REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV 2018-01066

Between

GEETA MAHARAJ

Claimant

And

KENSON OPERATIONAL SERVICES LIMITED

Defendant

Before The Honorable Justice David C. Harris

Appearances:

Mrs. Geeta Maharaj for the Claimant in-person

Mr. Colin Kangaloo instructed by Ms. Danielle Nieves **for the Defendant**

DECISION

FACTS[1]

1. On March 28, 2018, the Claimant filed a Claim Form and Statement of Case claiming the sum of $114,750.00 being the sum allegedly due and owing by the Defendant to the Claimant for outstanding fees for non-contentious commercial legal services. It is not in

[1] See the pleadings and the comprehensive written submissions of both parties.

dispute that the Claim Form and Statement of Case were issued without the Claimant having her bill of costs "taxed".

2. On June 4, 2018, the Defendant filed its Defence in which it averred that the Claimant was not entitled to commence these proceedings having regard to the fact that her bill of costs has not been taxed pursuant to section 51 of the Legal profession Act and, therefore, in the absence of a taxed bill of costs, the Claimant could not maintain this action for the recovery of fees.

CASE FOR CLAIMANT

3. This is a claim for outstanding legal fees brought pursuant to Section 20 of the Legal Profession Act, Chapter 90:03 of the Laws of Trinidad and Tobago (hereinafter called "the LPA"). The Claimant contends that there is no requirement to tax a bill of costs to recover legal fees before proceeding with legal action. The LPA provides a practicing Attorney-at-Law with an independent right to bring legal proceedings under section 20 in relation to legal commercial services.

4. Sections 20 (1), (2) and (3) of the LPA states as follows:

(1) Every person whose name is entered on the Roll in accordance with this Act shall be known as an Attorney at Law and

(a) Subject to subsection (2), is entitled to practice law and to sue for and recover his fees for services rendered in that respect;

5. Section 20(2) provides for the requirement for being entered on the roll and obtaining a practicing certificate. Sub-Section 3 provides for disentitling an Attorney from maintaining an action for his fees if he is not entered on the roll or a holder of a practicing certificate.

6. The Claimant contends the legislation is archaic and disjointed since the introduction of the CPR1998 in place of the RSC1975 and as such an Attorney at Law should not be penalized and/or be deprived of legal fees simply because the legislation governing remuneration of legal fees is archaic and deficient and further contends that it is clear from the language of the legislation that there are no regulations for remuneration for commercial matters.

7. In the circumstances, the Claimant argues, on a literal reading of sections 20 and 52 of the LPA, there is no need for a bill of costs to be taxed. An Attorney-at-Law can commence legal proceedings for recovery of legal fees as she has done, and an assessment be conducted by the Judge assigned to the matter.

CASE FOR DEFENDANT

8. Counsel for the Defendant at the onset accepts, from the pleadings, two (2) factors:

   (i) The Claimant is attempting to recover fees for non-contentious work; that is, advice which is not related to litigation; and
   (ii) There is no prior agreement between the Claimant and the Defendant pleaded as to the payment of fees for the work done by the Claimant.

9. Following the existence of these two factors the defendant contends that:
   (i) The Claimant should not have filed this action without getting her bill of costs taxed for the non-contentious advice she gave to the Defendant;
   (ii) As a matter of law and fact, there is no prior agreement between the Claimant and the Defendant for the payment of fees (pursuant to section 53 of the LPA) and therefore, the Claimant's fees should have been taxed before any action for the recovery of fees.

ISSUES

10. Whether the Claimant's action is an abuse of the Court's process and/or discloses no grounds for bringing the action, and should therefore be struck out, due to the Claimant's failure to have her bill of costs taxed prior to instituting the present action.

THE LAW

11. The law is first set out in the Legal Profession Act Chap 90:03. Following this, is the CPR1998. The Legal Profession Act predates the CPR. The CPR of course, replaced the RSC 1975 to which the LPA originally operated in tandem with.

12. The authorities of Vincent Nelson QC v The Attorney General of Trinidad and Tobago CV 2016-04386; Deanne Rameshar-McCloud v Marlene Samaroo CV 2006-02012 and Zuliani v Viera (1994) 45 WIR 188 are of particular note.

13. The core applicable sections of the LPA are 20; 51-52. Reference has been made by the Defendant to Section 53 of the Act. I do not see its relevance in this matter. Section 53 is clear I think; it deals with the alternative circumstances where the parties had made an agreement as to remuneration of the Attorney in respect of the non-contentions business. There is no dispute that no such agreement exists in this case.

14. Section 20 is straight forward; an Attorney at Law is entitled to sue for and recover his fees for legal services rendered. There is no dispute that the Claimant as an Attorney has that right.

