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Dispute Resolution

## Court Rejects Consultant's Claim for Fees for Breach of the Legal Profession Act

### Introduction

In *Choo Cheng Tong Wilfred v Phua Swee Kiang* [2021] SGHC 154, the Singapore High Court rejected the Plaintiff's claim for alleged unpaid 'consultancy fees' of over S\$2 million for work done over a 16-year period for breach of the Legal Profession Act. This is the first reported decision where the Singapore High Court has struck down a claim for fees for work done in breach of the Legal Profession Act.

The Plaintiff was admitted as an advocate and solicitor of the Singapore Court in 1989, and had a valid practising certificate from 1992 to 2000, and from 2006 to 2014. The Plaintiff, however, did not have a valid practising certificate when he was appointed by the Defendants in 2000/2001, and for a significant period during which the work was done. Under the Legal Profession Act, an unauthorised person (such as the Plaintiff) cannot claim payment for legal work done as an advocate and solicitor. The Plaintiff claimed that his services were law-related business consultancy services, which did not contravene the Legal Profession Act.

The Singapore High Court found that the work done by the Plaintiff was essentially in the nature of legal services, which he was not entitled to claim for as an unauthorised person under the Legal Profession Act. The Court also found that the payment arrangement, in which the Plaintiff would receive a percentage of the recovered moneys, was void for breaching the rules of champerty.

The Court further allowed the Defendants' counterclaims against the Plaintiff for wrongfully selling 3.53 million shares which had been transferred to the Plaintiff as security for the payment of his fees, as well as for the repayment of loans which the 2<sup>nd</sup> Defendant had made to the Plaintiff.

This decision clearly marks out the boundaries of what constitutes regulated work under the Legal Profession Act and the Court's focus on the substance (rather than the form) of the work done. The guidance in this decision is significant and timely as the legal industry enters into transition, with an increasing number of alternative legal service providers entering the market to provide legal services to the general public.

Jansen Chow and Ang Leong Hao of Rajah & Tann Singapore LLP successfully represented the 2<sup>nd</sup> Defendant in this decision.

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### Brief Facts

The Defendants (comprising the 1<sup>st</sup> Defendant and the 2<sup>nd</sup> Defendant) had appointed the Plaintiff ("**Mr Choo**") to provide them with advice and assistance in relation to certain legal disputes. Mr Choo had been admitted as an advocate and solicitor of the Singapore Court, but did not have a practising certificate at the material times.

As part of the arrangement, the parties entered into a 'Consultancy Agreement' in which Mr Choo would be paid 20% of the moneys recovered in the dispute ("**20% Remuneration Arrangement**"). The 1<sup>st</sup> Defendant also transferred 3.53 million shares ("**Shares**") to Mr Choo as security for the payment of his fees. All the Shares were subsequently sold by Mr Choo.

Mr Choo commenced these proceedings seeking payment of S\$2,089,080 from the Defendants, which he alleged to be the unpaid fees for 'business consultancy services' provided over a 16-year period. Mr Choo alleged that he and the Defendants had entered into six oral agreements in which he would be paid both fixed sums and fees at an hourly rate. This included retainers of A\$30,000 per year and hourly rates ranging from S\$800 to S\$1,200 per hour. The Defendants maintained that the oral agreements did not exist.

The 1<sup>st</sup> Defendant counterclaimed for an account and inquiry in respect of the proceeds from the sale of the Shares. The 2<sup>nd</sup> Defendant counterclaimed for repayment of loans made to Mr Choo.

### Holding of the High Court

The Court found in favour of the Defendants, dismissing Mr Choo's claims and allowing the counterclaims. The Court largely accepted the Defendants' version of events, finding Mr Choo to be "an extremely unreliable witness".

### Recovery of fees

The Court found that Mr Choo was not entitled to recover fees for the services provided to the Defendants, which were in substance legal work done as an advocate and solicitor.

In this regard, the Legal Profession Act provides that no person shall practise as an advocate and solicitor, unless his name is on the roll and he has in force a practising certificate. An unauthorised person who does not have a practicing certificate is not able to recover costs in respect of anything done as an advocate or a solicitor.

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As the Legal Profession Act does not expressly define what it means to act as an advocate and solicitor, the Court considered and endorsed the two disjunctive tests set out in *Turner (East Asia) Pte Ltd v Builders Federal (Hong Kong) Ltd and another* [1988] 1 SLR(R) 281 which are as follows:

- (a) Other than those specific acts listed in the Legal Profession Act, an act is an act of an advocate and solicitor when it is customarily within his exclusive function to provide.
- (b) A person acts as an advocate and/or solicitor if, by reason of his being an advocate and solicitor, he is employed to act as such in any matter connected with his profession.

Applying the aforesaid tests, the Court held that there were three types of work for which an unauthorised person cannot claim any remuneration:

- (a) Work that he was employed to do as an advocate and solicitor in any matter connected with the profession of advocates and solicitors;
- (b) Work done by him that falls within any of the specific categories in section 33 of the Legal Profession Act (in particular, acting as an advocate or solicitor in preparing any document relating to any legal proceeding); and
- (c) Work done by him that is customarily within the exclusive function of advocates and solicitors to provide (in particular, giving advice on legal rights and obligations).

