P RATNAVALI DEVI S P MUDALIAR & ORS

v.

MESSRS JERALD GOMEZ & ASSOCIATES

High Court Malaya, Kuala Lumpur
Nixon Kennedy Kumbong JC
[Originating Summons No: WA-24NCvC-6302-12-2025]
11 September 2026

Arbitration: *Arbitration clause — Solicitor-client remuneration arrangement — Whether arbitration clause in terms of engagement relied on by defendant validly engaged — Whether dispute arising from agreement under s 116 Legal Profession Act 1976 could be diverted to arbitration*

Legal Profession: *Costs — Solicitor-client remuneration arrangement — Plaintiffs seeking variation or setting aside of terms of engagement, extensions of time to invoke taxation jurisdiction under the Legal Profession Act 1976 ('LPA'), consequential orders for taxation of 18 bills and refund of sums charged or received in excess — Whether plaintiffs' application barred by s 117(3), s 118(5) or ss 126 and 128 LPA — Whether terms of engagement fairly obtained within s 118(2) LPA — Whether defendant discharged fiduciary burden imposed by s 111 Evidence Act 1950 — Whether terms of engagement reasonable in substantive terms — Whether quantum billed reasonable having regard to work done — Whether special circumstances existed to justify extensions of time under ss 126 and 128 LPA — Whether refunds should be ordered in respect of monies paid under the 18 bills*

The plaintiffs were 203 individual investors who had suffered substantial financial losses in an investment scheme. To pursue legal recourse, they appointed the defendant, a firm of advocates and solicitors. The plaintiffs' case was that during preliminary meetings, the defendant represented that its total legal fees for the entire action up to judgment would be 'approximately 5% of RM100,000,000.00', that is, RM5 million, and that they had relied on that representation in agreeing to engage the defendant. The defendant's own affidavit evidence described the RM5 million figure as its 'ballpark' estimate. On 16 January 2024, the 1st plaintiff ('Ms Ratnavali'), acting as the representative of all the plaintiffs, signed the Terms of Engagement ('the ToE') which stated on its face that it was an agreement under s 116 of the Legal Profession Act 1976 ('the LPA'), provided for an hourly-rate structure and contained an arbitration clause. The ToE was purportedly signed on the spot and initialled on every page by Ms Ratnavali without any meaningful opportunity given to her to read or understand the document and without the terms thereof being explained, and without disclosure of the arbitration clause embedded within it. The plaintiffs also claimed *inter alia* that the defendant kept the executed ToE in its own file and did not give it to them until after they had terminated

the retainer. Between 20 January 2024 and 19 August 2024 the defendant issued 18 legal bills totalling RM1,549,650.00, of which the plaintiffs paid RM1,342,394.50. The work reflected in the said bills culminated only in the filing of a writ and statement of claim. The plaintiffs terminated the retainer on 27 August 2024, and the action itself was discontinued on 30 August 2024 without any judgment obtained or recovery achieved. The plaintiffs thereafter filed the instant originating summons under ss 116, 118, 126 and 128 of the LPA, seeking the setting aside or variation of the ToE under s 118 of the LPA; extensions of time to invoke the court's taxation jurisdiction under ss 118, 126 and 128 of the LPA; and consequential orders for the taxation of the 18 bills together with the refund of any sums found to have been charged or received in excess. The issues that arose for determination were: (i) whether the plaintiffs' application was barred by s 117(3), s 118(5) or ss 126 and 128 of the LPA; (ii) whether the ToE was fairly obtained within the meaning of s 118(2) of the LPA, and whether the defendant had discharged the burden under s 111 of the Evidence Act 1950 ('the EA 1950') of proving the good faith of the transaction; (iii) whether the ToE was reasonable in its substantive terms; (iv) whether the quantum billed was reasonable having regard to the work done; (v) whether special circumstances existed to justify extensions of time under ss 118, 126 and 128 of the LPA; (vi) whether refunds should be ordered in respect of the monies paid under the 18 bills; and (vii) whether the arbitration clause relied on by the defendant was validly engaged.

Held (allowing the plaintiffs' application):

(1) Section 117(3) of the LPA had to be read as a whole and, critically, with its opening words, 'subject to this Part'. That phrase was a statutory qualifier which subordinated s 117(3) to the entirety of Part VIII. The plaintiffs' application was anchored in s 118 of the LPA, which sat squarely within Part VIII. Accordingly, s 117(3) could not operate as an absolute bar where the court was properly seized of a s 118 summons. The statutory scheme was sequential. While the agreement subsisted, taxation was barred, and once the agreement was set aside, taxation was mandatory. The case of *Lua & Mansor v. Tan Ah Kim*, which was relied on by the defendant, stood for the uncontroversial proposition that s 117(3) barred taxation only where the agreement was not impugned. It did not address, let alone restrict, the court's jurisdiction under s 118(3) to void the agreement and order taxation thereafter. Given that the primary relief sought by the plaintiffs was precisely the relief contemplated by s 118(3) of the LPA, s 117(3) of the LPA ceased to apply and the defendant's time-bar argument collapsed at the outset. The statutory bar applied only to an agreement that stood, and not where the very validity of the agreement was under challenge. (paras 47, 48, 49, 50, 55, 56, 95 & 96)

(2) Section 118(5) of the LPA likewise offered no obstacle. That subsection governed situations where a party sought to reopen a paid agreement without first setting it aside, and it presupposed the continued existence of the agreement. On the facts, the plaintiffs had not sought to reopen the ToE

while keeping it intact but sought to have it declared void. Section 128(2) of the LPA, which imposed time limits for taxation, also did not apply once the agreement was set aside. The statutory right to taxation arose only after the agreement was declared void under s 118(3), and the time bar in s 128(2) could not operate to defeat a right that did not exist until the agreement was impugned. (paras 97-99)

(3) Section 118(2) of the LPA was emphatic: the solicitor had to satisfy the court that the agreement was fair in the manner in which it was procured and reasonable in its terms. The burden lay squarely on the solicitor, not the client. Fairness concerned the mode of obtaining the agreement, and the solicitor had to prove that the client 'fully understood and appreciated' it. As the defendant occupied a position of active confidence towards the plaintiffs, s 111 of the EA 1950 placed the burden on it to prove the good faith of the transaction. On the evidence, that burden had not been discharged. Signature did not equate to fairness; payment did not equate to reasonableness; and gratitude expressed before discovering the true position did not extinguish statutory rights. (paras 30, 34, 36, 40, 43, 57, 58 & 59)

(4) The contemporaneous documents did not, in themselves, establish that the plaintiffs understood the legal implications of the ToE. The mere fact that meetings occurred did not prove comprehension of critical terms such as the arbitration clause, the hourly-rate structure, or the practical consequences of over-staffing and duplication of personnel. Withholding the very agreement that governed the solicitor's remuneration was inconsistent with fiduciary standards of openness and candour, and a client could not be said to 'fully understand and appreciate' an agreement that was not made available to them. In a relationship premised on trust, such withholding undermined the defendant's assertion that the ToE was fairly obtained and explained. The circumstances of procurement, including the request to sign immediately, the absence of explanation, the non-disclosure of material clauses and the withholding of the executed document were fundamentally inconsistent with the standard of fairness required of a solicitor. In the premises, the defendant had not discharged the fiduciary burden imposed by s 111 of the EA 1950, and the ToE was not fairly obtained within the meaning of s 118(2) of the LPA. (paras 67, 70, 71, 73, 74, 75 & 76)

