

**DALAM MAHKAMAH TINGGI MALAYA DI KUALA LUMPUR
[BAHAGIAN RAYUAN DAN KUASA-KUASA KHAS]
[SAMAN PEMULA NO. 17D-42-09/2014]**

Dalam Perkara Tetuan Rusmah Arunan & Associates, sebuah firma Peguambela dan Peguamcara yang beralamat di No. 5-2, Tingkat 2, Jalan Telawi 2, Bangsar Baru 59100 Kuala Lumpur

Dan

Dalam Perkara Penaksiran Kos ke atas Bil No. RRA/062/13, RAA/066/13, RAA/067/13, RAA/087/14 dan RRA/099/14 yang dikeluarkan oleh Tetuan Rusmah Arunan & Associates

Dan

Dalam Perkara Aturan 7 Kaedah 1 Kaedah-Kaedah Mahkamah 2012

Dan

Dalam Perkara Sekyen 126 Akta Profession Undang-Undang 1976

ANTARA

**PERBADANAN PENGURUSAN
SUBANG PERDANA COURT 10A**

... PLAINTIF

DAN

TETUAN RUSMAH ARUNAN & ASSOCIATES

... DEFENDAN

GROUND OF JUDGMENT

BRIEF BACKGROUND

1. By the Originating Summons dated 19th September 2014, the Plaintiff has sought, amongst others, for the following orders under Section 126 of the Legal Profession Act 1976 (**‘the LPA’**):
 - 1.1. That Bil No. RAA/062/13, RAA/066/13, RAA/067/13, RAA/087/14 and RAA/099/14 (**‘the said Bills’**) submitted by the Defendant to the Plaintiff as legal fees, payment and expenses be referred to the Taxing Officer for the taxation of the Bills;
 - 1.2. That the Taxing Officer makes the orders under Section 132 of the LPA as he deems fit, just and reasonable to enable the Bills to be consistent with the provisions of the Rules of Court 2012 (**‘RoC’**);
 - 1.3. That the Taxing Officer submits an Allocatur to verify the amount to be paid by the Plaintiff to the Defendant as fees for works done including the Allocatur’s costs and the cost for taxation;
 - 1.4. That if the amount verified in the Allocatur is less than the amount paid by the Plaintiff to the Defendant, the Defendant must refund the difference in the amount which had been paid

to the Plaintiff within fourteen (14) days from the date the Allocatur is submitted;

1.5. Costs; and

1.6. Other orders and or reliefs as this Honourable Court deem fit and just.

THE DOCUMENTS

2. For the purpose of the Originating Summons the following documents were filed and referred to by the Court:

2.1. Affidavit in Support affirmed by Boey Poh Wah on 19th September 2014 (**‘Enclosure 2’**);

2.2. Affidavit in Reply (1) affirmed by Sumita a/p Gnanarajah affirmed on 8th October 2014 (**‘Sumita’s Affidavit (1)’**) and the Defendant’s Counterclaim (**‘Enclosure 3’**);

2.3. Supplementary Affidavit (2) affirmed by Sumita a/p Gnanarajah on 13th October 2014 (**‘Sumita’s Affidavit (2)’**) (**‘Enclosure 8’**); and

2.4. Affidavit in Reply affirmed by Cham Wei Lun affirmed on 4th December 2014 (**‘Enclosure 16’**).

BACKGROUND FACTS

3. The background facts leading to this Originating Summons could be stated as follows:

- 3.1. The Originating Summons was commenced by the Plaintiff, Subang Perdana Court 10A Management Corporation, a management corporation established under the Building and Common Property (Maintenance and Management) Act 2007 (**'Act 663'**) (**'the Plaintiff'**) which address is at Unit AQ-02-04, Goodyear Court 10A, Persiaran Mulia, USJ 15, 47630 Subang Jaya, Selangor (**'the said Property'**).
- 3.2. The Defendant is a firm of Advocates and Solicitors known as Messrs Rusmah Arunan & Associates (**'the Defendant'**) purportedly appointed by the previous management of the Plaintiff to handle all cases and matters concerning the Plaintiff.
- 3.3. During the Annual General Meeting of the Plaintiff held on 29th June 2014 at the said Property, a Management Committee (**'Committee'**) comprising of the deponent of Enclosure 2, one Mr. Boey Poh Wah and seven (7) other house owners of the said Property were appointed as the new Committee to replace the old Committee.



