IN THE COURT OF THREE JUDGES OF THE REPUBLIC OF SINGAPORE

[2016] SGHC 165

Originating Summons No 4 of 2015

In the matter of Sections 94(1) and 98(1) of
the Legal Profession Act (Cap 161)

And

In the matter of Leong Pek Gan, an Advocate
and Solicitor of the Supreme Court of the
Republic of Singapore

Between

THE LAW SOCIETY OF SINGAPORE

… *Applicant*

And

LEONG PEK GAN

… *Respondent*

JUDGMENT

[Legal Profession] — [Disciplinary Proceedings]

[Legal Profession] — [Professional Conduct] — [Breach]

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Law Society of Singapore
v
Leong Pek Gan

[2016] SGHC 165

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Chao Hick Tin JA, Andrew Phang Boon Leong JA and Judith Prakash JA
20 April 2016

19 August 2016 Judgment reserved.

Andrew Phang Boon Leong JA (delivering the judgment of the court):

Introduction

1 The present case throws into sharp relief the perennial tension between a lawyer's duty as his or her client's advocate and his or her duty to the wider legal system. Lawyers are often expected to fearlessly advance the interests of their clients. But when the notion of duty to the client is carried too far, lawyers may find themselves enabling and facilitating criminal conduct. Indeed, the present matter provides a timely reminder of what can go wrong when a lawyer deliberately turns a blind eye to signs of wrongdoing.

2 In this originating summons, the Law Society of Singapore ("the Law Society") applied for the respondent ("the Respondent"), an advocate and solicitor of more than 30 years' standing, to show cause as to why she should

not be dealt with under s 83(1) of the Legal Profession Act (Cap 161, 2009 Rev Ed) ("the LPA"). The conduct complained of was, in essence, that the Respondent had acted for the parties on both sides of an unlicensed moneylending transaction and had preferred the interests of the moneylender in the process. Four charges were brought against the Respondent, and the Disciplinary Tribunal determined that cause of sufficient gravity existed for disciplinary action under s 83(2)(*b*) or, alternatively, s 83(2)(*h*) of the LPA on each of the four charges. The Disciplinary Tribunal's decision is reported in *The Law Society of Singapore v Leong Pek Gan* [2015] SGDT 4 ("the DT Report").

Background facts

The transaction in question

3 The transaction which the Respondent was engaged to handle ("the Transaction") was, on its face, for the sale and purchase of a property at Bedok Court ("the Property"). The Property was owned by the complainant, Ms Vimala Devi d/o Selvadurai ("the Complainant"), and her husband (collectively referred to as "the Vendors"). At the relevant time, the Complainant was an insurance agent and her husband was a property agent. The intended purchaser was Invest-Ho Properties Pte Ltd ("Invest-Ho"). At all material times, Invest-Ho was represented by Benson Ho Soo Fong ("Ho"), who was its managing director and shareholder.

4 The Transaction was structured as follows. The Vendors would grant Invest-Ho an option, exercisable anytime within six months, to purchase the Property at a price of $651,000. It should be noted that the market value of the Property at the time was almost three times that amount (*ie*, approximately

$1.7m), a point which we will return to later. The option fee was $250,000, and a further sum of $400,000 was to be paid upon the exercise of the option, leaving only a nominal $1,000 due on completion. At the same time, the Vendors would grant a power of attorney in Ho's favour to allow him to deal with the Property. Among the broad powers granted to Ho were: (a) the power to "sell … and absolutely dispose of" the Property on such terms and conditions as he thought fit (cl 1.1); (b) the power, upon selling the Property, to give good receipt for any monies due to the Vendors and to do whatever he thought fit with those monies (cl 1.5); (c) the power to substitute any other person, at his pleasure, as the attorney (cl 1.17); (d) the power to deposit any monies which he received in his capacity as the Vendors' attorney or which was otherwise due to the Vendors into any account in the name of any person whom he (Ho) deemed fit and to *withdraw those monies for his own use and benefit*, including investing those monies in his own name (cl 1.21); (e) the power to do all other acts whatsoever in connection with the power of attorney (cl 1.22); and (f) the power to lease the Property (cll 2.1 to 2.8). In addition, the power of attorney was stated to be "irrevocable until the Property is sold and all monies paid to [Ho]".

The events leading up to the Transaction

5 Beyond the undisputed fact that the Vendors and Ho were introduced to each other by a mutual friend, one Mr Selvarajan s/o Letchuman ("Rajan"), the parties proffered divergent accounts of the events leading up to the Transaction. According to the Vendors, Ho agreed to loan them $250,000 for a period of six months at an interest rate of 15% per annum, on the condition that they provided an option to purchase as well as a power of attorney over the Property. The power of attorney was to enable Ho to enforce the option to

purchase in the event that the Vendors defaulted on loan repayment and tried to renege on the option to purchase.

6 On the other hand, Ho (who was called as the Respondent's witness) testified that the Transaction was a genuine sale and purchase of the Property. According to him, the Vendors were in dire financial straits and had approached him for a loan of $400,000. He had rejected their request because he was not a licensed moneylender. Subsequently, the Vendors approached him again to ask if Invest-Ho was willing to purchase the Property. He also claimed that the parties had agreed on the purchase price of $651,000 after some negotiation.

The Respondent's involvement

7 At the material time, the Respondent was a partner at Ching Ching, Pek Gan & Partners and had over 30 years of experience in conveyancing practice. Ho instructed the Respondent to act in the matter by way of an email dated 2 August 2012 ("the 2 August 2012 Email"):

> Hello . Miss Leong
>
> Please see attachment . This is a Private 99 years . Can you please do for me
>
> Thank you .
>
> Ho Soo Fong

The "attachment" referred to in the email included a draft option to purchase as well as a power of attorney which were to be executed by the Vendors. The Complainant was copied in this email.

8 There is a dispute as to how the Respondent came to act for the Vendors. Ho's account is that he instructed the Respondent on behalf of

Invest-Ho and only introduced the Vendors to the Respondent when they asked if he knew of any conveyancing lawyer. Consistent with Ho's account, the Respondent stated that she was introduced to the Vendors via the 2 August 2012 Email, and that the Vendors visited her office the next day (3 August 2012) and confirmed that they wanted her to act for them. In contrast, the Complainant states that it was Ho who chose the Respondent to act for her and her husband, and that Ho informed them that they would have to bear the solicitor's fees of $1,000. According to the Complainant, the Vendors asked Ho if they could approach one of the lawyers whom her husband knew from his job as a real estate agent, but Ho insisted that they use the Respondent as their solicitor. Whichever was the case, the evidence was that the Vendors visited the Respondent's office on 3 August 2012 and executed the option to purchase and the power of attorney in the Respondent's presence. (The executed option to purchase and the executed power of attorney will hereafter be referred to as "the Option" and "the POA" respectively.) The handwritten attendance notes of the Respondent were bereft of details and simply stated as follows:

- They signed (1) POA
  (2) OTP
- But to wait for [Ho's instructions] on Monday b4 proceeding any further
- Email – apexintb24@singnet.com.sg
- The OTP to be dated 3/8/12.
- No [objection] to me replacing the pages of the OTP since signature page not affected
- To email to her the amended OTP now
- To email amended OTP to [Ho] also

Although the Respondent's handwritten attendance notes were dated 3 July 2012, it is common ground between the parties that the date of the Vendors' visit to the Respondent's office was 3 August 2012.

9 On 5 August 2012, the Vendors sent Ho a softcopy of the Option. According to Ho, the document which he received was "signed but undated". Upon noticing two minor typographical errors in the Option, Ho sent an email to the Respondent and the Vendors pointing out those errors and asking the Respondent to make the necessary changes. The changes were made after the Vendors confirmed that they had no objections.

10 On 6 August 2012, the Respondent informed Ho that she would lodge the POA the next day and sought instructions as to whether a caveat should be lodged against the Property as well. The Respondent did not copy the Vendors in her email. Ho replied the next day (copying the Complainant) with instructions for the Respondent to lodge a caveat against the Property. In his reply, Ho also asked for a copy of the Option so that he could arrange for the option fee of $250,000 to be paid to the Vendors.

11 On 7 August 2012, the Respondent lodged a caveat on the Property in favour of Invest-Ho. It is particularly noteworthy that the caveat was lodged before the Vendors received the option fee, *ie*, before Invest-Ho's interest in the Property had crystallised. The Respondent does not deny this. In fact, her evidence is that she lodged a caveat on the Property on Ho's assurance that he would procure the payment of the option fee to the Vendors.

12 It was only on 8 August 2012 that the Vendors collected a cheque for the $250,000 option fee from Ho at Invest-Ho's office. In exchange, the Complainant issued a cash cheque to Ho for the sum of $19,750, which,

according to her, comprised $18,750 for the agreed 15% per annum interest on the loan for the six-month term and $1,000 for solicitor's fees. Ho admits to having received the $19,750, but explains that the money was the commission for one Mr Nagasaravanan s/o Pillay ("Mr Sara"). According to Ho, Mr Sara had "inform[ed]" Rajan, who had in turn introduced him (Ho) to the Vendors (it is unclear from Ho's evidence what Mr Sara had informed Rajan of). We will return to this point later.

The disagreements between the parties

13 On 1 January 2013, Ho sent the Complainant's husband a text message which read as follows: "Hello. The exercise of your Option to Purchase of your property is coming very soon. Please let me know. Were [*sic*] you agree to us to extend your date of option in [*sic*] an urgent basis". The Complainant's husband responded saying that he would get back to Ho. However, the Vendors never replied to Ho.