On the facts, the Court found that the work done by Mr Choo for the Defendants was in substance work done in the capacity an advocate and solicitor, which included preparing documents relating to legal proceedings and giving legal advice on the Defendants' rights and obligations. The Court denied Mr Choo's attempts at characterising the work as mere business consultancy services.

As Mr Choo did not have a valid practising certificate in force at the material times, he was an unauthorised person and was thus barred from recovering any fees from the Defendants for work done during these periods.

### **Validity of remuneration arrangement**

On an examination of the evidence, the Court found that the Defendants had established Mr Choo as an extremely unreliable witness. The Court further accepted the Defendants' submission that Mr Choo's version of events was riddled with inconsistencies and held that Mr Choo had failed to prove the existence of the alleged oral agreements upon which his fees were based. As for the 20% Remuneration Arrangement, the Court found it was unenforceable as it was a champertous agreement.

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As such, Mr Choo was not entitled to claim unpaid fees based on the arrangement. In any event, the Court found that Mr Choo had already been remunerated for the work he performed for the Defendants.

### Counterclaims

The Court allowed the 1<sup>st</sup> Defendant's counterclaim for the sale proceeds of the Shares. The Court held that Mr Choo held the shares on trust for the 1<sup>st</sup> Defendant, and that he was not entitled to sell the shares. The relevant conditions for the sale of the shares had not been fulfilled, and the 1<sup>st</sup> Defendant's consent had not been obtained, despite Mr Choo's claims to the contrary.

The Court also allowed the 2<sup>nd</sup> Defendant's counterclaim for the repayment of loans. The Court found that the 2<sup>nd</sup> Defendant had shown that he had in fact made the relevant loans to Mr Choo, and that Mr Choo was required to repay the loans with interest.

## Concluding Words

This is a significant decision concerning the ambit of section 33 of the Legal Profession Act and should be referred to by any person who seeks to provides legal services, including any LegalTech companies or alternative legal service providers. The decision highlights the Court's focus of substance over form and is a cautionary tale for any person who seeks to act circumvent the Legal Profession Act through "creative" contracting arrangements.

For further queries, please feel free to contact our team below.

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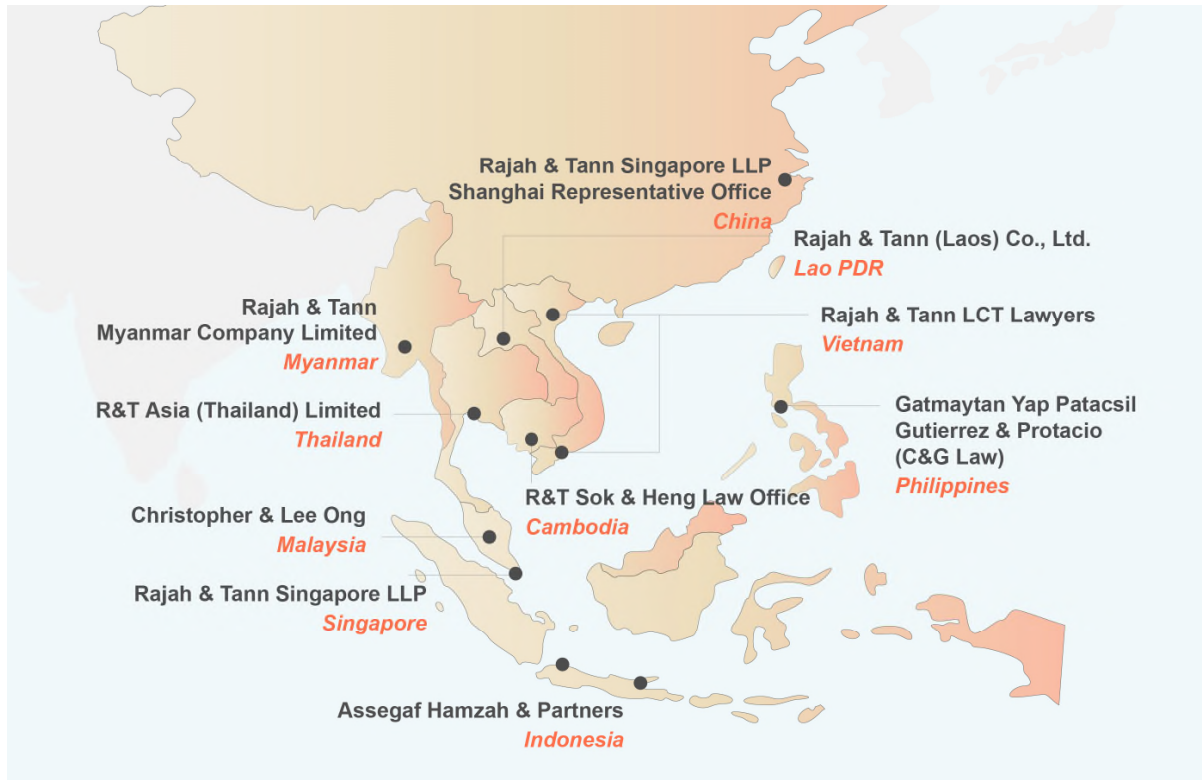
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