3.4. On 2nd July 2014, soon after the new Committee was appointed, the Plaintiff wrote a letter to the Defendant requesting for the following documents to be supplied to them:

3.4.1. The letter of appointment of the Defendant as the firm of Advocates and Solicitors representing the Plaintiff;

3.4.2. Copies of the cause papers filed by the Defendant on for and on behalf of the Plaintiff;

3.4.3. Copies of correspondence pertaining to legal advice given to the Plaintiff for all actions and or matters filed for and on behalf of the Plaintiff;

3.4.4. All invoices or bills and proof of payments made by the Plaintiff; and

3.4.5. A summary of all claims or actions commenced for and on behalf of the Plaintiff, including the status of each of the case and or matters pending in court and all instructions given by the Plaintiff to the Defendant.
(see **Exhibit BPW-1 of Enclosure 2**).

4. As there was no reply from the Defendant and on being informed by one of the house owners that there was a Court of Appeal case involving the Plaintiff which was coming up for hearing on the 8th July 2014, the Plaintiff sent a reminder dated 7th July 2014 to inquire from



the Defendant the status of their earlier request (see **Exhibit BPW-2 of Enclosure 2**).

5. The Defendant replied the Plaintiff's letter dated 7th July 2014 but made no mention of the 2nd July 2014 letter. Upon realizing that the Defendant had not responded to the Plaintiff's 2nd July 2014 letter the Plaintiff again wrote to the Defendant for the same documents to be supplied to them. The Plaintiff had also given specific directions to the Defendant not act on their behalf until all the documents they requested for are supplied to them (see **Exhibit BPW-3 of Enclosure 2**).
6. On 11th July 2014 the Defendant wrote to the Plaintiff asking for further directions pertaining to all claims and matters filed for and on behalf of the Plaintiff to which the Plaintiff responded *vide* their letter dated 14th July 2014 intimating to the Defendant the following:
 - 6.1. The Plaintiff had no knowledge about all claims filed by the Defendant on its behalf;
 - 6.2. The Defendant had not supplied all the documents requested by the Plaintiff, including the letter of appointment of the Defendant by the previous Committee;
 - 6.3. The Plaintiff would not be in a position to give further instructions without all these documents; and

6.4. Hence the Plaintiff sought the Defendant's cooperation to supply the said documents.

(see **Exhibit BPW-4 of Enclosure 2**)

7. The Defendant refused to reply to the said letter and at the same time the Plaintiff became aware of a case involving the Plaintiff which was still pending in the Kuala Lumpur High Court which had been fixed to 21st July 2014 for hearing.
8. In view of the Defendant's refusal to accede to the Plaintiff's request for documents and information to be supplied to them, the Plaintiff lost all confidence in the Defendant and terminated the services of the Defendant pursuant to a letter dated 18th July 2014 (see **Exhibit BPW-5 of Enclosure 2**).
9. Soon after the 18th July 2014 letter was sent, the Defendant wrote to the Plaintiff vide a letter dated 21st July 2014 to demand payment of all outstanding bills (see **Exhibit BPW-7 of Enclosure 2**).
10. On 15th August 2014 the Plaintiff through its newly appointed Solicitors demanded from the Defendant the particulars of the said Bills.
11. The Defendant informed the Plaintiff that they had no intention to prepare the Bill of Costs (see **Exhibit BPW-8 of Enclosure 2**). Hence this Originating Summons was filed, among others, the



Plaintiff cited the following grounds to demand for the Bills to be taxed:

- 11.1. The Defendant's appointment was doubtful due to the fact that the Defendant was not able to show any document to prove their appointment by the old Committee;
 - 11.2. There were no documents furnished by the Defendant to justify the said Bills;
 - 11.3. The Plaintiff did not agree to these Bills;
 - 11.4. The Bills were issued with respect to works which had not been performed by the Defendant;
 - 11.5. The Bills were not in accordance with the provisions of RoC; and
 - 11.6. The Bills were not supported by documents.
- 12.** Based on the aforesaid the Plaintiff had sought from this Court for the Bills of Costs to be taxed by the Taxing Officer.
 - 13.** In the Affidavits filed in opposition to the Plaintiff's Originating Summons the Defendant refuted all facts deposed thereto and averred that the Defendant was appointed by the previous management to handle all claims and matters involving the Plaintiff and the previous Committee through its then Chairman Mr. Stanley

Lim Chang Leong had given the Defendant the mandate to pursue these matters in Court and had in fact agreed to the Bills submitted by the Defendant (see **Exhibit SG-1 of Enclosure 3**).

POINTS RAISED BY THE RESPECTIVE PARTIES

14. Before me the learned Counsels for the Plaintiff and the Defendants raised the following arguments:

For the Plaintiff

14.1. Up to the point the Originating Summons were filed in Court the Defendant had failed to prove to the Plaintiff that they were legally appointed by the previous Committee to act on behalf of the Plaintiff. Despite the Plaintiff's request for the Defendant to show proof of appointment, the Defendant had failed, refused and ignored all requests. In view of the above it is doubtful if at all the Defendant was appointed by the old Committee to act on the Plaintiff's behalf.