14 On or around 14 January 2013, Ho rang the Respondent to inform her of his intention to instruct another law firm to act for Invest-Ho in the purchase of the Property. Invest-Ho then instructed Optimus Chambers to act on its behalf in the exercise of the Option.

15 On or around 28 January 2013, the Complainant's husband recalled the unanswered text message which he had received from Ho on 1 January 2013 and informed the Complainant about it. The Complainant sent Ho a text message asking to speak to him about "my loan with you". Ho denied knowledge of any loan between them. The Complainant and Ho subsequently exchanged a series of text messages in which Ho continued to deny the existence of a loan while the Complainant persisted in her attempts to ask for

an extension of time to repay the loan. We set out some of these text messages below to give a flavour of what transpired between Ho and the Complainant:

Sender	**Content of Text Message**
Complainant	"Hi Benson.. Can we meet at de office for discussion on my loan with you . Vimala."
[Ho]	"I not know what kind of loan we have. We have to put it to you both again that we did not loan any sum to you both."
Complainant	"Benson …rgads to 297 Bedok Court #01-04... I tried calling u a few minutes ago. Vimala."
[Ho]	"Oh. $400,000/- to exercise the option is already given to my lawyer."
Complainant	"What do u mean by that ? We were suppose to discuss before further action and what about timing..I already told u that I need to submit new income assessment before I can get bigger loan to pay yours n UOB together."
[Ho]	"I asked you few times as regard to your option for us to purchase . You ignored us and lying to me to waited few hour at Bengawan solo. I also on 1st of January SMS to your husband and your husband replied me that will let me know.

Sender	Content of Text Message
	But no response since [*sic*] today. I understand your plan. If we unable to exercise the option. You will forfeited our deposit $250,000/- right. I believed today your lawyer [the Respondent] called you then you pretend to contact me . Right."
Complainant	"Please don't make accusations when there is no need to… I don't have time to look at dates to remember. I only remember from start I told u max loan based on income is not able to cover both outstanding loans at one go … so I told u only beginning of year where re assessment of income than we get higher loan.. the lawyer reminded me but she is someone u know better. I don't want to take your $250,000/- but I need a higher loan to pay u off.."
[Ho]	"I hope you don't talk about loan. We are not moneylender or lian [*sic*] shark."
Complainant	"Sorry this option fee of $250,000/- has to be repaid but not so soon.. I need new assessment to b done.."
	"Sorry Benson for all de trouble but my

Sender	Content of Text Message
	financial situation was brought down by a lady who tricked me.. Pls let me have some more time to pay off option fee .. I really need new income assessment before I can solve de situation."
	"Benson .. I ve already told u my situation n I hope that u ve not done anything to aggravate my financial position."
	"Dear Benson.. please don't take away my home.."
	"Benson is it agreeable to u that we extend option period till May 6 2013 so that I ll get time to do some refinancing .. Vimala."
	"I apologise for not reading your otp and I realize that it caused some distress to u pls let me have de extension.."

16 Ho/Invest-Ho disregarded the Complainant's pleas for an extension of the option period and proceeded to exercise the Option on 31 January 2013. Optimus Chambers wrote to the Respondent to confirm that the completion date would be 15 March 2013, and enclosed a cheque for $400,000 as well as signed copies of the Option. At around the same time, Invest-Ho offered to withdraw the Option upon the Vendors' refund of the option fee of $250,000

and their payment of $470,000 as compensation. The Vendors were given the deadline of 8 February 2013 to respond to this offer.

17 On 1 February 2013, the Vendors discharged the Respondent from acting further as their solicitor. On 19 February 2013, a deed revoking the POA was filed in the High Court. The Vendors maintained throughout that the Transaction was a loan rather than a genuine sale and purchase of property, whereas Invest-Ho/Ho stood firm in their insistence that there was no such loan. Thereafter, the Vendors and Invest Ho/Ho commenced various legal proceedings to try to either (on the Vendors' part) unravel the Transaction or (on the part of Invest Ho/Ho) perform the Transaction.

18 Those legal proceedings are largely irrelevant to the present application as the Respondent had by then ceased to act for the Vendors. Thus, we will not delve into them in detail, save to mention two subsequent developments. On 10 December 2014, the parties entered into a consent judgment in settlement of Invest-Ho's claim in Suit No 843 of 2013 for specific performance of the sale and purchase of the Property pursuant to the Option ("the Consent Judgment"). Under the terms of the Consent Judgment, the Vendors were to pay Invest-Ho, within three months of the date of the judgment, the sum of $510,000, which comprised $250,000 as the refund of the option fee and $260,000 as compensation for aborting the Transaction. It is also relevant to note that the Vendors applied to set aside the Consent Judgment, but their application was dismissed by the court on 13 October 2015.

The police reports

19 On 9 March 2015 (the deadline for the Vendors to pay Invest-Ho the sum of $510,000 pursuant to the Consent Judgment), the Complainant lodged a police report against Ho and the Respondent alleging, amongst other things, that: (a) there was an unlicensed moneylending agreement between Ho and the Vendors; (b) the Respondent had "altered" the purchase price of $1,851,000 to $651,000 in the Option; and (c) the Respondent had been "coercing other clients into signing the Option to Purchase and Power of Attorney documents". On 6 May 2015, the Respondent was informed that the police would not be taking further action against her in relation to the police report. Her position in the present proceedings is that the allegations in the police report are scandalous, baseless and untrue.

20 In the Vendors' application to set aside the Consent Judgment, the Complainant exhibited a four-page option to purchase, with each of the pages initialled but without the execution page, wherein the purchase price of the Property was stated as $1,851,000 ("the Initialled Option"). The Complainant explained, through her solicitors in the proceedings before the Disciplinary Tribunal, that the execution page was missing because the Respondent had not given the Vendors a copy of the Option after it was executed, and that she (the Complainant) had only recently found a copy of the Initialled Option (without the execution page) among a bundle of documents kept by a mutual friend of Ho and the Vendors, namely, Rajan. The Respondent regarded the Initialled Option as a forged document and lodged a police report alleging so.

21 The Complainant's and the Respondent's respective police reports are relevant in the present proceedings to the extent that the Respondent claims

that the complaint against her was made in bad faith and challenges the Vendors' credibility in these proceedings.

The charges levelled against the Respondent

22 In essence, the charges levelled against the Respondent pertain to the following provisions of the Legal Profession (Professional Conduct) Rules (Cap 161, R 1, 2010 Rev Ed) ("the LPPCR"):

(a) Rule 28 – The **first charge** was that the Respondent had failed to advise the Vendors of the potential conflict of interests arising from her acting for them as well as for Invest-Ho/Ho in respect of the Transaction, and of her duty as an advocate and solicitor if such conflict materialised. Her failure in this regard amounted to: (i) improper conduct or practice as an advocate and solicitor within the meaning of s 83(2)(*b*) of the LPA; or (ii) misconduct unbefitting an advocate and solicitor as an officer of the Supreme Court or as a member of an honourable profession within the meaning of s 83(2)(*h*).

(b) Rule 25(*b*) – The **second charge** was that the Respondent, while acting for both Invest Ho/Ho and the Vendors in relation to the Transaction, had preferred the interests of Invest-Ho/Ho by lodging the caveat over the Property and the POA in favour of Ho without advising the Vendors of the implications of those instruments. This amounted to: (i) improper conduct or practice as an advocate and solicitor within the meaning of s 83(2)(*b*) of the LPA; or (ii) misconduct unbefitting an advocate and solicitor as an officer of the Supreme Court or as a member of an honourable profession within the meaning of s 83(2)(*h*).

(c) Rule 22 – The **third charge** was that the Respondent had tendered advice to "[Invest-Ho] and/or Ho and/or the Vendors" when she knew or had reasonable grounds to believe that they were requesting the advice to advance an illegal purpose, namely, unlicensed moneylending in contravention of the Moneylenders Act (Cap 188, 2010 Rev Ed) ("the MLA"). This amounted to: (i) improper conduct or practice as an advocate and solicitor within the meaning of s 83(2)(*b*) of the LPA; or (ii) misconduct unbefitting an advocate and solicitor as an officer of the Supreme Court or as a member of an honourable profession within the meaning of s 83(2)(*h*).

(d) Rule 11G – The **fourth charge** was that the Respondent had failed to report the Transaction, which she knew or had reasonable grounds to suspect involved unlicensed moneylending, one of the forms of "criminal conduct" falling within the ambit of s 39(1) of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap 65A, 2000 Rev Ed) ("the CDSA"). Her failure in this regard amounted to: (i) improper conduct or practice as an advocate and solicitor within the meaning of s 83(2)(*b*) of the LPA; or (ii) misconduct unbefitting an advocate and solicitor as an officer of the Supreme Court or as a member of an honourable profession within the meaning of s 83(2)(*h*).

The Disciplinary Tribunal's decision

23 The Disciplinary Tribunal determined that cause of sufficient gravity existed for disciplinary action under s 83(2)(*b*) or, alternatively, s 83(2)(*h*) of the LPA on each of the four charges levelled against the Respondent. We

briefly set out below the key findings of the Disciplinary Tribunal on each of the charges.