(5) The inquiry into reasonableness under s 118 of the LPA was a proportionality assessment: the quantum had to bear a rational and defensible connection to the extent, complexity and nature of the services rendered. On the facts, nearly one-third of the defendant's own estimated total cost of the entire action was billed merely to reach the starting line of litigation, without any interlocutory applications, case management, discovery, trial preparation or trial. The disproportion was stark and the overall quantum charged for preliminary steps was manifestly out of alignment with the defendant's own estimate of the costs of the full action. On the face of the figures alone, the charges were

unreasonable in substance, and the defendant had not provided satisfactory justification capable of reconciling the disparity. (paras 77, 79 & 80)

(6) Charging a client for the internal training or professional development of a solicitor's staff was plainly unreasonable. The deployment of eight personnel at a press conference 'as observers as well as for purposes of education' showed over-staffing that could not be justified under any recognised principle of professional remuneration. Additionally, billing a client for the work of an unqualified student at RM2,000.00 per hour was wholly inconsistent with professional norms, with fiduciary fairness, and with the expectation that charges reflected the skill, responsibility and expertise of the person performing the work. Mere presence did not equate to contribution. A solicitor's attendance had to be justified by reference to the work performed, the expertise applied or the value added to the client's case. Billing a client for unexplained and unparticularised presence of a solicitor was unreasonable. Internal discussions, supervision and administrative coordination were part of a firm's overhead and could not be indiscriminately passed on to the client. Over-staffing inflated costs without corresponding benefit, and the lack of contemporaneous time records undermined transparency and accountability. Taken together, these features reinforced the conclusion that the billing structure under the ToE was neither fair nor reasonable within the meaning of s 118 of the LPA. (paras 82, 83, 84, 85, 86, 87, 89, 90 & 94)

(7) In any event, the plaintiffs had demonstrated special circumstances. They were unaware of their right to taxation until they obtained independent legal advice. The defendant's failure to advise them of a material statutory protection, despite occupying a fiduciary position and despite the plaintiffs' evident reliance on its expertise, was itself a compelling special circumstance which justified an extension of time under ss 126 and 128 of the LPA. (paras 100-101)

(8) The statutory consequence of the ToE being set aside under s 118(3) of the LPA was clear in that the fees, charges and disbursements had to be taxed as though no agreement had ever existed. Taxation was not discretionary; it followed automatically from the voiding of the agreement. Any sums the plaintiffs had paid in excess of the taxed amount had to be refunded pursuant to the restitutionary principle embedded in s 118(3) of the LPA. The refund was not punitive but corrective. (paras 102-103)

(9) Parliament had made it unmistakably clear that taxation disputes between solicitors and clients were to be supervised, controlled and adjudicated by the courts, not diverted elsewhere. In light of that statutory design, any attempt by the defendant to rely on the arbitration clause to remove the matter from the court's supervisory jurisdiction was fundamentally inconsistent with the legislative scheme and would be contrary to public policy which required taxation matters to remain within the court's purview. (paras 104-105)

(10) In the circumstances, the arbitration clause relied on by the defendant was not validly engaged given that the ToE expressly stated on its face that it was an agreement under s 116 of the LPA and was governed entirely by the statutory framework of the LPA. Thus, any dispute arising from it had to be determined by the courts under s 118 of the LPA and could not be diverted to arbitration. The inclusion of such a clause in a s 116 agreement operated to the defendant's advantage and to the detriment of the client, and was cogent evidence of the unfairness of the agreement. Compelling the plaintiffs to proceed in that forum would undermine the protective purpose of the statute. (paras 108, 109, 110, 114 & 123)

Case(s) referred to:

7 Eleven Malaysia Sdn Bhd v. Ashvine Hari Krishnan [2023] 4 MLRA 252 (refd)

Arch Reinsurance Ltd v. Akay Holdings Sdn Bhd [2018] 7 MLRA 833 (folld)

Asbir Hira Singh & Co v. Supramaniam Pitchaimuthu & Ors [1999] 4 MLRH 52 (folld)

Ismail Khoo & Associates v. Yeoh Yih Terk [2023] 6 MLRH 689 (refd)

Lua & Mansor v. Tan Ah Kim [2017] 1 MLRA 289 (distd)

Messrs Albert Ding Lee & Partners v. Cho Chooi Mei [2020] 1 MLRH 391 (folld)

Ngu Toh Tung & Ors v. Superintendent Of Lands & Survey Kuching Division Kuching & Anor [2005] 2 MLRA 527 (refd)

Pasmore v. Oswaldtwistle Urban District Council [1898] AC 387 (refd)

Perusahaan Petanda Bintang Sdn Bhd v. Asbir Hira Singh & Co [1995] 2 MLRH 212 (refd)

Re Stuart, ex p Cathcart [1893] 2 QB 201 (refd)

Legislation referred to:

Arbitration Act 2005, s 4

Evidence Act 1950, s 111

Industrial Relations Act 1967, s 20

Legal Profession Act 1976, ss 116(1), 117(3), 118(1), (2), (3), (5), 126, 128(2), Part VIII, Part IX

Rules of Court 2012, O 59 r 17

Sarawak Land Code, s 51

Counsel:

For the plaintiffs: Jared Tee Wei Jin (Syed Afiq with him); M/s Zharif Nizamuddin

For the defendant: Michelle Wong (David Dev Peter with her); M/s Jerald Gomez & Associates

JUDGMENT

Nixon Kennedy Kumbong JC:

Introduction

[1] This Originating Summons dated 24 December 2025 is brought by the plaintiffs pursuant to ss 116, 118, 126 and 128 of the Legal Profession Act 1976 ("LPA"). In essence, the plaintiffs seek the court's supervisory intervention over the solicitor-client remuneration arrangement embodied in the Terms of Engagement dated 16 January 2024 ("ToE"). The reliefs sought include:

(a) the setting aside or variation of the ToE under s 118;

(b) extensions of time to invoke the taxation jurisdiction under ss 118, 126 and 128; and

(c) consequential orders for the taxation of eighteen legal bills amounting in total to RM1,549,650.00, together with refunds of any sums found to have been charged or received in excess.

[2] The factual matrix is extensive, but the legal issues are capable of principled distillation. The dispute ultimately turns on four interlocking questions:

(a) Fairness and Reasonableness of the ToE — whether the ToE was fairly procured and whether its substantive terms are reasonable within the meaning of s 118(2)-(3);

(b) Reasonableness of the Charges — whether the defendant's bills, viewed cumulatively and individually, are proportionate to the work done and consistent with the fiduciary obligations owed by solicitors to clients;

(c) Entitlement to Taxation and Refunds — whether the plaintiffs have established the statutory and equitable basis for taxation and for restitution of sums paid; and

(d) Time Bar Defences — whether the defendant's reliance on ss 117(3), 118(5), 126 and 128 operates as an absolute bar to the plaintiffs' application, or whether those provisions must be read subject to the remedial jurisdiction under s 118(3).

Salient Facts

[3] The plaintiffs comprise a group of 203 individual investors who collectively suffered substantial financial losses in an investment scheme associated with Datuk Allan Goh. In seeking legal recourse, they appointed the defendant firm, Messrs Jerald Gomez & Associates, as their solicitors.