15. Section 51 precludes an Attorney from commencing any suit for the recovery from his client of the amount of any bill of costs for any legal business done by her unless that bill has been taxed. The right to sue is not taken away by this section. It merely prescribes the basis upon which the right is founded and a process toward maintaining such an action,

if one exists. This is not the only instance in the Act where the right to sue is limited or even precluded. Section 20.3 of the Act provides for removing the right to sue for failing to be enrolled or in possession of a valid practicing certificate. This is all reflective of the closely regulated professional practice.

16. Section 49 of the said LPA provides that a "*taxing officer*" means, for our purposes is, the *"Registrar*" of the Court. Reference to the taxation of the "*bill of cost*" in section 51, presumably is required to be done before the "taxing officer" defined in the said section 49. I perceive that as a filtering process prior to the determination on the fairness and reasonableness of the fees billed for the legal services.

17. I have had the benefit of the comprehensive written legal submission of the counsels for the Claimant and Defendant in this matter. There are several issues raised there that do not affect this determination. The relevant authorities on the issue in this matter have been canvassed before me as have the interpretation of the various sections of the Act and the CPR. I note also that the authorities referred to have been in relation to bills of costs in relation to litigation before the Court and not in relation to non-contentious commercial matters.

18. For my part, if the legislative parameters of this case were limited to that which has been raised in the submission, revolving as they do, around section 51 of the Act, then clearly the Claimant has erred in failing to tax her bill prior to commencing this action.

19. However, I need to factor in certain other provisions, more specifically rules under the CPR that have not been canvassed in either submission[2].

[2] Perhaps the import of these rules were too patent to have specifically referred to them in the submissions.

20. The CPR 1998, provides at Part 2.2 that the Rules apply to all *Civil Proceeding* in the Supreme Court, save for several matters not relevant to this case. This rule does not appear to allow for issues not related to litigation or processes not fitting within a definition of "Civil Proceedings". The Defendant in this matter, at para 3 of its submissions filed July 27th 2018, accepted that the Claimant's services over which this action was brought is "non-contentious work, that is, advice which is not related to litigation…" and therefore not before the Supreme Court. That criminal legal services are not covered by the CPR is not in dispute. Further, it appears that it is also not in dispute that in relation to the Claimant's fees, in the civil jurisdiction it is a combination of the Act and the CPR that apply. To this extent, the process that describes the determination of fees for criminal legal services are no part of the equation that brings this court to the resolution of the issues before it.

21. It is common ground that the CPR provides, at 66.2(3) that Part 67.12 applies; where in any *enactment* there is reference to taxation of any costs it is to be construed as an '*assessment of cost*' pursuant to Part 67.12.

22. The LPA is such an *enactment*; so Part 66.2 effectively modifies Part 2.2 in so far as 66.7 to which 66.2 refers appears to allow for matters other than litigation before the Court to be dealt with under Part 67.12. But, as if that twist, was not enough, Part 67.12 appears to circumscribe the type of 'assessment' to one of '*cost in relation to any <u>matter</u> or <u>proceeding</u>*.'.

23. But, it does not stop here; at the onset of Part 67.1 it provides; "*This part deals with the way in which any costs awarded by the Court are quantified*". The literal interpretation of this rule is that part 67 deals only where the Court has already made an award of entitlement to costs and the party is subsequently seeking to quantify it. Part 67.2 continues in the same vein; that the litigation has commenced and concluded before the Supreme Court.

24. In the end, the Court relies on Part 66.2(2)(c) and Part 66.3, read along with the reference in Part 67.12 to "…*any matter*…", as including the non-contentious commercial legal services provided by the Attorney to her client in this matter. The words "*any matter*" must be read to encompass something other than a *"proceeding*" before the court.

CONCLUSION/DISPOSITION

25. Turning back to Section 51(1) of the Act, notwithstanding the introduction of the CPR, it is clear that a bill of costs can still be *taxed*. It is done before the Master (see Part 2.4 and Part 67.12(1),(3),(4) – (6). The "*Taxation*" is now done and referred to as an "assessment" under the CPR. Presumably pursuant to section 52, the Law Association and others have established the fee rate - scale of fees - applicable across a wide spectrum of services. In any event, whatever its origin, the practice of reliance on that 'scale of fees' and awards in accordance with it, is well established[3]. To be clear, the taxing officer also makes determinations in relation to fair and reasonable fees that are not fixed in accordance with any enactment.

26. The Claimant has not followed section 51(1). Does the failure of the Claimant to have first taxed her bill render the action a nullity; is the action still born as it were?