The first charge

24 In respect of the first charge, the Disciplinary Tribunal ruled that the Respondent had contravened r 28 of the LPPCR by failing to advise the Vendors of the potential conflict of interests arising from her acting for both Ho/Invest-Ho and the Vendors *vis-à-vis* the Transaction, and considered her breach to be more than a technical breach.

25 The Disciplinary Tribunal considered the Respondent's failure to seek the informed and/or written consent of the Vendors to her concurrently representing them as well as Ho/Invest-Ho *unbecoming* for a solicitor who had practised conveyancing for some 30 years (see the DT Report at [25]). The Disciplinary Tribunal noted that the Respondent never paused to advise the Vendors of "the patent conflict of interests" and of the need for them to seek independent legal advice (at [27]). Further, the Respondent operated on multiple assumptions at the expense of her clients' interests. Those assumptions were flawed and did not reduce the unflinching loyalty which she owed to each of her clients (at [26]).

The second charge

26 With regard to the second charge, the Disciplinary Tribunal found that the Respondent had preferred the interests of Invest-Ho/Ho over those of the Vendors while advising both parties in relation to the Transaction. In this regard, the Disciplinary Tribunal made two key findings in the DT Report:

(a) The POA and its broad terms could only be in the interests of Invest-Ho/Ho and not the Vendors (at [39]). The Respondent was also aware that the POA was not a negotiated document and that its initial draft had been provided to her by Ho.

(b) Whilst less serious than the complaint relating to the POA, the Respondent's act of filing the caveat over the Property in Invest-Ho's favour even before the options monies had been paid to the Vendors gave Invest-Ho's/Ho's interests precedence (at [42]).

The third charge

27 In respect of the third charge, the Disciplinary Tribunal held that the Respondent had *reasonable grounds to believe* that her advice was being sought to advance an illegal moneylending transaction, and that she had been "blissfully oblivious to the suspicious nature of the entire transaction" (see the DT Report at [67]).

28 To begin with, the fact that the POA was expressed to be "irrevocable until the Property is sold and all monies paid to [Ho]" ought to have signalled to the Respondent that the Transaction was not a straightforward sale and purchase between a willing buyer and willing sellers (at [60]). Instead, the Option was "a security for a loan" and the POA was "a further safeguard provided to [Invest-Ho] to enforce that security" (at [61]). Moreover, when questioned by counsel for the Law Society on the unusual terms of the Transaction and the payment of $19,750 by the Vendors, Ho was unable to offer any credible explanation for the same (at [64]).

The fourth charge

29 Where the fourth charge was concerned, the Disciplinary Tribunal ruled that the Respondent had *reasonable grounds to suspect* that the Property was used or was intended to be used in connection with illegal moneylending, one of the forms of "criminal conduct" falling within the ambit of s 39(1) of the CDSA. Therefore, her failure to disclose the Transaction to either the Suspicious Transaction Reporting Office of the Commercial Affairs Department or an authorised officer under the CDSA was a contravention of r 11G of the LPPCR (see the DT Report at [82]–[83]).

30 The Disciplinary Tribunal held that the *mens rea* of having "reasonable grounds to believe" (*vis-à-vis* the third charge) was of a higher order than that of having "reasonable grounds to suspect" (*vis-à-vis* the fourth charge) because belief was stronger than suspicion (at [80]–[81]). Thus, given its finding (in relation to the third charge) that the Respondent had reasonable grounds to believe that her advice was being sought to advance an illegal moneylending transaction, the Disciplinary Tribunal was of the view that the Respondent must necessarily have had reasonable grounds to suspect that the Property was used or was intended to be used in connection with illegal moneylending (at [82]).

The issues before this court

31 The issues before this court may be broadly classified as follows:

(a) whether due cause for disciplinary action to be taken against the Respondent has been shown under s 83(2)(*b*) or s 83(2)(*h*) of the LPA; and

(b) if so, what is the appropriate penalty to be imposed on the Respondent under s 83(1) of the LPA.

The first charge: Whether the Respondent failed to advise the Vendors of the potential conflict of interests arising from her concurrent representation and of her duty in the event that such conflict materialised

32 It is often said that no man can serve two masters. The danger is that a person who undertakes to serve two masters at the same time may easily find himself in the position where he must prefer the interests of one over those of the other. It is for this reason that the law mandates that a solicitor who wishes to accept instructions from multiple parties in the same matter must seek the informed consent of all the parties whom he proposes to act for. In the present application, the nub of the first charge is that, prior to accepting instructions from the parties on both sides of the Transaction, the Respondent failed to advise the Vendors of the potential conflict of interests and of her duty as an advocate and solicitor if such conflict arose. The basis of this charge is r 28 of the LPPCR, which provides as follows:

> **Potential conflict of interests**
>
> **28.** When accepting instructions to act for more than one party in any commercial or conveyancing transaction where a diversity of interests exists between the parties, an advocate and solicitor shall advise each party of the potential conflict of interests and of the advocate and solicitor's duty if such conflict arises.

33 In the conveyancing context, the requirement of informed consent finds expression in r 6 of the Law Society's Conveyancing Practice Directions and Rulings dated 19 May 2009 ("the 2009 Conveyancing PD"), which states:

> **6. Conflict Of Interest**
>
> Members of the Bar are reminded that where they act for both Vendor and Purchaser (including sub-purchaser) or Mortgagor and Mortgagee (including surety or guarantor), they put themselves in a position that they may be liable to one or the other. The member in such cases has a "double duty" to perform in that he must safeguard the adverse interest of each of his clients and must discharge his duty impartially in the interest of each of his clients. This requires the highest standards of integrity and experience.
>
> ***Members are therefore required to have both their clients and Vendor and Purchaser, put into writing that they are aware of and do consent to their solicitor acting for both parties and in the event a conflict does arise, the solicitor must discharge himself/herself from acting for both parties.***
>
> [emphasis added in bold italics]

34 It is clear from r 28 of the LPPCR that to establish a charge under this particular rule, the Law Society has to prove that: (a) the solicitor in question accepted instructions to act for more than one party in the same transaction; (b) there was a diversity of interests between the parties; and (c) the solicitor failed to advise each party of the potential conflict of interests and of his duty as an advocate and solicitor if such conflict arose.

35 In so far as the present application is concerned, there appears to be no dispute that the first and third elements have been satisfied. In respect of the first element, the Respondent admits to having accepted instructions to act for both the Vendors and Invest-Ho/Ho in the purported sale and purchase of the Property. In so far as the third element is concerned, counsel for the Respondent confirmed at the hearing before us that the Respondent had admitted, in the proceedings before the Disciplinary Tribunal, that she did not inform the Vendors of the potential conflict of interests arising from her representation of both parties to the Transaction and of her duty in the event

that such conflict materialised. The dispute centres, instead, on the second element.

36 The Respondent argues that she did not have to advise the Vendors of the potential conflict of interests (and of her duty if such conflict arose) because the parties' interests were not diverse at the material time. The main thrust of her argument is that r 28 of the LPPCR only applies when a solicitor is concurrently representing "clients whose interests [are] irreconcilable and/or directly in conflict and/or diametrically opposed". This argument, as we understand it, seeks to confine the application of r 28 to situations where there is an actual, irreconcilable conflict between the clients' interests.

37 In our judgment, the Respondent's interpretation of r 28 flies in the face of the plain language of this provision, which speaks of an advocate and solicitor's duty to "advise each party of the ***potential*** *conflict of interests* and of the advocate and solicitor's duty ***if*** *such conflict arises*" [emphasis added in italics and bold italics]. It has been observed that this rule is intended to apply in situations where the parties have different, *but not yet conflicting*, interests: see Alvin Chen, "Counselling Multiple Clients with Conflicting Interests" *Singapore Law Gazette* (December 2015) pp 32–37 at p 33.

38 We are satisfied that the Vendors' interests and Ho's/Invest-Ho's interests were diverse at the point when the Respondent accepted instructions to act for them. It is true that the parties were *ad idem* as to the terms of the Transaction. Such agreement evinced a compatibility of their interests and created a common interest between them in completing the Transaction. However, it should not be forgotten that the parties were ultimately on opposing sides of the Transaction (whether as lender/borrower or as

buyer/seller). It was therefore not without reason that V K Rajah JC remarked that "prudent solicitors, in all but the plainest cases, do not usually act for both the vendor and [the] purchaser in the same transaction": see the Singapore High Court decision of *Lie Hendri Rusli v Wong Tan & Molly Lim (a firm)* [2004] 4 SLR(R) 594 ("*Lie Hendri Rusli*") at [56]. In the present case, the Transaction was far from one of "the plainest cases". It had a highly unusual structure, and, in particular, the terms of the POA were clearly and overwhelmingly in favour of Ho/Invest-Ho, providing a strong indication of the potential for a conflict of interests to arise at a later stage of the Transaction.

39 It also appears that the Respondent did not even apply her mind to the possibility of a conflict of interests arising before accepting instructions from both the Vendors and Ho/Invest-Ho. Had the Respondent truly believed that her obligation under r 28 of the LPPCR was not triggered (and therefore proceeded to act for both the Vendors and Ho/Invest-Ho on that basis), she would surely have raised this argument at the first available opportunity. But she did not. Her "common interest" argument was only raised after the conclusion of the hearing before the Disciplinary Tribunal. It is therefore clear, in our view, that this particular argument arose as a very belated afterthought.