14.2. The Plaintiff had never agreed to the Bills. There was no agreement between the Plaintiff and the Defendant with respect to the legal fees to be paid to the Defendant for works done for the Plaintiff. The Defendant had failed to prove that there was a resolution made pursuant to the Act 663 in relation to the appointment of the Defendant as the Advocates and Solicitors for the Plaintiff.



14.3. The Bills issued by the Defendant were doubtful and not in accordance with the law.

14.4. The Plaintiff's Originating Summons were not barred by limitation.

14.5. There exist special circumstances to warrant this Court to grant order in terms of the prayers.

14.6. The Defendant's Counterclaim is irregular and incorrect.

For the Defendant

14.7. Both the Plaintiff and the Defendant had agreed to a fixed legal fees for all works done by the Defendant in moving all the Plaintiff's cases and or matters in Court.

14.8. Section 126 of the LPA had stipulated the time frame within which the Plaintiff could apply for orders for the legal fees to be taxed and the Plaintiff was out of time.

14.9. All cause papers had been supplied to the Plaintiff.

14.10. The Notice of Change of Solicitors was filed in court without the Defendant's permission.

14.11. The Plaintiff's Solicitors have acted for the adverse party.

14.12. The facts deposed by the Plaintiff were not full and frank.

DECISIONS OF THE COURT

- 15.** There was no evidence before me to show that the Defendant was the firm of advocates and solicitors appointed by the old Committee to undertake all legal matters on behalf of the Plaintiff. Despite the Plaintiff's repeated request for the documents pertaining to the Defendant's appointment, the same was not furnished to Plaintiff. The Defendant had, ignored and failed to supply to the Plaintiff the information and or documents requested by the Plaintiff. Even reasonable request for the summary of their pending cases in Court was denied to the Plaintiff. The least the Defendant could have done was to respond to the 2nd July 2014 letter and provide reasonable input to enable the Plaintiff, being a new Committee to take stock of things.
- 16.** In short the Defendant was not able to prove by way of a single letter that they have been appointed by the Plaintiff to act on behalf of the Plaintiff. The Defendant had blatantly ignored the Plaintiff's request and only when the Plaintiff pursued the matter to have the bills to be taxed, the Defendant attempted to produce a letter purportedly signed by one Mr. Stanley Lim Chang Leong the previous Chairman of the Committee to prove that there was in fact an agreement reached by both the Defendant and Mr. Stanley Lim Chang Leong with regard to the fixed legal fees to be paid to the Defendant for legal works undertaken by the Defendant. However there was nothing in writing

to prove the existence of an agreement under Section 116 of the LPA.

17. The Court noted that the letter to prove that there was an agreement between the Plaintiff and the Defendant for payment of fixed legal fees and expenses dated 26th August 2014 after the said Mr. Stanley Lim Chang Leong ceased to be the Chairman of the Plaintiff. This letter was issued after the Defendant failed to furnish the necessary documents requested by the Plaintiff and after the Plaintiff pursued the issue of costs with the Defendant. As at 26th August 2014, the said Mr. Stanley had no authority to issue any letters for and on behalf of the Plaintiff because he had ceased to be the Chairman and with effect from 29th June 2014 a new Committee had been appointed and had taken over the management of the Plaintiff.
18. As this matter involved a decision of a Committee there must be a resolution made pursuant to Regulation 6 of Schedule 1 of Act 663. The Defendant had failed to prove that there was a resolution pursuant to Regulation 6 of Schedule 1 of Act 663 with respect to their appointment as Advocates and Solicitors for the Plaintiff.
19. Pursuant to Regulation 6 of Schedule 1 of Act 663, a resolution is deemed to be approved and or passed if all the Committee members had been informed of the proposed resolution in writing and or reasonable efforts had been made to inform all the Committee members of the proposed resolution. The said resolution had to be signed by every Committee members indicating their agreement to

the resolution. In the event there is no resolution by every member of the Committee then a meeting shall be convened for the said purpose.

