtained are set out in s 120 of the Act. Fundamentally, a bill is taxed either pursuant to a court order obtained by the client, or by the solicitor, upon a petition of course presented under s 120(1) or pursuant to the consent of both parties. For a court ordered taxation, such a petition has to be presented within one year from the delivery of the bill or it will not be entertained. The other condition for obtaining a court order is that the bill must not have been paid. This is provided for by s 122 of the Act which states:

Time limit for taxation of bills of costs

122. After the expiration of one year from the delivery of a bill of costs, or after payment of the bill, no order shall be made for taxation of a solicitor's bill of costs, except upon notice to the solicitor and under special circumstances to be proved to the satisfaction of the court.

10 Section 122 does, however, provide a client with an avenue to tax a paid bill. Such a client may still be able to procure an order for taxation if he gives notice of his intention to ask for taxation to his solicitor and thereafter satisfies the court that special circumstances exist which merit taxation of the bill notwithstanding payment. Examples of special circumstances noted in Professor Tan's text include the existence of undue pressure and overcharge on the face of the bill (at p 733). What is notable, however, is that the opportunity to have a paid bill taxed is open only to the client. A solicitor who has sent out an interim bill for work done during a specified period or a final bill which is then paid by his client cannot ask the court for a taxation order even if he discovers later that he has grossly underestimated the amount of work which he had done and therefore has undercharged the client. In such a situation, the solicitor will have no opportunity to correct his bill and present a second bill which more accurately represents the work done by him. This is fair as it is up to the solicitor who prepares and presents a bill to ensure that it accurately reflects the work done and the charges incurred. If the solicitor undercharges and the client accepts the bill and pays it, the solicitor will have to live with his own mistake. As we see it therefore, giving effect to the plain meaning of the language of r 28(4) by recognising that it permits a solicitor upon taxation to deliver a bill for a greater amount even if the first bill delivered has been paid, does not give him a licence to, at his whim, increase the amount of the bill subsequently and bring taxation proceedings to enforce payment of the increased amount by the client.

11 In the absence of special circumstances, the only situation in which a paid solicitor's bill can be taxed is if the client asks the solicitor to tax the bill and the solicitor agrees. Such consent will bring the situation within s 120(3) of the Act and will confer jurisdiction on the registrar to conduct the taxation without the necessity for a court order. When that happens, the bill that the solicitor presents for taxation would be governed by O 59 r 28 and, therefore, the solicitor will be entitled to present a bill that is higher than the bill that the client has paid and is not satisfied with. That is not an unfair outcome to either side: both parties will on taxation have the opportunity of convincing the registrar as to the reasonable amount payable for the work actually done. It seems to us that where a client asks for taxation of a paid bill, a request to which the solicitor is under no obligation to accede, if he does so, it would be unfair to allow the client to try and reduce the amount of the bill and thus obtain a refund of an amount he has paid without earlier protest but, at the same time, not allow the solicitor to increase the amount of the bill if, in the course of preparing the bill, he realises that the sum originally charged is inadequate in view of the work done.

12 In the circumstances, we are unable to agree with the judge's view that the firm was not allowed to present an increased bill for taxation for the work done by it for Madam Lum during the period covered by the interim bills, even though the request for taxation had been made by Madam Lum and was obviously inspired by a desire to obtain a reduction of the firm's charges, just because Madam Lum had paid those bills. The decision below must therefore be set aside.

13 This leaves us with the issue as to the proper amount to be awarded to the firm for such work. The firm's argument is that Madam Lum had agreed that she would pay for Mr Lau's services at the rate of \$500 an hour and that as 446 hours were spent over the two year period during which advice was given to her, the firm was entitled to the sum of \$220,000 in fees. We cannot, however, accept that such an agreement existed. The only evidence of it was the following statement in the firm's letter of 4 December 1999 to Madam Lum accompanying its interim bill for \$30,000:

As we have explained to you your above case is full of complexities. We have attended to you on at least more than 30 hours, (the details of which we have not worked out) our fees of which are approximately in the region of \$450 to \$500 per hour.

This letter was the only document that the firm produced to evidence an agreement on fees. There was no document signed by Madam Lum agreeing to pay fees of \$450 to \$500 per hour and there was no evidence either that this fee rate had been notified to and accepted by Madam Lum at the beginning of the solicitor- client relationship in 1998. Madam Lum's silence in the face of this letter sent nearly two years later cannot be read as her consent to that fee rate.

14 In the circumstances, the assistant registrar was free to tax the bill on the usual basis. It is apparent from her grounds of decision that she took great pains in the taxation process and carefully considered the bill, the documentary evidence tendered before her, and the arguments proffered by both parties both in support and in criticism of the time records maintained by the firm. She also correctly took the view that while the firm was not bound by its earlier bills, the amount initially claimed was still a relevant factor to be borne in mind when considering the correct remuneration for the firm's services. At the end of this process, the assistant registrar's decision was that the sum of \$110,000 (inclusive of the \$45,000 already paid) represented reasonable fees for the work done. We can see no basis on which to disagree with her.

15 Accordingly, the appeal is allowed. The decision below is set aside and the award of the assistant registrar is restored. The firm shall have the costs of the appeal.