40 For the sake of completeness, we will address the Respondent's contention that the Disciplinary Tribunal acted *ultra vires* by considering r 6 of the 2009 Conveyancing PD. There is no merit in this argument. In this regard, we find it apposite to refer to the comment by V K Rajah J in the Singapore High Court decision of *Wong Keng Leong Rayney v Law Society of Singapore* [2006] 4 SLR(R) 934 that "[t]he rules of ethics, as articulated in

[the then equivalent of] the LPA, its subsidiary legislation and the Law Society Practice Directions and conventions" should not be perceived as an external and inconvenient imposition of values on the legal profession, but rather, as "an embodiment of the moral compass and aspirations of the profession" (at [84]). Indeed, the Law Society's practice directions and rulings set out prevailing standards of professional conduct that the Respondent, as a member of the legal profession, is bound by, and the Disciplinary Tribunal was therefore entitled to consider them in assessing whether the Respondent had fallen short of her professional duty.

The second charge: Whether the Respondent preferred the interests of Ho/Invest-Ho while advising both parties

41 Beyond the requirement of informed consent, it is imperative that a solicitor who acts for multiple parties in the same matter advances each client's interests unaffected by the interests of the other(s). Where the second charge is concerned, the crux of the complaint is that the Respondent failed in her duty to the Vendors by subordinating their interests to those of Invest-Ho/Ho with regard to two main aspects of the Transaction: (a) the lodgement of the caveat over the Property in favour of Invest-Ho; and (b) the execution of the POA. The basis of this charge is r 25(*b*) of the LPPCR, which provides as follows:

> **Conflict of interest**
>
> **25.** During the course of a retainer, an advocate and solicitor shall advance the client's interest unaffected by —
>
> …
>
> (*b*) any interest of any other person; or …
>
> …

42 An advocate and solicitor's core duty is to act in the best interests of his client and he should avoid any influence which could potentially interfere with his unflinching loyalty to his client: see, for example, the decision of this court in *Law Society of Singapore v Uthayasurian Sidambaram* [2009] 4 SLR(R) 674 ("*Uthayasurian*") at [45]. Whilst there is no blanket prohibition against multiple representation, the standard of skill and care expected of a solicitor acting for multiple parties *vis-à-vis* each client must be at least equivalent to that of a solicitor acting for a single party: see *Lie Hendri Rusli* at [48]. The solicitor's duty extends to drawing attention to and, where appropriate, advising on the legal ramifications of a particular transaction; in particular, he ought to draw the client's attention to any unusual aspects of the transaction, notwithstanding any concern that it may incur the displeasure of the other clients whom he is representing.

43 The present case calls to mind the facts of *Law Society of Singapore v Tan Phuay Khiang* [2007] 3 SLR(R) 477 ("*Tan Phuay Khiang*"), a decision by this court. In that case, the solicitor prepared and witnessed the execution of a power of attorney appointing a complete stranger as the complainants' attorney in the proposed sale and subletting of a flat. The solicitor contended that he was only obliged to provide a very limited ministerial role in so far as the preparation of the power of attorney was concerned, and was not obliged to inquire into why the complainants wished to appoint an attorney or why they wished to pay the sale proceeds to a third party. In this regard, V K Rajah JA observed as follows:

> 95 … [T]he respondent erred in taking the view that it was not incumbent on him to query and advise the complainants on why they were executing a power of attorney. This is clearly not a situation where the respondent's duties were wholly ministerial in nature. The respondent's duties in this case went beyond the essentially perfunctory role of preparing a

> power of attorney and witnessing its execution. *The respondent was obliged to take reasonable care to advise and ensure that the complainants understood the implications of executing a power of attorney in the prevailing circumstances*. The respondent ought to have asked the complainants for their reasons in effecting a power of attorney given that the usual reasons for executing a power of attorney were absent on the facts … More significantly, the proposed attorney (Cheung) appeared to be a complete stranger to the complainants. The power of attorney prepared by the respondent was extremely broad and far-reaching both in its scope and application. It endowed Cheung with an almost unfettered discretion and power to dispose of the Flat as he saw fit, at any price and to any party. This effectively exposed the complainants to the risk that Cheung could sell the Flat at an undervalue to a related party, and potentially leave the complainants without any form of meaningful recourse.
>
> …
>
> 98 The respondent compromised the interests of the complainants in the course of acting for them. He did not adequately explain to the complainants their potential legal predicament and failed to enquire into the context in which the power of attorney was required. Instead, the respondent took the view that he had been obliged to only provide a very limited ministerial role in so far as the preparation of the power of attorney was concerned. ***Put another way, the respondent merely perceived his role as that of "rubber-stamping" the power of attorney and [ensuring] that the technical details stated therein were accurate. He mistakenly saw his role as being purely that of a facilitator rather than that of a professional adviser.***
>
> [emphasis added in italics and bold italics]

44 At the end of the day, the solicitor's duty is to bring home to his client the ramifications of the legal documentation which the latter is to execute, although the precise scope of the solicitor's duty would vary depending on the level of sophistication of the client in question: see *Lie Hendri Rusli* at [55]. That having been said, even where a solicitor is dealing with commercially-savvy clients, he should not immediately assume that he is thereby free of any duty to advise them of the potential ramifications of any decisions which are potentially detrimental to their interests: see *Uthayasurian* at [57].

45 In the present case, we are satisfied that the Respondent, while acting for both Ho/Invest-Ho and the Vendors in relation to the Transaction, breached her duty under r 25(*b*) of the LPPCR to advance the Vendors' interests unaffected by the interests of Ho/Invest-Ho. Our decision in this regard is based on two key aspects of the Respondent's conduct. ***First***, contrary to the Respondent's claims that she did advise the Vendors of the legal implications of the Transaction during their first meeting on 3 August 2012, the facts demonstrate that she did not do so. By the Respondent's own admission, she spent only ten minutes taking the Vendors through each of the documents which they were to sign. Further, under cross-examination, the Respondent conceded that she did not advise the Vendors that: (a) the POA was expressed to be "irrevocable until the Property is sold and all monies paid to [Ho]"; (b) the POA went beyond the scope of the Option; and (c) there was a risk that Ho might breach the fiduciary duty which he owed the Vendors under the POA, given that he also wore the hat of Invest-Ho's managing director.

46 We agree with the Law Society that the Respondent operated on multiple assumptions at the expense of the Vendors. She assumed that the Vendors and Ho/Invest-Ho had agreed on all the terms prior to engaging her services. She also assumed that the Vendors knew the consequences of executing the documents which they were to sign and that they would have asked her if they were in doubt. Coupled with her repeated emphasis on the fact that the parties had agreed on the terms before engaging her services, it is clear that the Respondent saw her role as a purely ministerial one. We note also that, in the proceedings before the Disciplinary Tribunal, then counsel for the Respondent sought to convince the Disciplinary Tribunal that "conveyancing now has become so factory production line".

47 As was the case in *Tan Phuay Khiang*, the terms of the POA in the present case were extremely broad and the usual reasons for executing a power of attorney were ostensibly absent. By the Respondent's own account, the Vendors wanted to sign the Option and the POA in a hurry. Notwithstanding these alarm bells, the Respondent did not see it necessary to probe deeper, and failed to adequately explain to the Vendors the nature and implications of the POA. Bearing in mind that the Respondent neglected to advise the Vendors in the face of the grant of a power of attorney that was detrimental to their interests and overwhelmingly in favour of Ho/Invest-Ho (for whom the Respondent was also acting), it is plain that the Respondent preferred the interests of Ho/Invest-Ho over those of the Vendors.

48 In addition, we note that the Respondent's attendance notes (set out in full above at [8]) were sorely lacking in details and did not record any advice rendered to the Vendors. The Respondent's explanation during cross-examination was that it was not her practice to record what she explained to her clients. We find this particularly troubling in the light of repeated judicial pronouncements that an advocate and solicitor has a duty to keep contemporaneous notes and diligently document each stage of the transaction which he is handling, especially *any significant advice* rendered to the client. This would include taking attendance notes meticulously and faithfully throughout the course of his retainer (see *Lie Hendri Rusli* at [63]). The importance of a solicitor keeping contemporaneous attendance notes as a record of the communications between him and his clients was more recently reiterated by the Singapore Court of Appeal in *Mahidon Nichiar bte Mohd Ali and others v Dawood Sultan Kamaldin* [2015] 5 SLR 62 (at [97], [105] and [155]). In the absence of credible contemporaneous records, the court may come to the view that an adverse inference should be drawn against the

solicitor: see *Tan Phuay Khiang* at [82]. Given the Respondent's admission that she did not advise the Vendors of what were, in our view, material aspects of the Transaction, it is unnecessary for us to draw such an inference in the present case. However, had it been necessary, we would have been prepared to find that this is an appropriate case in which an adverse inference should be drawn against the solicitor.

49 ***Secondly***, the conduct of the Respondent subsequent to her meeting with the Vendors on 3 August 2012 was deplorable. The Disciplinary Tribunal found that the Respondent lodged the caveat against the Property in favour of Invest-Ho before the option fee was paid to the Vendors. Before us, the Respondent submitted that the Disciplinary Tribunal erred in so finding because she had lodged the caveat only after the Vendors had received Invest-Ho's cheque for the option fee. She submitted, further, that a cheque was deemed paid on the date of tender.