20. There is a requirement under the above-quoted law that there must be a resolution to be passed in writing and signed by each of the members for any action and or decision to be undertaken by the Committee. The same would apply to the appointment of advocate and solicitors to act on behalf of the Plaintiff. The Defendant had failed to prove to the new Committee that they had been appointed by the old Committee as advocates and solicitors to handle all legal matters concerning the Plaintiff.
21. Rule 9 of the Second Schedule of the Strata Management Act 2013 (**‘Act 757’**) provided for the same procedure to be adopted with respect of any resolution to be passed by the Committee. The resolution had to be in writing and signed by every member of the Committee. In the absence of such agreement by every member of the Committee a meeting is to be held. It is observed that the Defendant had not demonstrated to the Plaintiff that they had been properly appointed by the Plaintiff to act on behalf of the Plaintiff as required by the law.
22. The Defendant was not able to show that they had been appointed by the Plaintiff to act on the Plaintiff’s behalf at this stage and the letter purportedly issued by Mr. Stanley has no value as it had been issued after he ceased to be the Chairman of the Plaintiff and after the

Defendant had denied the Plaintiff of any information pertaining to their appointment as the plaintiff's advocates and solicitors. The Defendant had also failed to prove by way of contemporaneous documents that they had been appointed by the plaintiff to attend to all legal matters.

23. The Defendant had failed to prove by way of a resolution and or a confirmed minutes in writing that they have been appointed. The law places the burden on the Defendant to prove that they were duly appointed to act for and on behalf of the Plaintiff (see *Messrs Firdaus Azlina & Co v. Tunas Selatan Construction Sdn. Bhd. & Anor* [2014] 9 MLJ 808). The Defendant had not discharged the said burden.
24. In view of the above I agree that at this juncture there is doubt as to whether the Plaintiff had through Mr. Stanley Lim Chang Leong and the Defendant had agreed for a fixed legal fees to be paid to the Defendant for all legal works undertaken by them. The best way to prove that the Defendant had is entitled to be paid legal fees was to proceed by way of taxation under Section 126 of the LPA.
25. Further there were special circumstances in the case at hand to grant the order to compel the Defendant to prepare a detailed bill of costs given the circumstances of this case. In *Tan Tek Sin & Anor v. Tetuan Nora Hayati & Associates* [2015] 1 CLJ 89 the Court of Appeal had stated "*The most important question the court should ask*

was whether there were special circumstances in the present case.”.

The Court went further to hold as follows:

“ The defendant had set out the particulars of the legal work done without any sum being shown against each item. The bill only just showed a lump sum of RM600, 000 representing the costs of all items. This was in itself a special circumstance, which was a ground for the court to exercise its inherent jurisdiction to allow the plaintiff’s extension of time and to refer the bill for taxation and determination.”.

26. Guided by the above quoted case, and as the facts in the case at hand showed a lump sum figure, I am of the view there exist a special circumstance upon which this court should exercise its inherent jurisdiction to allow the Plaintiff herein to refer the Bills for taxation and determination.
27. Given the factual matrix of this case and for the ends of justice I am of the view that the fairest mode to determine the amount of costs for works done by the Defendant, if any, which the Defendant is claiming from the Plaintiff must be by the orders of the Court as prayed for by the Plaintiff herein. The Plaintiff too must be allowed extension of time to refer the Bills for taxation.
28. As the amount of the Bills were subject to taxation the final the amount due from the Plaintiff to the Defendant would ultimately depend on the amount to be taxed by the Taxation Officer. Hence whatever amount that is due from the Plaintiff to the Defendant which

the Defendant was claiming from the Plaintiff in their Counterclaim would be subjected to the same to be taxed by the taxing officer.

29. I do not propose to deal with other issues raised by the Defendant especially with respect to paragraph 14.10 and 14.11 and leave it to the Defendant to take up these matters with the Bar Council.

CONCLUSION

30. Based on the above-mentioned reasons I granted the prayers sought by the Plaintiff herein with costs of RM4,000.00 to be paid by the Defendant to the Plaintiff. Any legal fees due to the Defendant, if any, will be ultimately determined after the Bills are being taxed by the Taxing Officer.

(ASMABI MOHAMAD)
HIGH COURT SPECIAL AND APPELATE POWERS
KUALA LUMPUR

Date of Grounds : 2nd December 2015

Date of Decision : 13th April 2015

Date of Notice of Appeal : 22nd April 2015

Counsel:-

For and On Behalf of the Plaintiff - Habizan Rahman Habeeb; M/s Rahman Rohaida

Advocate & Solicitor

Bangunan ABDACOM, No. 32, Tingkat 3

Jalan Medan 9, Taman Medan

46000 Petaling Jaya Selangor Darul Ehsan

[Ref:2014/LIT/0325]

For and On Behalf the Defendant - Nuraine Haziqah; M/s Rusmah Arunan & Associates

Advocate & Solicitor

1-20, Centrio, Pantai Hillpark

Jalan Pantai Murni 59200 Kuala Lumpur

[Ref: RAA/BANG/SG/WILL/2092]