[4] The defendant thereafter undertook preliminary investigations, convened multiple meetings with prospective claimants, and ultimately filed a Writ and Statement of Claim on their behalf.

[5] Between 20 January 2024 and 19 August 2024, the defendant issued 18 legal bills amounting to RM1,549,650.00, of which RM1,342,394.50 was paid by the plaintiffs. The work reflected in these bills culminated only in the filing of the Writ and Statement of Claim.

[6] No interlocutory applications were heard, no substantive case management milestones were reached, and the action itself was discontinued on 30 August 2024, without any judgment obtained or recovery achieved.

[7] The plaintiffs' evidence is that, during the preliminary meetings, the defendant represented that the total legal fees for the entire action would be "approximately 5% of RM100,000,000.00", ie RM5,000,000.00.

[8] This representation was not merely asserted by the plaintiffs; it is affirmed in the defendant's own affidavit evidence, which describes the RM5,000,000.00 figure as the defendant's "ballpark" estimate for conducting the entire multi-pronged litigation up to judgment. The plaintiffs say they relied on this representation in agreeing to engage the defendant.

[9] The plaintiffs further contend that the Terms of Engagement ("ToE") dated 16 January 2024 was procured unfairly. They say that Ms Ratnavali, acting as the representative of all plaintiffs, was asked to sign and initial every page on the spot, without meaningful opportunity to read or understand the document, without any explanation of its terms, and without disclosure of the arbitration clause embedded within it. They also say that the defendant withheld the executed copy of the ToE until after the plaintiffs terminated the retainer on 27 August 2024.

[10] The defendant disputes these assertions. It relies heavily on contemporaneous documents and billing narratives which record meetings on 15 December 2023, 12 January 2024, and 16 January 2024. The defendant says the ToE was explained in detail, that the hourly rate structure was made clear, and that the plaintiffs understood the nature and scope of the retainer. The Defendant also points to WhatsApp messages from the plaintiffs expressing gratitude and satisfaction with the defendant's work during the retainer period.

[11] The plaintiffs challenge the reasonableness and proportionality of the defendant's charges. Their complaints include, among others:

- charges for pre-retainer work performed before the ToE was signed;
- billing a law student (the Senior Partner's son) at RM2,000.00 per hour;

- RM160,100.00 billed for the attendance of eight personnel at a press conference on 27 June 2024;
- RM58,500.00 billed for Yvonne Kalathini M Vijayaraj (DYR)'s mere "presence" across eleven meetings;
- repeated charges for "mesyuarat dalaman" (internal meetings);
- absence of contemporaneous time records in all 18 bills;
- alleged over-staffing, duplication of roles, and deployment of personnel whose contributions were not particularised.

[12] The defendant's position is that staffing decisions fall within the professional judgment of counsel, particularly in a complex, multi-claimant, multi-agency matter of this magnitude. It emphasises that the plaintiffs never raised any complaint contemporaneously, paid the bills promptly, and repeatedly expressed appreciation for the defendant's efforts. The defendant says these factors demonstrate that the charges were understood, accepted, and reasonable at the material time.

Issues For Determination

[13] Having considered the Originating Summons, the affidavit evidence across both sides, and the extensive submissions filed, seven issues arise for determination. Each issue is discrete, but they are interrelated in the sense that the statutory scheme under Part VIII of the Legal Profession Act 1976 ("LPA") requires the court to examine both the validity of the Terms of Engagement ("ToE") and the propriety of the charges issued pursuant to it.

[14] The first issue concerns the threshold objection raised by the defendant, namely whether the plaintiffs' application is barred by ss 117(3), 118(5), or 126 and 128 of the LPA.

[15] The defendant contends that the statutory time limits are absolute and that the court is precluded from entertaining any challenge to the ToE or the bills.

[16] The plaintiffs submit that s 117(3) is expressly made "subject to this Part", that s 118(3) contains no time bar for setting aside an agreement, and that the court retains jurisdiction to order taxation once the agreement is declared void.

[17] The second issue is whether the ToE was fairly obtained within the meaning of s 118(2). This requires the court to examine the mode of procurement of the agreement, the circumstances of the meetings on 15 December 2023, 12 January 2024 and 16 January 2024, the plaintiffs' allegation that the ToE was signed without meaningful opportunity for review, and the defendant's reliance on contemporaneous documents said to demonstrate full explanation and understanding. The fairness inquiry is fact-sensitive and must be assessed against the fiduciary nature of the solicitor-client relationship.

[18] The third issue is whether the ToE was reasonable in its substantive terms. Section 118(3) requires the court to determine whether the remuneration structure, viewed in light of the nature of the work contemplated, was reasonable.

[19] This includes consideration of the hourly-rate framework, the absence of a cap, the defendant's own "ballpark" estimate of RM5,000,000.00 for the entire action up to judgment, and whether the terms imposed were proportionate to the complexity and scope of the litigation.

[20] The fourth issue concerns the reasonableness of the charges actually levied. Even where hourly rates are agreed, the court must assess whether the quantum billed is reasonable having regard to the work done. The plaintiffs challenge numerous items: pre-retainer work billed as chargeable time; the billing of a law student at RM2,000.00/hour; RM160,100.00 for attendance of eight personnel at a press conference; RM58,500.00 for Yvonne Kalathini M Vijayaraj (DYR)'s presence across eleven meetings; repeated internal meetings; over-staffing; duplication; and the absence of contemporaneous time records. The defendant contends that staffing decisions fall within professional judgment and that the plaintiffs raised no contemporaneous objection.

[21] The fifth issue is whether special circumstances exist to justify extensions of time under ss 118, 126 and 128. The Plaintiffs rely on the withholding of the signed ToE until after termination, their lack of knowledge of the statutory right to taxation, and the discovery of the true position only upon obtaining independent legal advice. The Defendant argues that ignorance of the law is not a special circumstance and that the statutory time bars are absolute.

[22] The sixth issue is whether refunds should be ordered in respect of monies paid under the eighteen bills. This issue arises only if the ToE is set aside or varied, or if taxation is ordered. The court must determine whether the sums paid exceed what is fair and reasonable, and whether restitution should follow.

[23] The seventh issue is whether the arbitration clause relied upon by the defendant is validly engaged. The position is that the agreement is expressly stated on its face to be an agreement under s 116 of the Legal Profession Act 1976 ("LPA").

[24] These seven issues form the architecture of the court's determination. I address each in turn.

The Law

Section 118 LPA — Fairness And Reasonableness

[25] Part VIII of the Legal Profession Act 1976 ("LPA") establishes a statutory framework governing solicitor-client remuneration agreements. Section 118 is the fulcrum of that framework. It empowers the court, upon challenge,

to scrutinise such agreements not merely for contractual validity, but for substantive fairness and reasonableness.

[26] The provision reflects Parliament's recognition that solicitor-client agreements are not ordinary commercial bargains: they arise in a fiduciary setting where the client is inherently vulnerable, and where the solicitor's superior knowledge and position of active confidence may influence the client's consent.