50 We note, first, that the Respondent's submission is inconsistent with her affidavit evidence, in which she stated that she lodged the caveat against the Property upon Ho's assurance that he was going to arrange for the payment of the option monies to the Vendors. This suggested that it was clear in the Respondent's mind that the option monies had yet to be paid to the Vendors when she proceeded to lodge the caveat. In any case, we do not think there is merit in the Respondent's submissions that a cheque is deemed paid on the date of tender. The decision of the Singapore Court of Appeal in *Tan Chong Keng v Lim Bak Keng Vincent* [1985–1986] SLR(R) 496 ("*Tan Chong Keng*"), on which the Respondent relies, does not stand for the proposition that a cheque is deemed paid on the date of tender. *Tan Chong Keng* stands, instead, for a more limited proposition: that the acceptance by a creditor of a

cheque in payment of a debt is, in the absence of any specific agreement, a ***conditional payment*** which operates to suspend the creditor's remedies against the debtor in respect of the debt unless and until the cheque has been presented and dishonoured. Given the risk of Invest-Ho's cheque for the $250,000 option fee being dishonoured, it was imprudent of the Respondent to have filed the caveat against the Property before the cheque was presented and cleared.

51 To conclude our analysis of the second charge, we find that the Respondent failed to advise the Vendors on critical aspects of the Transaction which were clearly advantageous to Ho/Invest-Ho but disadvantageous to them (the Vendors), and lodged a caveat over the Property in Invest-Ho's favour before the option fee was received by the Vendors. The Vendors were first-time clients of the Respondent. In contrast, the Respondent had a more than 20-year solicitor-client relationship with Ho, and this, in our view, required the Respondent to take greater care in her dealings with the Vendors so as to ensure that she did not unwittingly prefer the interests of Invest-Ho/Ho. But it is quite apparent from the way in which events unfolded that she failed to do so.

52 For the above reasons, we are satisfied that the Respondent fell short of the standards expected of an advocate and solicitor representing multiple parties in the same matter. The present case is a timely reminder of the inherent risks involved in concurrent representation, and we urge solicitors who represent multiple clients in the same matter to exercise scrupulous caution when so doing.

The third charge: Whether the Respondent knew or had reasonable grounds to believe that the parties were requesting for advice to advance an illegal purpose

53 We turn now to the third charge. Rule 22 of the LPPCR, together with various other provisions therein, emphasises the duty of an advocate and solicitor not to connive with or assist a client in his misconduct: see Jeffrey Pinsler, *Ethics and Professional Responsibility: A Code for the Advocate and Solicitor* (Academy Publishing, 2007) at paras 05.001–05.002. This duty arises out of an advocate and solicitor's multi-faceted responsibility as an officer of the court and his duty to assist in the administration of justice.

54 The central question with regard to the third charge is whether the Respondent knew *or* had reasonable grounds to believe that her advice was being sought to advance an illegal purpose, more specifically, unlicensed moneylending in contravention of the MLA. The basis of this charge is r 22 of the LPPCR, which provides as follows:

> **No advice for illegal purpose**
>
> **22.** An advocate and solicitor shall not tender advice to a client when the advocate and solicitor knows or has reasonable grounds to believe that the client is requesting the advice to advance an illegal purpose.

55 There are two planks to the Respondent's defence with regard to the third charge. First, she raises a preliminary objection to the specification of alternative *mens rea* requirements in the third charge (*ie*, "knows or has reasonable grounds to believe"). The charge, so her argument goes, is bad for duplicity as two distinct offences were rolled up into one charge. Second, the Respondent argues that she did not know nor did she have reasonable grounds

to believe that her advice was being sought to advance an illegal purpose. We will address these arguments in turn.

Whether the third charge is bad for duplicity

56 Section 132(1) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("the CPC"), which sets out the rule against duplicity of charges, provides that there must be a separate charge for "every ***distinct*** offence of which any person is accused" [emphasis added in bold italics]. It is unclear whether this rule applies to disciplinary proceedings under the LPA. However, even assuming that it does apply, we are of the view that it has not been engaged in the present case. It is clear from the case law that two offences will only be considered distinct within the meaning of s 132(1) of the CPC (and, thus, be required to be set out in two separate charges) if they are *not in any way inter-related*, *ie*, if there is no connection between the various acts which give rise to criminal liability for each offence. This interpretation comports with the rationale underlying the rule against duplicity, which is to save the accused from being embarrassed in his defence as well as to prevent the court from being unduly influenced by the different evidence tendered against the accused on different charges (see, for example, the Singapore High Court decision of *Lim Chuan Huat and another v Public Prosecutor* [2002] 1 SLR(R) at [14]).

57 In the present case, the third charge sets out alternative degrees of *mens rea* (that is, "knows or has reasonable grounds to believe") which the Law Society has to prove in relation to the *same* offence. Even if these alternative *mens rea* requirements are considered to create separate offences, the offences cannot be said to be "not in any way inter-related" (see [56] above). In any case, the Respondent was clearly not prejudiced by the specification of alternative *mens rea* in the third charge. She knew precisely

the case which she had to meet – that she had at least reasonable grounds to believe that the purpose for which her advice was being sought was illegal. Accordingly, we are of the view that the third charge is not bad for duplicity.

Whether the third charge has been proved

58 In order for us to find that the third charge has been established, the Law Society has to prove that, *first*, the Transaction involved an illegal purpose (namely, unlicensed moneylending in contravention of the MLA) and, *second*, the Respondent knew or had reasonable grounds to believe that the Transaction involved the aforesaid purpose.

(1) Whether the Transaction involved unlicensed moneylending in contravention of the MLA

59 The first element which the Law Society has to prove (*viz*, that the Transaction involved unlicensed moneylending in contravention of the MLA) raises two sub-issues: (a) whether there was a loan in the first place; and (b) whether Ho/Invest-Ho was carrying on a moneylending business.

(A) WHETHER THERE WAS A LOAN IN THE FIRST PLACE

60 The ***first sub-issue*** is an obvious, logical as well as commonsensical one. In order to fall within the proscriptions contained within the MLA, a threshold requirement must be fulfilled: there must have been a "*loan*" in the first place. As Judith Prakash J observed in the Singapore High Court decision of *Lim Beng Cheng v Lim Ngee Sing* [2016] 1 SLR 524 ("*Lim Ngee Sing (HC)*") (at [63]), "[i]t is self-evident that a transaction must be a loan to attract the operation of the [MLA] in the first place" (see also generally the Privy Council decision of *Chow Yoong Hong v Choong Fah Rubber Manufactory*

[1962] AC 209 ("*Chow Yoong Hong*") in an appeal from a decision of the Federation of Malaya Supreme Court, as well as the Singapore High Court decision of *Nissho Iwai International (Singapore) Pte Ltd v Kohinoor Impex Pte Ltd and another* [1995] 2 SLR(R) 170). And, in the Singapore High Court decision of *City Hardware Pte Ltd v Kenrich Electronics Pte Ltd* [2005] 1 SLR(R) 733 ("*City Hardware*"), a leading decision in this area of the law, Rajah J observed as follows (at [24]):

> A loan need not be given directly to the borrower. It suffices that the borrower gives directions on the disbursement of the moneys. What constitutes lending must of course remain a question of fact in every case. Careful consideration has to be given to the form and substance of the transaction as well as the parties' position and relationship in the context of the entire factual matrix. *It is axiomatic that if there has been no lending there can be no moneylending.* [emphasis added]

In a similar vein, Chan Sek Keong CJ, delivering the grounds of decision of the Singapore Court of Appeal in *Donald McArthy Trading Pte Ltd and others v Pankaj s/o Dhirajlal (trading as TopBottom Impex)* [2007] 2 SLR(R) 321 ("*Donald McArthy Trading*"), observed (at [10]) that "[i]t is axiomatic that without 'lending', there could be no 'moneylending'". It bears emphasising that this inquiry into whether there has been a loan is an intensely factual exercise which turns strictly on the precise circumstances of each case.

61 In the present case, we are satisfied that there *was*, in fact, *a loan* which was secured by the Option and the POA. Although the Transaction itself was cast in the form of a sale and purchase of real property, the overwhelming evidence of what, in *substance*, underlay this particular transaction made it very clear that it was nothing more than a thinly disguised *loan*.

62 The following aspects of the Transaction were highly unusual and, in our view, cast serious doubts on the genuineness of the sale and purchase transaction which it purported to be. *First*, the period for the exercise of the Option was six months, significantly longer than the customary two-week period for the exercise of an option. *Secondly*, the sale price was $651,000 for a property which, as mentioned earlier at [4] above, had a market value in the region of $1.7m at the material time. We find incredible Ho's evidence that he did not – and did not have to – take into account the market value of the Property in fixing the sale price. *Thirdly*, the option fee of $250,000 amounted to 38.4% of the sale price, a percentage which is substantially higher than the normal option fee of 1–5% of the sale price. *Fourthly*, through the terms of the POA, Ho arrogated to himself an extraordinary range of powers which were far wider than necessary for the stated purpose of executing and completing the sale and purchase of the Property. Those powers, as set out above at [4], included, *inter alia*: (a) the power for Ho to "sell … and absolutely dispose of" the Property on such terms and conditions as he thought fit (cl 1.1); and (b) the power, upon selling the Property, to give good receipt for any monies due to the Vendors and to do whatever he thought fit with those monies (cl 1.5). *Finally*, the POA was stated to be "irrevocable until the Property is sold and all monies paid to [Ho]". In our view, the only plausible explanation is that the POA stood as security for a loan of $250,000 to the Vendors for a six-month period. Should the Vendors default on loan repayment, Ho/Invest-Ho could exercise their rights under the Option and the POA, and compel the sale of the Property at an extremely low price.

