

HONG KONG / JUDGMENT

PANG HONG v. PRO-CENTRIC GROUP LTD

COURT

Court of First Instance

DECIDED

21 November 2007

CASE / FILE NUMBER

HCLA85/2005

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bjbj HCLA85/2005 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION COURT OF FIRST INSTANCE LABOUR TRIBUNAL APPEAL NO. 85 OF 2005 (ON APPEAL FROM LBTC 2754 OF 2005)

BETWEEN PANG HONG Respondent (Claimant) and PRO-CENTRIC GROUP LIMITED Appellant (Defendant)

Before: Master de Souza in Chambers (Open to public) Date of Hearing: 21 November 2007 Date of Ruling: 21 November 2007

R U L I N G

This is an application for review of my costs order following taxation of the bill of costs in these proceedings. The areas for consideration this afternoon are of a limited ambit. I have heard arguments from both law costs draftsmen for and against the first two points turning on the hourly rates of the winning party's solicitors. I now propose to give my ruling thereon. Mr Yu, who represents the aggrieved respondent, the paying party herein, has highlighted the hourly rates of Mr Chan Man-hon, Edward and Mr Yau Leung-sau, Lawrence as being excessive. At the taxation hearing, I had reduced both solicitors charge-out rates from \$4,000 to \$3,750, a reduction of \$250 in each case. Mr Yu does not seriously challenge my ruling as regards the more senior of the two, i.e., Mr Chan Man-hon, Edward. It can be seen that Mr Chan was admitted in 1986 and at the material times was, the partner of the firm in question. In view of his seniority, I would not have thought that he should not be entitled to his fee of \$4,000 per hour. However, taking into account that there was some reliance on counsel, and that the role of Mr Chan was basically that of an overseer of the legal functions of Mr Yau Leung-sau, Lawrence, I thought it would be appropriate to reduce his fees and I did so. I am still of the view that the \$250 deducted from his

charge-out rate of \$4,000 is appropriate, although his involvement in the entire case might have been no more than about an hour or so. That aspect of the review is, therefore, not successful. 4 Turning to Mr Yau's charge-out rate, it has also been argued by Mr Yu that there had been excessive reliance on counsel, which from my recollection of the case, I did not consider that to have been so. I still hold that view. It has been said that the case was not a heavy one. Yes, that I agree. But it is in no way one which could be taken to be a simple, straightforward legal matter. In fact, the bill was in respect of an application for leave to appeal on a point of law from the determination of a presiding officer of the Labour Tribunal and a review order of 15 November 2005.

5. There was a two-stage appellate process that the appellant had to overcome. First, leave had to be sought, which was granted by Deputy High Court Judge Louis Chan on 9 February 2006. Having obtained leave to appeal, the matter then was returned before the then Deputy High Court Judge Poon for the substantive hearing. Of course, the outcome was plain to everyone before me. It resulted in the orders for taxation, which I had ultimately dealt with.
6. Mr Yau was admitted as a solicitor in 1993. He is therefore considerably less senior than Mr Chan Man-hon, Edward. Nonetheless, he had 12 years or so of experience and Mr Yu agreed that the rate would fall between \$3,200 and a top rate of \$4,000. I deducted \$250 from his charge out rate of \$4,000, as I thought that was neither excessive nor unreasonable. He was not simply the conduit between lay client and counsel; he was also actively engaged in running this case hands-on, as can be seen by the various items of profit costs that related to him. I do not consider that the much-reduced charge-out rate urged upon me would be fair to the recipient party in this case.
7. On party and party taxation, the reduction that I ordered is fair and proper and reasonable in all the circumstances, and in view of the fact that there has been no fresh evidence led on this or any other points to be addressed subsequently by the parties on the remaining items, I hold that that reduction should stand. (Submissions of Law Costs Draftsmen)
8. The next item for review is B1.6 on page 16 of the bill of costs. This is described as paid counsel's fee for drafting leave to appeal on point of law for which a charge of \$8,400 was made and allowed in full upon taxation. Whether or not counsel should be involved in drafting the application for leave to appeal is a matter which was argued before me at the taxation hearing. No new arguments have been raised on this occasion, other than that, as a point of principle, it has been urged by Mr Yu that the document could have been undertaken and completed by a competent solicitor, such as Mr Yau, who was allowed a charge-out rate of \$3,750.
9. This is clearly an important document, as it sets out in a concise fashion the areas upon which it could be said that the presiding tribunal officer had made erroneous findings on points of law. The application for leave to appeal consists, including the backsheet, of six pages, but substantially the body consists of about four pages. It is on A4 sized paper, as is expected, and presented in single spacing so it can be seen that the material was quite

densely packed in this document. It is by no means a simple document to produce. I have no doubt that a competent solicitor, given adequate time, could have undertaken and completed such a document.