[27] Section 118(1) LPA

(1) No Action Or Suit Shall Be Brought Or Instituted Upon Any Agreement As Is Referred To In Section 116, But Every Question Respecting The Validity Or Effect Of Any Such Agreement May Be Examined And Determined, And The Agreement May Be Enforced, Varied Or Set Aside By Suit Or Action By Summons, Motion Or Petition By Any Person Or The Representatives Of Any Person Being A Party To Such Agreement, Or Being Alleged To Be Liable To Pay, Or Being Or Claiming To Be Entitled To Be Paid The Costs, Fees, Charges Or Disbursements In Respect Of Which The Agreement Is Made, by the court in which The Business Or Any Part Thereof Was Done, or a judge of the court, Or, If The Business Was Not done in any court, Then By The High Court or a judge of the High Court.

[28] Section 118(1) confers jurisdiction on the court to "examine and determine" the validity and effect of any agreement made under s 116. In essence, s 116(1) allows an advocate and solicitor to enter into a written fee agreement with a client for contentious work. The agreement may stipulate how the fees are to be paid and how much is to be charged, whether as a fixed lump sum or by any other method, and even at rates higher or lower than what the law would ordinarily permit.

[29] The court may enforce, vary, or set aside the agreement. This supervisory jurisdiction is broad and remedial in nature. It is not confined to procedural defects; it extends to substantive justice.

[30] Section 118(2) provides that an agreement may only be enforced if it is "in all respects fair and reasonable between the parties". The statutory language is emphatic. The solicitor must satisfy the court that the agreement is fair in the manner it was procured, and reasonable in its terms. The burden lies squarely on the solicitor, not the client.

[31] Section 118(3) then empowers the court to declare the agreement void if its substantive terms are "unfair or unreasonable". Once voided, the court may order taxation of all costs "as if the agreement had not been made". The proviso allows partial ratification where only parts of the agreement are tainted.

[32] Sections 118(2) and 118(3) of the LPA, reproduced as follows:

(2) Upon any such summons, motion or petition, if it appears to the court or a judge that such agreement is in all respects fair and reasonable between the parties, the agreement may be enforced by the court or a judge by rule or order, in the manner and subject to the conditions, if any, as to the costs of the summons, motion or petition as the court or the judge thinks fair and reasonable.

(3) If the substantive terms of any agreement are deemed by the court or the judge to be unfair or unreasonable, the agreement may be declared void, and the court or judge may thereupon order the agreement to be given up for cancellation, and may direct the cost, fees, charges and disbursements incurred or chargeable in respect of the matters included therein to be taxed, in the same manner and according to the same rules as if the agreement had not been made. Provided that the court or judge may amend or ratify the agreement where not all the substance of the agreement is unfair or unreasonable.

[33] The leading authority is *Asbir Hira Singh & Co v. Supramaniam Pitchaimuthu & Ors* [1999] 4 MLRH 52, which adopted the twin test articulated in *Re Stuart, ex p Cathcart* [1893] 2 QB 201.

"Mr Gunaselan, learned counsel for the plaintiff, referred to the English Court of Appeal case in *Re Stuart, ex p Cathcart* [1893] 2 QB 201, and urged this court to apply the same test. *Re Stuart* was a case which discussed the application of ss 8 and 9 of the English Attorneys' and Solicitors' Act 1870 which are in *pari materia* to our s 118(1) and (2) LPA 1976.

On an application under the Attorneys' and Solicitors' Act, 1870, by the defendant to set aside the agreement as unfair and unreasonable, Lord Esher MR for the Court of Appeal held that: 'such an agreement must not only be fair in the sense that it was understood by the client, but must be reasonable in amount, having regard to the work done,'

His Lordship went on to say: 'With regard to the fairness of such an agreement, it appears to be that this refers to the mode of obtaining the agreement, and that if a solicitor makes an agreement with a client who fully understands and appreciates that agreement that satisfies the requirement as to fairness. But the agreement must also be reasonable, and in determining whether it is so the matters covered by the expression "fair" cannot be re-introduced. As to this part of the requirements of the statute, I am of opinion that the meaning is that when an agreement is challenged the solicitor must not only satisfy the court that the agreement was absolutely fair with regard to the way in which it was obtained but must also satisfy the court that the terms of that agreement are reasonable. If in the opinion of the court they are not reasonable, having regard to the kind of work which the solicitor has to do under the agreement, the court are bound to say that the solicitor, as an officer of the court, has no right to an unreasonable payment for the work which he has done, and ought not to have made an agreement for remuneration in such a manner.'

The burden of proving fairness and reasonableness of the agreement is on the plaintiff, as solicitors acting for D1 and if I may add, taking the cue from Lord Esher MR's words, as an officer of the court. I also accept as correct law, the

commentary in The Law of Advocates and Solicitors in Singapore and West Malaysia (2nd edn) at p 693 stating the reason for the first limb of the above proposition, which is: The reason is that the solicitor stands in a fiduciary relation with his client and the courts apply the presumption that the client's will was overborne in making the agreement.

In *Westmelton (Vic) Pty Ltd (Receiver and Manager Appointed) v. Archer and Shulman* (1982) VR 305, the Supreme Court of Victoria expounded the proposition in the following way:... the court views the transactions with suspicion, and applies a rebuttable presumption that the other's will was overborne by the confidence he placed in the confidant, and the court imposes a burden on the confidant to prove that in all the circumstances the dealings were at arms' length and that the other's will was in no way overborne by the relationship of confidence.... The presumption applies to all cases of solicitors dealing with clients..."

[34] The principles are well-settled:

(a) Fairness concerns the mode of obtaining the agreement. The solicitor must prove that the client "fully understood and appreciated" the agreement. The inquiry is contextual: the client's vulnerability, the circumstances of signing, the presence or absence of explanation, and the solicitor's conduct are all relevant.

(b) Reasonableness concerns the amount stipulated, having regard to the nature and extent of the work done. Even if the client understood the agreement, the solicitor must still justify the quantum charged.

[35] The rationale for this heightened scrutiny is grounded in fiduciary law. Section 111 of the Evidence Act 1950 codifies the principle that where one party stands in a position of active confidence, the burden of proving good faith lies on that party.

[36] Section 111 of the Evidence Act 1950 places the burden squarely on the party who stands in a position of active confidence here, the solicitor, to prove the good faith of the transaction. The statutory language is clear: where a transaction arises within a fiduciary relationship, the solicitor must demonstrate that the client entered into the agreement voluntarily, with full knowledge of its implications.

[37] The principle was applied in *Messrs Albert Ding Lee & Partners v. Cho Chooi Mei* [2020] 1 MLRH 391. The court held that once a relationship of trust is established, the law presumes against the transaction. The solicitor must then affirmatively show that:

1. the agreement was perfectly fair and reasonable;

2. no advantage was taken of the solicitor's position; and

3. no material information was withheld from the client.

[38] In *Albert Ding (supra)*, the court found the second agreement unreasonable because the services described were vague, indeterminate, and not satisfactorily explained. The solicitor failed to show what the services entailed, rendering the charges "redundant and superfluous".

[39] The authority reinforces two propositions directly relevant here:

- First, the fiduciary burden is substantive, not symbolic. It requires the solicitor to prove fairness in the mode of procurement and reasonableness in the substance of the agreement.
- Second, where the solicitor cannot clearly explain the nature, scope or necessity of the billed work, the presumption against the transaction is not displaced.

[40] Applied to the present case, the plaintiffs' challenge to the procurement of the ToE and the nature of the charges engages precisely the presumption described in *Albert Ding (supra)*. The defendant must therefore satisfy the court that the ToE was explained, understood, voluntarily accepted, and that the charges were justified by identifiable and necessary work. On the evidence, that burden has not been discharged.