63 Care must be taken to distinguish the facts of this case from those of other cases in which the courts have found that there was no loan. One such case, in particular, merits some discussion. In the Singapore Court of Appeal

decision of *E C Investment Holding Pte Ltd v Ridout Residence Pte Ltd* [2012] 1 SLR 32 ("*E C Investment*"), Ridout Residence Pte Ltd ("Ridout") granted E C Investment Holding Pte Ltd ("ECI") an option to purchase a property at a price of $20m, $3.2m (*ie*, 14%) below the forced sale value placed on the property. The option fee was $1.5m, which amounted to 7.5% of the sale price. Later, the parties entered into a deed of settlement under which Ridout had the right to cancel the option within 60 days by refunding the $1.5m option fee and paying an additional sum of $180,000 to compensate ECI. It was held that the true nature of the transaction as embodied in the option to purchase and the deed of settlement was that of a genuine agreement for the sale of the property.

64 There are a number of key features that distinguish the present case from *E C Investment*. First, the option fee, as a percentage of the agreed sale price, is much higher in the present case. Unlike in *E C Investment*, where the option fee was a mere 7.5% of the agreed sale price, the option fee in the present case amounts to 38.4% of the agreed sale price of $651,000. Second, there is, in the present case, a much greater disparity between the agreed sale price and the market value of the property concerned. Unlike in *E C Investment*, where the sale price of the property was only 14% below its forced sale value and described as an "extremely attractive price" (see *E C Investment* at [64]), the agreed sale price here is only about one-third of the market value of the Property and was arrived at without any rational basis. According to Ho, he arrived at the figure of $651,000 based on his personal opinion without any regard to the market value of the Property. Third, the present case involves a power of attorney containing extremely and unnecessarily broad powers for the attorney, Ho, to deal with the Property as he deemed fit. Such a power of attorney is noticeably absent in

E C Investment. In view of these critical differences, the facts of *E C Investment* can clearly be distinguished, and we are satisfied that the Transaction in the case before us was, in substance, a loan.

65 We find it useful to also refer to the recent (unreported) decision of the Singapore Court of Appeal in *Lim Ngee Sing v Lim Beng Cheng* Civil Appeal No 213 of 2015 (9 May 2016) ("*Lim Ngee Sing (CA)*"), in which the court largely upheld Prakash J's decision in *Lim Ngee Sing (HC)*, save in respect of the issue of whether the transaction in question was, in substance, a loan. That transaction was on its face for the sale and purchase of real property at a price of $300,000. The option fee was $240,000. The vendor was entitled to "buy back" the option within three months at a sum of $340,000, failing which the intended purchaser would be entitled to either receive a sum of $340,000 or complete the purchase of the property at the agreed price of $300,000. The Court of Appeal accepted that, although the transaction was structured as an investment, it was essentially a loan in substance. However, this finding had no bearing on the outcome of the appeal, which was dismissed as the court held that the MLA was not applicable on the facts of the case. In our view, the facts of the present case point even more glaringly to the existence of a loan than those of *Lim Ngee Sing (CA)*, especially in the light of the POA, which we have repeatedly noted to be extremely and unnecessarily broad in its scope. As stated above, there is no other discernible reason for such a power of attorney apart from its being security for a loan extended to the Vendors.

66 We are also satisfied that the payment of $19,750 by the Vendors on 8 August 2012 (see [12] above) was intended to be the 15% per annum interest payable for the loan and $1,000 in solicitor's fees. We accept that the Respondent had no knowledge of this payment, but it is nevertheless a critical

piece of evidence that casts light on the true nature of the Transaction. Ho's evidence that the entire sum of $19,750 was meant as commission for Mr Sara for introducing him, through Rajan, to the Property is rather contrived. As pointed out by the Law Society in its submissions, Mr Sara was a cable contractor, not a housing agent; nor was he the Rajan who had introduced the Vendors to Ho. Moreover, although there was a handwritten note in which Mr Sara purported to acknowledge his receipt of the commission, that handwritten note stated the amount received as $19,700, and not the $19,750 stated on the Complainant's cheque. Ho could not explain this discrepancy in the amount of commission that was allegedly paid to Mr Sara, apart from saying that perhaps, his (Ho's) nephew, who had cashed in the cheque, had taken $50. In addition, Ho had no good explanation as to why it was necessary for the Vendors to pay Mr Sara's commission through him, as evidenced by the following exchange:

> Q Mr Ho, you can tell them, "This is your commission that you owe Mr Sara. You pay him directly. Don't waste my time." Correct? You could have told them this, right?
>
> A Yes, the reason why---the reason because this Sara don't want to see him. Er, see---see these family people. I don't know what happened. This one, I don't know. If---if she [*ie*, the Complainant] want to see them early, she can---er, sorry. He can direct introduce, but he get another person to introduce. That are the reason. And even, they want cash, you know? I said, "I got the cheque." She said, "Don't want, you go and get ca---cash for me." So I have to get my nephew. Er, the cheque they give it to my nephew. I ask my nephew, "Go and collect it."

67 We note too that multiple references were made to a "loan" in many of the text messages exchanged between the Complainant and Ho. Those text messages, which we set out earlier at [15] above, were exchanged in the context of the Complainant's request for an extension of time to repay the

option fee of $250,000. While Ho took pains to deny the existence of any loan in his replies to the Complainant's text messages, the Complainant's repeated pleas for an extension of time and for Ho not to take away her home contain, in our view, a strong ring of truth. Further, the execution of the Consent Judgment, under which the Vendors agreed to pay Invest-Ho $510,000 to abort the Transaction, is yet another indication of the Vendors' lack of genuine intention to sell the Property. Similarly, it is clear from the evidence that Invest-Ho had no genuine interest in purchasing the Property. This can be seen from the fact that on or around the date on which the Option was exercised, Invest-Ho offered to withdraw the Option provided that the Vendors refund the option fee of $250,000 and make payment of a sum of $470,000 as compensation (see [16] above).

68 Before leaving this first sub-issue of whether there was a loan in the first place, we turn to address the Respondent's submission that the court's dismissal of the Vendors' application to set aside the Consent Judgment (see [18] above) is good evidence that the Transaction was a genuine sale and purchase transaction. It is clear from a perusal of the relevant minute sheet that the court's dismissal of the Vendors' application was not premised on any finding as to whether the parties were involved in an illegal moneylending transaction. Instead, the issue before the court was whether there was any contractual vitiating factor (such as duress or undue influence) that would warrant setting aside the Consent Judgment, and on that basis, the court concluded that there were insufficient grounds to set aside the judgment.

69 For the above reasons, we are persuaded that the form of the Transaction was merely a façade to disguise what was ***in substance*** a loan.

(B) WHETHER HO/INVEST-HO WAS CARRYING ON A MONEYLENDING BUSINESS

70 The ***second sub-issue*** of whether Ho/Invest-Ho was carrying on a moneylending business is relatively straightforward. As Chan Sek Keong J aptly put it in the Singapore High Court decision of *Subramaniam Dhanapakiam v Ghaanthimathi* [1991] 1 SLR(R) 164 ("*Subramaniam Dhanapakiam*") (at [10]):

> The settled law is that what is prohibited by [the then equivalent of the MLA] was not moneylending but the ***business*** of moneylending. This is *a question of fact.* It is also settled law that the giving of a number of loans to friends does not constitute the ***business*** of moneylending, unless there is a system and continuity about the transactions. [emphasis added in italics and bold italics]

71 What, then, constitutes the "business" of moneylending within the meaning of the MLA? In this regard, it is pertinent to note that the carrying on of moneylending as a "business" is inherent in the definition of "moneylender" in s 2 of the MLA, in that this provision defines a "moneylender" as "a person who, whether as principal or agent, carries on or holds himself out in any way as carrying on the ***business*** of moneylending …" [emphasis added in bold italics]. This definition of "moneylender" has to be read in tandem with the presumption in s 3 of the MLA, which states:

> **Persons presumed to be moneylenders**
>
> **3.** Any person, other than an excluded moneylender, who lends a sum of money in consideration of a larger sum being repaid shall be presumed, until the contrary is proved, to be a moneylender.

72 Instructive guidance on the interrelationship between s 2 and s 3 of the MLA was provided by Belinda Ang Saw Ean J in the Singapore High Court decision of *Mak Chik Lun and others v Loh Kim Her and others and another action* [2003] 4 SLR(R) 338 ("*Mak Chik Lun*") at [11]–[12]:

> 11 To prove that a person is in the business of moneylending, the easiest way is to show that the rebuttable presumption in s 3 of [the then equivalent of the MLA] is applicable to the facts of the case. If the borrower can show that a person lends a sum of money in consideration of a larger sum being repaid, the person is presumed to be a moneylender. Once a *prima facie* presumption is raised, it is for the lender to rebut the presumption by showing that it does not apply. He has to bring himself within one of the exceptions in s 2 or show that he is not a moneylender within the terms of the definition in s 2. In rebutting the presumption, the claimant, for instance, has to show that there was neither system nor continuity in moneylending. The local test of whether there is a business of moneylending is whether there was a system and continuity in the transactions. If no system or continuity is displayed, the alternative test (the *Litchfield* test) of whether the alleged moneylender is one who is ready and willing to lend to all and sundry provided that they are from his point of view eligible is used. See *Ang Eng Thong v Lee Kiam Hong* [1998] SGHC 64; *Brooks Exim Pte Ltd v Bhagwandas Naraindas* [[1995] 1 SLR(R) 543] where *Litchfield v Dreyfus* [1906] 1 KB 584 was followed.
>
> 12 In the case where the borrower is unable to raise the presumption in s 3, the burden is then on him to prove the business of moneylending through the two tests mentioned.

