

Legal Profession

Professional fees – Letter of appointment agreeing to fees conditional upon success – Whether letter contravened section 112(1)(b) of the Legal Profession Act 1976 – Whether respondent discharged all obligations under letter of appointment – Whether respondent was exclusive agent

Industrial Concrete Products Berhad v Huang Khairun Kumar & Associates

[2014] 7 CLJ 52, Court of Appeal

Facts The appellant appointed the respondent to secure a refund of sales tax (“the refund”) erroneously paid to the Royal Customs and Excise Department. One of the terms of the appointment was that the respondent would be entitled to a stipulated commission if the appellant receives the refund. The respondent, however, failed to secure the refund, and the appellant, therefore, proceeded to engage the services of Top Tier Services Sdn Bhd (“Top Tier”) to undertake the task. Top Tier succeeded. The respondent then issued a letter of demand for the professional fees promised by the appellant in its letter of appointment. The appellant argued that since the respondent was never appointed as its exclusive agent, the commission was rightfully paid to Top Tier. In response, the respondent contended that they were entitled to the commission since all obligations imposed under the terms of appointment had been discharged. The High Court allowed the respondent’s claim for the stipulated commission. The appellant appealed.

Issues The issues before the Court of Appeal were (1) whether the letter of appointment was illegal as it contravened section 112(1)(b) of the Legal Profession Act 1976 (“the Act”)*; (2) whether the respondent discharged all the obligations under the letter of appointment; and (3) whether the appellant appointed the respondent to be its exclusive agent.

Held In allowing the appeal, the Court of Appeal held that since the respondent was a firm of solicitors and the services undertaken by them were contentious in nature, the letter of appointment was illegal as it contravened section 112(b) of the Act. As the respondent failed to follow proper procedures in securing the refund, it was held that the trial judge erred in ruling that the respondent had discharged all the obligations under the letter of appointment. The Court of Appeal further ruled that since the respondent was not appointed as its exclusive agent, the appellant was at liberty to appoint other agents to secure the refund.

*Section 112(1)(b) of the Act states that a solicitor cannot enter into an agreement with a client whereby his entitlement to professional fees was conditional on success.