[41] A solicitor is quintessentially such a fiduciary. The law presumes that the client's will may have been overborne, and the solicitor must rebut that presumption by demonstrating transparency, fairness, and absence of advantage-taking.

[42] The defendant's submissions emphasise that the plaintiffs signed every page of the ToE, paid the bills, and expressed satisfaction during the retainer. These matters are not determinative.

[43] Signature does not equate to fairness; payment does not equate to reasonableness; and gratitude expressed before discovering the true position does not extinguish statutory rights. Section 118 requires a deeper inquiry into the circumstances of procurement and the proportionality of the charges.

[44] In applying s 118, the court must therefore answer two distinct questions:

(a) Was the ToE fairly obtained?

This requires examination of the plaintiffs' opportunity to read the document, the explanation (or lack thereof) provided, the withholding of the signed copy, and the fiduciary dynamics at play.

(b) Were the terms reasonable?

This requires assessment of the quantum charged against the work done, including the deployment of personnel, duplication, pre-retainer billing, and the defendant's own "ballpark" estimate of RM5,000,000.00 for the entire action up to judgment.

[45] These principles guide the court's determination of the plaintiffs' challenge under s 118. Applying them to the facts of this case, the court finds that the defendant has not discharged the burden of proving that the ToE was fairly obtained or reasonable in its substantive terms.

[46] Section 117(3) — Whether Taxation Is Barred

Section 117(3) reads as follows:

> Subject to this Part, the costs of an advocate and solicitor or a limited liability law partnership in any case where there is any agreement as is referred to in s 116, shall not be subject to taxation, nor to s 124.

[47] Section 117(3) of the Legal Profession Act 1976 must be read as a whole, and critically, with its opening words: "subject to this Part." This phrase is not ornamental. It is a statutory qualifier that subordinates s 117(3) to the entirety of Part VIII, which includes ss 116 through 121.

[48] The plaintiffs' application is anchored in s 118, which sits squarely within Part VIII. Accordingly, s 117(3) cannot operate as an absolute bar where the court is properly seized of a s 118 summons. The structure of Part VIII confirms this interpretation.

[49] Section 117(3) prohibits taxation while a s 116 agreement stands. Section 118(3), however, expressly empowers the court to declare such an agreement void where its substantive terms are unfair or unreasonable, and thereafter to direct taxation "as if the agreement had not been made."

[50] The statutory scheme is sequential:

(a) while the agreement subsists, taxation is barred;

(b) once the agreement is set aside, taxation is mandatory.

[51] This reading is consistent with the decision in *Ismail Khoo & Associates v. Yeoh Yih Terk* [2023] 6 MLRH 689, where the High Court affirmed that s 118(3) displaces s 117(3) upon a finding of unfairness or unreasonableness. Section 118(3) provides that where the court finds the substantive terms of a s 116 agreement to be unfair or unreasonable, the agreement may be declared void.

[52] Upon such a declaration, the court may order the agreement to be surrendered for cancellation and direct that all costs, fees and disbursements be taxed as though no agreement had ever existed. The Court retains discretion to amend or ratify the agreement where only part of its substance is objectionable.

[53] The defendant's reliance on *Lua & Mansor v. Tan Ah Kim* [2017] 1 MLRA 289 is misplaced, whereby in the said case, the defendant's allegation of statutory breach rested on the contention that the taxation order was made contrary to the Legal Profession Act 1976 ("LPA"). Part IX of the LPA governs the recovery of legal costs and the taxation of bills. Section 116 expressly

permits a solicitor and client to enter into a written agreement on fees for contentious work.

[54] In the said case, such an agreement existed: the defendant had appointed the plaintiff under a letter dated 19 January 2010, and the defendant never disputed agreeing to the fees stated therein. Section 117(3) then provides that costs agreed pursuant to s 116 cannot be subjected to taxation. The statutory bar is clear. Once parties have entered into a valid s 116 agreement, the agreed fees are not open to taxation unless the agreement is first set aside under s 118. The taxation order made by the learned Judicial Commissioner therefore contravened s 117(3). By permitting taxation of fees that were expressly agreed under s 116, the court acted outside the statutory framework. The Judicial Commissioner erred in law in allowing taxation of an agreed fee arrangement. On this ground alone, the appellate court held that the appeal ought to be allowed.

[55] However, in *Lua & Mansor (supra)*, the client did not seek to set aside the agreement under s 118. The Court of Appeal held that taxation could not be ordered because the s 116 agreement remained intact. That case stands for the uncontroversial proposition that s 117(3) bars taxation only where the agreement is not impugned. It does not address, let alone restrict, the court's jurisdiction under s 118(3) to void the agreement and order taxation thereafter.

[56] In the present case, the plaintiffs' primary relief is precisely the relief contemplated by s 118(3): a declaration that the ToE is unfair and unreasonable. Once that threshold is crossed, s 117(3) ceases to apply. The defendant's time-bar argument therefore collapses at the outset.

Analysis

A. Whether The ToE Was Fairly Obtained

(1) The Fiduciary Burden

[57] The defendant, as solicitor, occupied a position of active confidence *vis-à-vis* the plaintiffs. This fiduciary relationship is not incidental; it is structural. It arises the moment a client seeks legal advice and continues throughout the retainer. In such a relationship, the law presumes that the client may be vulnerable to the solicitor's superior knowledge, experience and influence.

[58] Consequently, the burden rests squarely on the defendant to demonstrate that the plaintiffs fully understood and appreciated the Terms of Engagement ("ToE") at the time it was executed. It is not sufficient for the defendant to show that the plaintiffs signed the document; signature alone does not prove fairness. The defendant must affirmatively establish that the ToE was explained, that its implications were understood, and that no advantage was taken of the plaintiffs' reliance and trust.

[59] This burden flows directly from s 111 of the Evidence Act 1950, which requires the party in a position of active confidence to prove the good faith of the transaction. In the context of s 118 LPA, this means the defendant must satisfy the court that the ToE was procured transparently, voluntarily, and with full appreciation of its terms.

[60] The plaintiffs' challenge therefore engages a presumption that must be rebutted by the defendant. The inquiry is not whether the plaintiffs signed the ToE, but whether the defendant has discharged the fiduciary burden of proving that the ToE was fairly obtained.

(2) The Plaintiffs' Evidence

[61] The plaintiffs' account of the signing process is consistent and unequivocal. They state that on 16 January 2024, Ms Ratnavali was asked to initial every page and sign the Terms of Engagement immediately, without any meaningful opportunity to read the document, consider its implications, or seek clarification.

[62] No explanation of the clauses was provided, and critically, the arbitration clause was never disclosed or drawn to her attention. The plaintiffs further emphasise that the defendant retained the executed copy and did not furnish it to them until after the retainer had been terminated. This withholding of the very agreement governing the solicitor-client relationship forms a significant part of their fairness challenge.

[63] The plaintiffs' affidavits reinforce this narrative. They consistently depose that the ToE was not explained at any stage. Ms Ratnavali's evidence is clear: she "was not given the opportunity and adequate time to peruse the ToE."

[64] Her description is not an isolated assertion but part of a coherent factual matrix showing that the plaintiffs signed the document in circumstances where they were unable to understand or appreciate its terms.

[65] This evidence, taken at face value, engages the presumption under s 111 of the Evidence Act that her will may have been overborne, thereby shifting the burden to the defendant to prove that the ToE was procured fairly.