73 In a similar vein, Quentin Loh J observed thus in the Singapore High Court decision of *E C Investment Holding Pte Ltd v Ridout Residence Pte Ltd and another (Orion Oil Ltd and another, interveners)* [2011] 2 SLR 232 (at [135]−[136]) (affirmed on appeal in *E C Investment*):

> 135 It is clear that the MLA prohibits the business of moneylending and not the act of moneylending. What constitutes a business of moneylending is a question of fact: *Litchfield v Dreyfus* [[1906] 1 KB 584], *Subramaniam Dhanapakiam v Ghaanthimathi* [1991] 1 SLR(R) 164 at [7]–[10]. In Singapore, there are two accepted tests in determining whether a person is carrying on a business of moneylending. The first is whether there was a certain degree of system and continuity in the transactions, called the *Newton v Pyke* ([1908] 25 TLR 127) test: see *Ang Eng Thong v Lee Kiam Hong* [1998] SGHC 64. If the answer is no, then the test in *Litchfield v Dreyfus* is applied, [*ie*], whether the alleged moneylender is one who is ready and willing to lend to all and sundry

> provided that they are from his point of view eligible: see *Mak Chik Lun* … at [11]. Further, a solitary transaction can amount to a moneylending transaction in an appropriate case: see *Bhagwandas Naraindas v Brooks Exim Pte Ltd* [1994] 1 SLR(R) 932 at [51], *Ng Kum Peng v PP* [1995] 2 SLR(R) 900 at [43].
>
> 136 As stated by Belinda Ang Saw Ean J in *Mak Chik Lun*, if the borrower can show that a person lends a sum of money in consideration of a larger sum being repaid, the person is presumed to be a moneylender under s 3 of the [MLA]. It is then for the lender to rebut the presumption by showing [that] the [MLA] does not apply. The reference to "a larger sum being repaid" in s 3 is not confined to repayment in money only. If the repayment is in kind or partly in cash and in kind, it may still constitute a "larger sum" for the purpose of s 3 because otherwise, it would be easy to circumvent that section: see Woo Bih Li J in *Ding Leng Kong v Mok Kwong Yue* [2003] 4 SLR(R) 637 at [44].

74 Reference may also be made to, for example, the Singapore High Court decisions of *Ng Kum Peng v Public Prosecutor* [1995] 2 SLR(R) 900 ("*Ng Kum Peng*") at [35]−[40] and *Ang Eng Thong v Lee Kiam Hong* [1998] SGHC 64 ("*Ang Eng Thong*") at [19]−[20].

75 Indeed, the ***rebuttable presumption under s 3*** of the MLA is a very significant one. The earliest version of what is now s 3 apparently had *no counterpart* in the corresponding *English* legislation from which the MLA stems, and this is the case even today (see the observation of Spenser-Wilkinson J in the Singapore High Court decision of *Esmail Sahib v Noordin* [1951] MLJ 98 at 98, which was noted, *inter alia*, in *Subramaniam Dhanapakiam* at [9]; and see, further, the decision of the Singapore Court of Appeal in *Sheagar s/o T M Veloo v Belfield International (Hong Kong) Ltd* [2014] 3 SLR 524 ("*Sheagar*") at [36]−[37] and [70]). In the Privy Council decision of *Chow Yoong Hong*, Lord Devlin, delivering the judgment of the Board, succinctly summarised the significance of the presumption in the

Federation of Malaya's then equivalent of s 3 of the MLA (*viz*, s 3 of the Moneylenders Ordinance 1951 (Malaya)) as follows (at 218):

> Section 3 enables a defendant to found his claim on proof of a ***single*** loan made to him at interest, it being *presumed*, in the absence of rebutting evidence, that there were ***sufficient other transactions of a similar sort*** to amount to a carrying on of business. [emphasis added in italics and bold italics]

76 Returning to what constitutes the "business" of moneylending within the meaning of the MLA, the general – albeit extremely important – point to note at the outset is that the entire analysis is ***heavily dependent on the facts and context*** before the court concerned. In this regard, there is no substitute for a granular analysis of the same – albeit bearing in mind Rajah J's salutary reminder that "the court ought not to be overzealous in analysing or deconstructing a transaction in order to infer and/or conclude that the object of the transaction was to lend money" (see *City Hardware* at [25]). On a normative level, the two alternative tests that are now firmly established in the Singapore legal landscape in this particular area of the law were succinctly stated by Belinda Ang J in *Mak Chik Lun* at [11] (quoted above at [72]). It is important, at this juncture, to reiterate the fact that before these tests can even begin to be considered, there must be evidence of a "*loan*" in the first place (see above at [60]).

77 The ***first*** test, which centres on whether there is a certain degree of system and continuity in the transactions concerned, appears to be more of an analysis of the ***actual*** *facts and circumstances* relating to the transactions themselves, and also appears to connote (subject to the caveat noted at the end of this paragraph) a situation where there is *more than one* (actual) transaction. However, the transactions concerned need not be entered into by the lender with several persons, and a degree of system and continuity may (depending

on the precise facts and context) exist even where the loans were made to only one person (see, for example, *Ng Kum Peng* at [43]). It should also be noted that, whilst it would be unusual, this first test might possibly be satisfied (again, depending on the precise facts and context) *even where* there was *only one transaction* (see, for example, the Singapore High Court decision of *Bhagwandas Naraindas v Brooks Exim Pte Ltd* [1994] 1 SLR(R) 932 at [51] as well as *Ng Kum Peng* at [43]) – although, in such a situation, it might well be the case that the transaction concerned would fall within the ambit of the *second* test in any event (to which our attention now turns).

78 Unlike the first test, the ***second*** test, which centres on whether *the lender* is one *who is willing and ready to lend to all and sundry provided they are, from his point of view, eligible*, appears to contemplate *not only* a situation where there is a certain degree of system and continuity in the transactions concerned, ***but also*** (and perhaps more importantly) a situation where *the precise facts and context suggest that* ***although*** *there is* ***only one isolated*** *transaction, that particular transaction gives rise to the* ***inference*** *that it is really* ***a manifestation of an underlying "business" of moneylending*** *inasmuch as the lender would be willing to lend to* ***all and sundry*** *provided they meet his criteria of eligibility*. In this regard, we pause to observe that where the facts and context of a particular case demonstrate that there is a certain degree of system and continuity in the transactions concerned (and where the lender has, in fact, hitherto lent to all who have met his criteria of eligibility), the second test may, in a sense, be redundant inasmuch as that case could be said to fall within the ambit of the *first* test to begin with (*cf* the "two-step test" advocated by Lai Siu Chiu J in *Ang Eng Thong* (at [21]), under which the first step (relating to the issue of whether there is a certain degree of

system and continuity in the transactions concerned) is viewed as "a crucial, *initial* consideration" [emphasis added]).

79 In so far as the second test is concerned, the following observations by Kan Ting Chiu J in the Singapore High Court decision of *Pankaj s/o Dhirajlal v Donald McArthy Trading Pte Ltd and others* [2006] 4 SLR(R) 79 ("*Pankaj*") (affirmed on appeal in *Donald McArthy Trading*) might be usefully noted (at [31]):

> While one can readily understand that someone who is prepared to lend to everyone is in the business of moneylending, one may ask whether that is a requisite element of the business of moneylending. A person may not be prepared to lend to everyone, and may be selective of his clients, and be content with lending on a commercial basis to a few or even only one regular borrower whom he trusts. This person is nevertheless carrying on moneylending as a business.

80 The observations just quoted underscore the extremely important point made above (at [76]–[78]) to the effect that the *precise facts and context of each case* are of *the first importance* in determining whether a business of moneylending is being carried on. They also remind us of the *complementarity* between the first test and the second test. For example, in the hypothetical situation referred to by Kan J in the above quotation, it might be argued that the situation in question does not fall within the ambit of the second test, but falls within the ambit of the first test instead.

81 The above two tests can be traced to the oft-cited English decisions of *Newton v Pyke* (1908) 25 TLR 127 and *Litchfield v Dreyfus* [1906] 1 KB 584, respectively (with regard to the first test and the second test, respectively). These two English decisions have been cited in numerous Singapore cases (see, *eg*, *Subramaniam Dhanapakiam* at [7] and [8], which paragraphs

correspond to the second test and the first test, respectively). It should further be noted that these two tests can be utilised *not only* (as just stated) to establish that the lender is engaged in the "business" of moneylending, *but also* to *rebut the presumption* under s 3 that the lender is engaged in such a "business" – although in so far as the *latter* is concerned, it is obvious that the evidence adduced must (in contrast to the former) point in the *opposite* direction (see, for example, *Pankaj* at [29]–[30]). In addition, it should be borne in mind that it is *the lender who bears the burden of rebutting the presumption on a balance of probabilities* (see *Ng Kum Peng* at [27]−[34]; and, for a detailed analysis, see the recent decision of the Singapore Court of Appeal in *Sheagar* at [36]–[75], where it was also held that if, conversely, there was an issue as to whether the lender was an *excluded moneylender* under the MLA, the legal burden of proving that he was not would fall, instead, on *the borrower*).