27. The defendant has not taken a robust objection(if any) before me in relation to the finding by Rahim J in the ***Vincent Nelson QC*** case that the section 51 requirement to Tax one's bill of costs is not a procedural requirement that can be remedied under the CPR. Indeed it does appear at the very least to be a process provided to allow further distillation of the issues in relation to the fairness and reasonableness of the fees, before(if at all) it gets before a High Court Judge for trial. A particular view of the reasons for the section 51 taxation being procedural in nature, are set out in the said Judgment of Rahim J. I need

[3] See also CPR Part 4.6(1); see Practice Guide to the Assessment of Costs of 2oth December, 2007 and updates thereto.

not repeat it here. That case however, in critical material particulars, is not on all-fours with the instant case.

28. Why then can the Court not deal with both the "assessment"' and claim as one matter as appears to be suggested by the claimant? There are practical bases for having everything dealt with in one hearing or before one judge, such as; the potential for **(i)** saving of costs and **(ii)** saving of time. In the case before Rahim J, the suit for costs was in relation to a contentious matter litigated before the court. The Rules provide in such a case that the costs may be assessed before a Judge (as opposed to a Master). It may well seem illogical in those circumstances to treat the taxation/assessment before another Judge or Master or in a separate hearing, as a precondition for commencing the suit where one judge can do it all.

29. The taxation acts as a filter however. This court, even if it had the authority to do so, is not prepared to relax the time honoured and sensible process of filtering these often times unseemly dollars-and-cents disputes, through the assessment process first. The Bill must be taxed.

30. More importantly, as pointed out above, there is a distinguishing factor in our case. In a suit before the court a Judge can assess costs (see rule 67.12(2). I see no equivalent rule for a non-contentious matter unrelated to any litigation.(see rule 67.12(3)-(6).

31. The issue then is whether this failure to first independently tax/assess the bill before a 'taxing officer' is fatal to the Claim. In order to resolve this issue I pose the questions: What, under the Act, gives rise to the cause of action brought by the Claimant? Is it the failure of a client/Defendant to pay the Attorney's fees as billed or is it the failure of a client/Defendant to pay the Taxed bill? The s. 51(1) of LPA provides for the Attorney's right to sue for fees in accordance with the Act. It is important to note that the section refers to *"…any suit…any bill of costs…for any legal business done by him…"*. It does not distinguish between contentious and non-contentious, or commercial, probate and so

on[4]. Section 51 in this court's view creates the basis for the Claimant's cause of action, only after taxation/assessment. This in part, is how the profession closely guards its reputation in the "market place". This is a protection also, of sorts for the Attorney I would think. After the taxation process, the Attorney can comfortably request payment for fees that have been certified as fair and reasonable by her peers in what is a statutorily regulated and fused profession. There is no other, to my knowledge, like it.

32. So pursuant to section 51 the Claimant, having billed the client and gotten no satisfaction, must first tax/assess her bill and send (or resend) it to the Defendant; upon the Defendant's refusal to pay the taxed bill, the cause of action is crystalized and an action can then be commenced. In the absence of an agreement for the amount and payment of fees, a taxation must be pursued where the client refuses to pay the fees. Presumably where a defendant/client enters into an agreement to pay certain fees pursuant to section 53 of the LPA, they are taken to have been satisfied with the fairness and reasonableness of the fees. In those circumstances the Act provides for the Claimant proceeding directly against the client without taxation. Contrary to the claimant's assertion in her written submissions, she is not being deprived of her legal fees. She remains entitled to sue in the manner provided by law. So what order does the court make in these circumstances?

33. Striking out a claim is considered the last resort; the "nuclear" option. It is not to be the preferred option if the default can otherwise be fairly remedied. Having found that the taxation/assessment and subsequent refusal to pay the taxed/assessed bill is a fundamental precondition for creating and as a consequence of that, then bringing an action, regrettably I can see no other remedy available to the court but for the Claimant to either forthwith discontinue the suit or for the court to strike it out on the basis that the claim discloses no ground for the bringing of the claim (CPR1998 part 26.2(c).

[4] See section 53 of the LPA which does create an exception to section 51.

34. If the Claimant wishes to pursue this matter, the Claimant is directed to have the bill of costs taxed/assessed before the Master as provided for in the LPA and CPR Part 67.12 and the CPR generally.

35. For the reasons provided about **IT IS HEREBY ORDERED** that:

    i. That subject to this order, the Claimant's claim and statement of case is struck out.

    ii. That there is a stay of execution of the said striking out for 3 clear days from the notification of the Claimant of this order, after which the claim, if not discontinued, stands struck out and dismissed as ordered above.

DAVID C HARRIS
HIGH COURT JUDGE
NOVEMBER 2, 2018