(3) The Defendant's Evidence

[66] The defendant places considerable reliance on contemporaneous documents which record meetings on 12 January 2024 and 16 January 2024, asserting that the Terms of Engagement ("ToE") was explained to the plaintiffs page by page during those meetings. The defendant's position is that these records demonstrate transparency and adequate explanation at the point of execution.

[67] However, the contemporaneous documents do not, in themselves, establish that the plaintiffs understood the legal implications of the ToE. The

mere fact that meetings occurred, or that the defendant claims to have gone through the document, does not prove comprehension of critical terms such as the arbitration clause, the hourly-rate structure, or the practical consequences of over-staffing and duplication of personnel.

[68] These are not mechanical or administrative clauses; they carry substantive legal and financial implications. The Defendant's evidence does not show that these matters were explained in a manner enabling the plaintiffs to appreciate their effect. In the absence of such proof, the defendant has not displaced the fiduciary presumption under s 111 of the Evidence Act.

(4) Withholding The Signed ToE

[69] The defendant accepts that the executed Terms of Engagement ("ToE") was kept in its own file and not provided to the plaintiffs at the time of signing. The explanation offered is that the discounted rates reflected in the ToE were "private and confidential". That justification, however framed, does not sit comfortably with the nature of a solicitor-client relationship, where transparency is not optional but foundational.

[70] Withholding the very agreement that governs the solicitor's remuneration is inconsistent with fiduciary standards of openness and candour. A client cannot be said to "fully understand and appreciate" an agreement if the document is not made available to them, either at the point of execution or thereafter. It is akin to blindfolding the client while the solicitor keeps the only map that charts the rights and obligations between them.

[71] The failure to furnish the signed ToE deprived the plaintiffs of the ability to review, question, or even know the operative terms of their retainer. In a relationship premised on trust, such withholding undermines the defendant's assertion that the ToE was fairly obtained and explained.

[72] It also reinforces the presumption under s 111 of the Evidence Act that the plaintiffs' will may have been overborne, a presumption the defendant must rebut but has not meaningfully addressed.

(5) Conclusion On Fairness

[73] Having examined the evidence in its totality, I find that the defendant has not discharged the fiduciary burden imposed by s 111 of the Evidence Act. The plaintiffs were not afforded a meaningful or genuine opportunity to understand the Terms of Engagement ("ToE") before signing it.

[74] The circumstances of procurement, including the request to sign immediately, the absence of explanation, the non-disclosure of material clauses, and the withholding of the executed document are fundamentally inconsistent with the standard of fairness required of a solicitor dealing with a client who relies on his expertise and judgment.

[75] Fairness under s 118 is not satisfied by the mere occurrence of meetings or by the plaintiffs' signatures on the document. It requires proof that the client fully appreciated the nature, effect and implications of the agreement. On the evidence, that appreciation was never facilitated. The mode of obtaining the ToE was therefore not fair, and the defendant has failed to rebut the presumption that the plaintiffs' will may have been overborne.

[76] Accordingly, the court concludes that the ToE was not fairly obtained within the meaning of s 118(2) of the Legal Profession Act 1976.

B. Whether The ToE Was Reasonable In Its Terms

[77] The inquiry into reasonableness under s 118 focuses on the relationship between the amount charged and the work actually performed. It is a proportionality assessment: the quantum must bear a rational and defensible connection to the extent, complexity and nature of the services rendered.

[78] The defendant's own evidence is that the overall professional fees for conducting the entire RM100,000,000.00 action up to judgment were estimated at approximately RM5,000,000.00. This was described as the "ballpark" figure and formed part of the plaintiffs' understanding of the anticipated cost of full litigation.

[79] Against that backdrop, the defendant issued bills totalling RM1,549,650.00 for work that culminated only in the filing of a Writ and Statement of Claim proceedings that were subsequently discontinued. In other words, nearly one-third of the estimated total cost of the entire action was billed merely to reach the starting line of litigation, without any interlocutory applications, case management, discovery, trial preparation, or trial.

[80] The disproportion is stark. Even without dissecting individual line items, the overall quantum charged for preliminary steps is manifestly out of alignment with the defendant's own estimate of the cost of the full action. On the face of the figures alone, the charges are unreasonable in substance, and the defendant has not provided a satisfactory justification capable of reconciling this disparity.

C. Specific Unreasonable Charges

[81] The plaintiffs have identified numerous items within the bills that they say are plainly excessive or unjustifiable. While not every item needs to be addressed individually, it is appropriate to consider the most significant examples because they illustrate the broader pattern of disproportionate charging. These instances, taken cumulatively, reinforce the plaintiffs' contention that the billing structure under the ToE was not aligned with the nature or extent of the work performed.

(1) Press Conference — RM160,100.00

[82] One of the most striking items is the charge of RM160,100.00 for attendance at a press conference. The defendant billed eight personnel for this single event. The defendant's own partner candidly acknowledged that these individuals attended "as observers as well as for purposes of education." That admission is significant. It confirms that several of those present were not performing client-focused legal work but were instead present for internal learning and exposure.

[83] Charging a client for the internal training or professional development of a solicitor's staff is plainly unreasonable. A press conference is not a legal proceeding, nor does it require the presence of eight fee-earning personnel.

[84] The deployment of such numbers, coupled with the stated purpose of "education", demonstrates a level of over-staffing that cannot be justified under any recognised principle of professional remuneration. This item alone illustrates a pattern of disproportionate billing that undermines the reasonableness of the ToE.

(2) Law Student Billed At RM2,000.00/hour

[85] A further troubling item is the billing of a law student at the "executive" rate of RM2,000.00 per hour. The defendant does not dispute that this individual was, at the material time, not yet qualified, not called, and not holding any practising certificate. The plaintiffs also state that they were never informed that a student would be deployed on their matter, let alone billed at a rate equivalent to senior fee-earners.

[86] This charge is inherently unreasonable. A law student's participation in a matter may be permissible for training or exposure, but such involvement must never be monetised at a rate reserved for experienced practitioners.

[87] Billing a client for the work of an unqualified student at RM2,000.00/hour is wholly inconsistent with professional norms, fiduciary fairness, and the expectation that charges reflect the skill, responsibility and expertise of the person performing the work. This item exemplifies a pattern of over-charging that cannot be justified under s 118.

(3) Datin Raj (DYR)'s Attendances — RM58,500.00

[88] The bills also include eleven attendances attributed to DYR, amounting to RM58,500.00, each described only with the bare notation "hadir mesyuarat". No particulars were provided as to the nature of the meetings, the issues discussed, the role played by DYR, or any substantive contribution made. The entries are devoid of detail and do not enable the court to assess whether the attendances were necessary, useful, or even related to the plaintiffs' matter.

[89] Mere presence does not equate to contribution. A solicitor's attendance must be justified by reference to the work performed, the expertise applied, or the value added to the client's case. In the absence of any explanation, these charges appear to reflect attendance for attendance's sake.

[90] Billing a client for unexplained and unparticularised presence is unreasonable, and this pattern of vague entries further reinforces the plaintiffs' contention that the ToE operated in a manner disproportionate to the work actually done.

(4) Internal Meetings And Over-Staffing

[91] The bills also reveal a recurring pattern of "mesyuarat dalaman" being charged to the plaintiffs. These internal meetings, by their very nature, concern the defendant's own coordination and supervision. Yet they were repeatedly billed as fee-earning attendances.