10. However, in this case, counsel was brought in and he charged but \$8,400 for doing the work. It is of reasonable and fair quantum. I allowed the quantum without any deduction, on the basis that this was a document which was important and significant. It was important to client and it was significant in that it had to set out in a very succinct and cogent fashion the areas of dispute on which the appellant would have to seek leave to appeal, so the process was clearly important. It does not appear to me to be unreasonable, unfair or improper for the solicitors firm to have brought in counsel at this stage to produce the application for leave to appeal on a point of law.
11. If Mr Yau had performed the task himself, he may have taken more than two hours. He might have taken less than two hours or he might have taken considerably more than two hours. One is not able to say how long he would have required to draft this document, having done the necessary research on the matter. I still hold the view that it was right and proper for counsel to have been invited to do this task. The charge was not excessive and certainly reasonable given the length of the document and the content thereof. So even on the basis of the objection that the counsel s fee was excessive, I maintain my holding on this point. (Submissions of Law Costs Draftsmen)
12. I next turn to item B1.8 at page 16 of the bill of costs. This is paid counsel s brief fee for leave to appeal for which a charge of \$25,000 was allowed following taxation. Mr Yu contends that counsel s fee was excessive, as it was merely an application for leave to appeal, and excessive also from the point of view that counsel had back in November the preceding year, charged \$28,000 for perusal of the papers that led eventually to his preparation for the leave to appeal application before Deputy High Court Judge Louis Chan on 3 February 2006 and then on 9 February 2006. I can see from the Form 15A, i.e., the Notice of Day Fixed for Hearing of an Application for Leave to Appeal, that the matter was estimated to last about 30 minutes. That notice is dated 26 November 2005.
13. As it turned out, the case came before the Deputy Judge on two days in February, and he ultimately granted leave to appeal but directed that the matter be heard substantively by another judge for reasons which do not concern us today. It has not been suggested that counsel should not be briefed to attend, as clearly his attendance was required. This was an appeal before a judge. I had allowed the fee of \$25,000. The hearing was set down for half an hour, although earlier there had been some suggestion that it was a one-day hearing. However, that is not correct, as we can see from the Form 15A that I have referred to just now.
14. Counsel for the purpose of the leave to appeal had to produce written submissions and authorities, which I have looked at on the last occasion. No doubt the Deputy Judge was greatly assisted by the written submissions. I cannot see how it could be said that counsel

with about 11 years call has charged excessively for his attendance on this application. The fees were reasonable. The application was clearly of great importance to the client as this was a substantial first hurdle that they had to meet. If the lay client failed at that stage, that would have been the end of the matter.

15. No additional material has been placed before me in relation to this aspect of the review. I consider that the order that I made previously was fair and reasonable and I still maintain that view. The review on this point is dismissed. (Submissions of Law Costs Draftsmen)
16. Item D2.1, entitled Perusal of all Evidential Background Documents provided by Client is the next and penultimate item of review this afternoon. Mr Yu contends that the time allowed of 17.5 hours out of a total claim of 20 hours remains excessive. It is said that it was unnecessary for the solicitor to peruse and digest every single document in undertaking and prosecuting the appeal, particularly with the aid of counsel. It has also been contended that the matter should not have taken so much time as counsel had also been supplied with documents for perusal and preparation for which a separate charge had been made and allowed.
17. I deducted 2.5 hours from the total number of hours claimed. Is the allowance excessive? The bill of costs sets out some 700 pages of documents. The solicitors for the receiving party came on board following adjudication at the tribunal level. There were copious documents which the solicitor would have to go through before identifying and singling out the relevant documents. A solicitor charged with such a task would have to go through the papers very quickly, and what appears to be peripheral or of little significance would be discarded or moved aside so that he could concentrate on the more important documents. No doubt, counsel should be supplied with papers which were necessary and only those that were of assistance on the matter of the appeal. So the weeding out of unnecessary documents would have to be undertaken. In effect, I had allowed a little over two working days for Mr Yau to peruse all these papers.
18. Having reconsidered the matter, I agree that the amount that I allowed may aptly be described as over-generous. However, a reasonable time must be allowed for a solicitor to do this necessary task. I would allow 13 hours in the end. I therefore allow the review and the reduction would be increased to 7 hours. So 20 hours, minus 7 hours, leaving 13 hours. The review on this item is allowed. (Submissions of Law Costs Draftsmen)
19. The final item for review relates to the law costs draftsman s fee for drafting the bill of costs. That includes perusal of the papers. Mr Lau, the law costs draftsman, charged 12 hours totalling \$19,200. I had allowed that amount in full. At today s review, Mr Yu submitted that a reduction of two hours would seem to be fair; anything less might be unreasonable from his perspective as an experienced law costs draftsman.
20. The bill itself is not particularly long, totalling just 37 pages excluding the backsheet. It can be seen that there were quite a few documents in this case, with a fair amount of correspondence and e-mails and telephone exchanges between various individuals. I do not

consider the amount of time spent by the law costs draftsman to be inordinately excessive or unreasonable. The fact that the bill itself is not overly long and verbose is indicative that much attention has been paid to setting out all the various relevant items in a clear and concise manner and that was patently achieved in this case.

21. I do not consider that the amount I had allowed the law costs draftsman should in any way be interfered with even on review. The order stands. (Discussion on costs of review)
22. As to costs, the applicant for review has succeeded on only one item and that relates to the perusal of documents by the solicitor, Mr Yau. In terms of dollars, that is, as Mr Yu has said, the biggest item on the agenda for review today. However, the applicant has failed in five out of the six items. So if one were to look at the success on each side, the one who comes out with the biggest win would be Mr Lau s client. I think it would be right, balancing the percentage of their success to order that the applicant for the review to pay two-thirds of the costs of the respondent to this appeal. (Discussion on quantum)
23. I accordingly order the applicant (Pang Hong) for the review to pay the respondent (Pro-Centric Group Limited) \$4,983 as the costs of this review application. (B.L. de Souza) Master of the High Court Mr S Lau, Law Costs Draftsman, instructed by Messrs Chan, Wong & Lam, for the Appellant (Defendant) Mr N Yu, Law Costs Draftsman, instructed by Messrs Ng, Lie, Lai & Chan, for the Respondent (Claimant) PAGE - PAGE CRT37/21.11.2007/GTT HCLA85/2005/Ruling A B C D E F G H I J K L M N O P Q R S T U V A B C D E F G H I J K L M N O P Q R S T U V A B C D E F G H I J K L M N O P Q R S T U V &`#\$ JUDGE.DOT setup Microsoft Word 9.0 judiciary Title Microsoft Word Document MSWordDoc Word.Document.8

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