[92] Compounding this, multiple fee-earners were billed for the same event, resulting in duplication of charges without any demonstration that each individual contributed distinct or necessary work.

[93] The defendant further concedes that no contemporaneous time records were kept. In the absence of proper time-keeping, the court is left without any objective basis to assess the duration, necessity, or proportionality of these meetings.

[94] Such practices are inconsistent with reasonable billing. Internal discussions, supervision, and administrative coordination are part of a firm's overhead and cannot be indiscriminately passed on to the client. Over-staffing inflates costs without corresponding benefit, and the lack of contemporaneous time records undermines transparency and accountability. Taken together, these features reinforce the conclusion that the billing structure under the ToE operated in a manner that was neither fair nor reasonable within the meaning of s 118.

D. Time Bars — Sections 117(3), 118(5), 126 And 128

[95] Section 117(3) does not bar the plaintiffs' application. That provision prohibits taxation only while a s 116 agreement remains subsisting. Here, the plaintiffs seek to set aside the Terms of Engagement ("ToE") under s 118(3).

[96] Once such relief is invoked, s 117(3) is displaced. The statutory bar applies only to an agreement that stands; it does not apply where the very validity of the agreement is under challenge.

[97] Section 118(5) likewise offers no obstacle. That subsection governs situations where a party seeks to reopen a paid agreement without first setting it aside. It presupposes the continued existence of the agreement.

[98] In the present case, the plaintiffs do not seek to reopen the ToE while keeping it intact; they seek to have it declared void. Section 118(5) is therefore inapplicable. Section 128(2), which imposes time limits for taxation, also does not apply once the agreement is set aside.

[99] The statutory right to taxation arises only after the agreement is declared void under s 118(3). The time bar in s 128(2) cannot operate to defeat a right that did not exist until the agreement was impugned.

[100] In any event, the plaintiffs have demonstrated special circumstances. They did not know of their right to taxation until they obtained independent legal advice. The defendant never advised them of this right, despite occupying a fiduciary position and despite the plaintiffs' evident reliance on the defendant's expertise.

[101] The failure to inform the plaintiffs of a material statutory protection is itself a compelling special circumstance justifying extension of time under ss 126 and 128.

E. Refunds

[102] Once the Terms of Engagement ("ToE") is set aside under s 118(3), the statutory consequence is clear: the fees, charges and disbursements must be taxed as though no agreement had ever existed. Taxation is not discretionary; it follows automatically from the voiding of the agreement.

[103] After taxation, any sums previously paid by the plaintiffs in excess of the taxed amount must be refunded. This flows directly from the restitutionary principle embedded in s 118(3), which seeks to restore the client to the position they would have occupied had the unfair or unreasonable agreement never been made. The refund is therefore not punitive but corrective — a necessary consequence of the court's supervisory jurisdiction over solicitor-client remuneration.

The Arbitration Clause

[104] The Legal Profession Act 1976 is the governing statute that protects clients in solicitor-client remuneration disputes. Sections 118, 126 and 128 expressly confer jurisdiction on the High Court to hear and determine such matters. Parliament has therefore made it unmistakably clear that taxation disputes between solicitors and clients are to be supervised, controlled and adjudicated by the courts, not diverted elsewhere.

[105] In light of this statutory design, any attempt by the defendant to rely on the impugned arbitration clause to remove the matter from the court's supervisory jurisdiction is fundamentally inconsistent with the legislative scheme. Such an attempt would undermine the protective purpose of the Act and run contrary to public policy, which requires taxation matters to remain within the court's purview.

[106] Section 4 of the Arbitration Act 2005

(1) Any dispute which the parties have agreed to submit to arbitration under an arbitration agreement may be determined by arbitration unless the arbitration agreement is contrary to public policy or the subject matter of the dispute is not capable of settlement by arbitration under the laws of Malaysia.

[(1) Am. Act A1569: s 4]

(2) The fact that any written law confers jurisdiction in respect of any matter on any court of law but does not refer to the determination of that matter by arbitration shall not, by itself, indicate that a dispute about that matter is not capable of determination by arbitration.

[107] In *Arch Reinsurance Ltd v. Akay Holdings Sdn Bhd* [2018] 7 MLRA 833, the Federal Court held that a statutory right under the National Land Code could not be subject to arbitration because (1) the statutory regime was exhaustive and conclusive and (2) the arbitration clause could not oust the statutory scheme, reproduced below:

"[63] Under s 4(1) of the Arbitration Act 2005 a dispute which the parties agree to submit to arbitration is not arbitrable on ground of public policy. There is no universally accepted test on what is public policy. Different courts and different tribunals might have different views as to enforceability of contracts on ground of public policy: *See Westacre Investments Inc v. Jugoimport-SDPR Holding Co Ltd and others* [1999] 3 All ER 864.

[64] Russel on Arbitration (24th edn) at p 71 para 2 makes the following observation:

> Limits on arbitrability. There is no agreed definition of arbitrability and none is provided in the Arbitration Act 1996, although the Act does recognise the right of the court to refuse recognition or enforcement of an award that is in respect of a matter which is not capable of settlement by arbitration. There are also well recognised categories of dispute that may not be capable of being resolved by arbitration and certain underlying principles that can be identified in determining whether a matter is arbitrable. In particular, a dispute will generally not be arbitrable if it involves an issue of public policy, public rights or the interests of third parties, or where the dispute in question is clearly covered by a statutory provision which provides for inalienable access to the courts. In these cases, as the Court of Appeal has confirmed, 'even the most widely drafted arbitration agreement will have to yield'....

[67] The NLC is a complete and comprehensive code of law governing the tenure of land in Malaysia and the incidence of it as well as other important matters affecting land: *United Malayan Banking Corp. Bhd. v. Pemungut Hasil Tanah Kota Tinggi & Another Case* [1984] 1 MLRA 342. In *Kimlin Housing Development Sdn Bhd v. Bank Bumiputra (M) Bhd*, it was held that the provisions

> of the NLC setting out the rights and remedies of parties under a statutory charge over land comprised in Part XVI are exhaustive and exclusive and any attempt at contracting out of those rights unless expressly provided for in the Code — would be void as being contrary to public policy.
>
> Hence, the dispute triggered by the statutory notice of demand in Form 16D is not arbitrable under s 4(1) of the Arbitration Act 2005."

[108] In view of the abovesaid case, I am inclined to agree with the plaintiff that the arbitration clause relied upon by the defendant is not validly engaged. Their position is that the agreement expressly stated on its face to be an agreement under s 116 of the Legal Profession Act 1976 ("LPA") is governed entirely by the statutory framework of the LPA.

[109] As such, any dispute arising from that Agreement must be determined by the courts, pursuant to s 118, and cannot be diverted to arbitration. The statutory scheme reinforces this conclusion. The Court is entitled to take judicial notice of the nature and characteristics of arbitration. If the plaintiffs' grievances were required to be heard in an arbitral forum rather than before the High Court, the plaintiffs would suffer prejudice.

[110] Sections 118, 126 and 128 of the LPA specifically reserve the supervision of solicitor-client fee disputes to the High Court and the courts. Parliament has therefore made a deliberate choice: taxation disputes between solicitors and clients are to remain under judicial oversight.

[111] This supervisory role is described in *Perusahaan Petanda Bintang Sdn Bhd v. Asbir Hira Singh & Co* [1995] 2 MLRH 212, which reflects the courts' constitutional function as guardians over the conduct of solicitors, who are officers of the court.

[112] In *Perusahaan Petanda Bintang (supra)*, the High Court held:

> "Section 131 of the Act also empowers the court to order a delivery of the bill of cost upon an application by a party other than the party chargeable. As such, upon careful consideration of the Act and the relevant case authorities, the court would have not only statutory but also inherent and general powers of supervision over the fee that solicitors charge in non-contentious matters as well as and similar to contentious matters as provided under ss 116 and 118 of the Act. ....."
>
> It has been said that the jurisdiction of the High Court to make such an order rests in the first place on the original or inherent jurisdiction of the court over its own officers, and in the second place on the statutory provisions. See 44 *Halsbury's Laws of England* (4th edn) para 175 at p 133 and para 178 at p 135.

[113] Against this statutory backdrop, the defendant, a firm of solicitors, inserted into its own fee agreement a clause which, if effective, would remove the plaintiffs' fee grievances from the very judicial supervision Parliament intended for their protection.

[114] The inclusion of such a clause in a s 116 agreement is itself telling. It demonstrates a term that operates to the defendant's advantage and to the detriment of the client and is cogent evidence of the unfairness of the agreement.

[115] Accordingly, if this court accepts the plaintiffs' position, the presence of the arbitration clause would stand as a clear example of the agreement being unfair and unreasonable. The defendant sought, through contractual drafting, to override the statutory and inherent jurisdiction of the court by inserting an arbitration clause into an agreement governed by the LPA.

[116] In the Court of Appeal case of *7 Eleven Malaysia Sdn Bhd v. Ashvine Hari Krishnan* [2023] 4 MLRA 252, it decided on the applicability of s 20 of the Industrial Relations Act 1967. It was upheld that, when there exists a statutory dispute resolution mechanism/process under an act, the complainant is bound to follow the same. This case emphasises that one must follow the statutory dispute resolution mechanism as it was the intention of Parliament:

> "[52] Indeed, since Parliament has enacted the Act, it is relevant to ask whether a dismissed employee can choose to circumvent the statutory process by filing a civil claim on the argument that he/she can do so since the Act has not ousted the jurisdiction of the civil court? Of course, the Act does not say that the jurisdiction of the civil court has been ousted. But that does not mean that the statutory process under the Act can be avoided or disregarded.
>
> [53] In our view, if Parliament (per the Act) has put in place a statutory mechanism/process and stipulates the remedies that can be given by the statutory tribunal, then that is the process/remedy that must be pursued. In this regard, the following passage from the English Court of Appeal's decision in *Wilkinson v. Barking Corporation* [1948] 1 KB 721 (CA) per Asquith L.J. (pp 724-725 K.B.) is relevant and instructive:
>
> > "It is undoubtedly good law that where a statute creates a right and, in plain language, gives a specific remedy or appoints a specific tribunal for its enforcement, a party seeking to enforce the right must resort to that remedy or that tribunal, and not to others. As the House of Lords ruled in *Pasmore v. Oswaldtwistle U.D.C.* [1898] A. C. 387, 394 (per Lord Halsbury): "The principle that where a specific remedy is given by a statute, it thereby deprives the person who insists upon a remedy of any other form of remedy than that given by the statute, is one which is very familiar and which runs through the law."
>
> [54] As stated in *Fung Keong Rubber*, whilst the civil court will not order specific performance of a contract of employment, the Industrial Court, has on the other hand, the power under the Act, to order, in an appropriate case, reinstatement plus back-wages. Essentially, the remedy that is available via the statutory adjudication process is designed to compensate the dismissed employee for the loss of employment.
>
> ...

> [69] In the final analysis, we agree with and endorse the approach taken by the High Court in *Ng Siang Teck* — a civil suit by a dismissed employee who chooses not to pursue the statutory dispute resolution mechanism/process under the Act and/or seek the requisite statutory remedy under the Act and who seeks instead monetary compensation for loss of employment via a common law action ought to be struck out as being an abuse of process of the court."

[117] In *Ngu Toh Tung & Ors v. Superintendent Of Lands & Survey Kuching Division Kuching & Anor* [2005] 2 MLRA 527, the Court of Appeal addressed the proper avenue for challenging decisions made under s 51 of the Sarawak Land Code. The court held that parties dissatisfied with the Superintendent's decision must pursue the specific statutory remedies provided under the Land Code itself. They cannot bypass that statutory framework by invoking judicial review. The Court emphasised that when Parliament creates a remedy within a statute, that remedy must be invoked through the statute, and not through any alternative procedural route.

[118] In the said case, the Court of Appeal relied on long-standing principles articulated in *Pasmore v. Oswaldtwistle Urban District Council* [1898] AC 387: where legislation creates an obligation and prescribes a particular method for enforcing or challenging it, the statutory mechanism is exclusive. The party must "take their stand upon the statute in question" and seek relief only in the manner Parliament has provided.

[119] The reasoning in *Ngu Toh Tung (supra)* is instructive. It underscores a broader legal principle: when a statute creates both the obligation and the remedy, the statutory pathway is mandatory and cannot be displaced by other procedural devices. The statutory remedy is not merely an option; it is the only competent route.

[120] Applied to the present case, the plaintiffs contend that disputes arising from a s 116 agreement under the Legal Profession Act 1976 must be determined strictly within the statutory framework of the LPA. Sections 118, 126 and 128 expressly reserve solicitor-client fee disputes to the High Court.

[121] Just as the Land Code confines challenges to its own statutory process, the LPA confines solicitor-client taxation matters to the courts. Any attempt to divert such disputes to arbitration would contradict the statutory design and undermine the protective purpose intended by Parliament.

[122] Further, O 59 r 17 of the Rules of Court 2012, confers even more powers to the court in the determination of disputes arising from the costs by a solicitor to its client. This would further support the notion that only the courts have the powers over a solicitor's legal bills.

[123] Thus, it is my finding that arbitration is not designed to perform the supervisory taxation function mandated by the LPA, and compelling the

plaintiffs to proceed in that forum would undermine the protective purpose of the statute.

Conclusion

[124] For the reasons set out above, namely, that the Terms of Engagement ("ToE") was not fairly obtained, was unreasonable in its terms, and that the statutory time bars do not defeat the plaintiffs' application, the court is satisfied that the plaintiffs have made out their case under s 118 of the Legal Profession Act 1976. The remedial consequences under s 118(3) follow as a matter of law.

Orders

[125] i. The *alternative dispute resolution* clause contained in the solicitors' fee agreement dated 16 January 2024 has contravened the provisions under s 118 of the Legal Profession Act 1976.

ii. The Terms of Engagement dated 16 January 2024 to be set aside.

iii. All eighteen legal bills issued by the defendant shall be taxed as if no agreement had been made.

iv. The Registrar of the High Court is directed to tax the bills in accordance with the applicable rules and principles governing solicitor-client taxation.

v. Any sums paid by the plaintiffs in excess of the taxed amount shall be refunded by the defendant within 30 days of the issuance of the Certificate of Taxation.

vi. Accordingly, costs are fixed at RM5,000.00 subject to 4% allocatur fee, payable by the defendant to the plaintiffs.

I hereby order so.