82 As there was clearly a loan on the facts of this case, the presumption under s 3 of the MLA applies. In our view, Ho/Invest-Ho have *not* rebutted this presumption on a balance of probabilities. Indeed, had it been necessary, we would have been prepared to find that the Transaction fell foul of the MLA *even if* the presumption under s 3 did *not* apply.

83 The loan transaction between Ho/Invest-Ho and the Vendors was not an isolated one, and we are satisfied that there was system and continuity in the way in which Ho/Invest-Ho went about their moneylending. In this regard, we draw attention to another transaction that was raised in the course of the proceedings. Ho admitted to having entered into an option to purchase a flat at Chai Chee owned by one Chua and his wife ("the Chai Chee transaction"). The purchase price was fixed at $647,000 and the agreed option fee was $90,000. According to Ho, Chua required a high option fee as he owed money

to loan sharks and required funds for his business. The sale did not go through because Ho later realised that the flat in question was a HDB flat and he was not eligible to buy such a flat. It appears that the Chai Chee transaction took place within the same month as the Transaction in the present case – the Option and the POA in respect of the Property were executed on 3 August 2012, whereas Ho's intention to withdraw his purchase of the property in the Chai Chee transaction was evidenced in a letter dated 30 August 2012. Notably, the Respondent was also involved in the Chai Chee transaction as the vendors' solicitor.

84 We find it extremely difficult to believe that Ho was simply a good Samaritan who was willing to assist in resolving the financial problems of others by offering them a high option fee for the purchase of their property. We are compelled to conclude, instead, that his practice is entirely consistent with that of a moneylender, and that there was system and continuity in the manner in which he/Invest-Ho entered into loan transactions. In addition, we find that the conduct of Ho/Invest-Ho evinced a willingness to lend to all and sundry who were, from their point of view, eligible. It is especially significant that Ho and the Vendors did not know each other beforehand. As noted at [5] above, they were introduced to each other by Rajan for the purpose of entering into what we have found earlier to be a loan transaction.

85 As the Transaction in the present case was a loan and Ho/Invest-Ho has not rebutted the presumption that it was made in the course of a moneylending business, we now turn to the question of whether the Respondent knew or had reasonable grounds to believe that the Transaction involved unlicensed moneylending.

(2) Whether the Respondent knew or had reasonable grounds to believe that the Transaction involved unlicensed moneylending

86 It is clear, in our view, that the Respondent knew or ***at least*** had reasonable grounds to believe that the Transaction involved unlicensed moneylending. We make two brief observations before embarking on our analysis. First, not all of the facts that this court has considered above (in ascertaining whether the Transaction involved unlicensed moneylending) will be relevant for the purposes of assessing the Respondent's state of knowledge at the time she accepted instructions to act for both the Vendors and Ho/Invest-Ho since it is undisputed that some of those facts were not brought to her attention at that time. Secondly, the proscription contained in r 22 of the LPPCR is against the provision of advice that will enable the client to "*advance* an illegal purpose" [emphasis added]; it does not require the illegal purpose to be completed before the solicitor is found to be in breach. In the present case, the Disciplinary Tribunal found that the Respondent had been "blissfully oblivious" to the "suspicious nature" of the Transaction (in so far as it purported to be a sale and purchase transaction), and the question here is whether the Disciplinary Tribunal erred in so finding.

87 The doctrine of wilful blindness is part of the legal landscape in many areas of law and the relevant principles are well established in Singapore. In *Tan Kiam Peng v Public Prosecutor* [2008] 1 SLR(R) 1, the Singapore Court of Appeal held that wilful blindness was the legal equivalent of actual knowledge (at [104]), and that in order to establish wilful blindness, there had to be the appropriate level of suspicion, which level of suspicion "*must then lead to a refusal to investigate further*, thus resulting in 'blind eye knowledge'" [emphasis in original] (at [125]). The requisite level of suspicion would be established if the court is satisfied that the person in question refused

to make further inquiries because he or she was virtually certain that if further inquiries were made, his or her suspicions would be confirmed (at [126]). We note also that in the absence of proof of knowledge, proof of a lower degree of *mens rea* – namely, that of "reasonable grounds to believe" – would suffice to establish a charge under r 22 of the LPPCR. In the Singapore High Court decision of *Ow Yew Beng v Public Prosecutor* [2003] 1 SLR(R) 536, it was held that having "reason to believe" involved a lower degree of conviction than certainty, but a higher one than speculation. In applying this test, the court must assume the position of the actual individual involved (*ie*, including his knowledge and experience), but must reason from that position (*ie*, infer from the facts known to that particular individual) like an objective reasonable person.

88 As a matter of context, it appears that the practice of moneylending on the security of the borrower's property is not new or uncommon. In *Tan Phuay Khiang*, this court expressed concern over this "worrying aspect of legal practice" (at [73]):

> 73 … When loan transactions are involved, the transaction is typically structured in the following manner: ***a home-owner may borrow a sum of money from a licensed moneylender by offering his flat as security***. *The home-owner will typically be required to execute a power of attorney in favour of a servant or agent of the moneylender, who is then empowered to act in relation to the sale or the letting of the flat.* The moneylender then later appoints or works with a related housing agent to sell the flat. Often, one of these parties may refer the home-owner to a law firm with an existing referral relationship … [emphasis added in italics and bold italics]

In a similar vein, it was recently observed by Lai Yew Fei in the chapter on "Legal Profession" in (2015) 16 SAL Ann Rev 558, pp 558–581 (at

para 21.54) that schemes to disguise an unlicensed moneylending transaction using an option to purchase coupled with a power of attorney are not novel.

89 There are striking parallels between the present case and *The Law Society of Singapore v Yoong Tat Choy Joseph* [1993] SGDSC 9 ("*Joseph Yoong*"). In that case, the respondent solicitor was found to have, *inter alia*, facilitated an illegal moneylending transaction by preparing, for that purpose, a power of attorney and a sale and purchase agreement knowing that those documents constituted the security for the illegal moneylending transaction. The Disciplinary Committee found that the respondent, who had six years' of experience in civil work and conveyancing, was experienced enough to appreciate that the transaction was highly unusual. First, despite the fact that completion was not to take place for six months, a "big up-front" of $150,000 (almost 25% of the purchase price of $610,000) was to be paid to the vendor in circumstances of the utmost urgency, without even passing through the hands of a stakeholder (at [120]). Notably, the respondent asked no questions about the need for urgency. Further, no instructions were recorded, no attendance notes were kept and no written advice was rendered to the client.

90 Secondly, there was expert opinion in *Joseph Yoong* that both the sale and purchase agreement and the power of attorney contained some highly unusual features. The agreement provided for a deposit of $150,000, which was "well in excess of the usual 10% of the purchase price, the more unusual since it was forfeitable upon default by the purchaser" (at [118]). There was also a stipulation for the deposit to be paid directly to the vendor, instead of to his solicitor as the stakeholder. The power of attorney was stated to be irrevocable, and the expert witness testified that he had not come across more than a handful of such powers of attorney in the course of a conveyancing

career spanning some 35 years. In addition, there was extraordinary provision in the power of attorney depriving the vendor of his rights over the property. It was also unusual for the purchaser's solicitor to prepare a power of attorney which the vendor was to grant. Finally, there was an odd request by the respondent's firm for the return of the cheque representing the $150,000 deposit. In the Disciplinary Committee's view, this indicated that "[the cheque] could not have been presented … without any corresponding record that the deposit had been paid by some other means" (at [119]).

91 Returning to the present case, the Complainant asserted that she had in fact informed the Respondent at their meeting on 3 August 2012 that she and her husband "had no choice but to take the loan from [Ho]". We note that, as pointed out by the Respondent, the Complainant's husband admitted under cross-examination that nothing like that was communicated to the Respondent. However, even leaving aside this assertion by the Complainant (which did not appear to be substantiated by any evidence), we find that there were sufficient facts to show that the Respondent was wilfully blind to the fact that her advice was being sought to advance a transaction which involved unlicensed moneylending.

92 We have stated earlier that several aspects of the Transaction were highly unusual. *First*, even if the market value of the Property (which the Respondent denies knowledge of) is put to one side, the Respondent must have appreciated the extraordinary nature of the payment structure – the option fee amounted to 38.4% of the purchase price and the bulk of the purchase price was to be paid upon the exercise of the Option, leaving only a nominal sum of $1,000 to be paid at the time of completion. *Secondly*, at the risk of repetition, we must once again emphasise the extraordinarily (and also

unnecessarily) broad scope of the POA, which, in our view, gave the game away. Ho had, *inter alia*, the power to dispose of the Property for such consideration as he thought fit (cll 1.1 and 1.4), and to apply any monies which he received in his capacity as the Vendors' attorney or which were otherwise due to the Vendors for his own use and benefit (cl 1.21). Ho, in his capacity as the Vendors' attorney, also had the power to lease the Property at such rents and upon such terms as he deemed fit. The Vendors had effectively, by way of the POA, which was stated to be "*irrevocable* until the Property is sold and all monies paid to [Ho]" [emphasis added], ceded control over almost every aspect of their rights in the Property. In the face of such exceptional terms, even the Respondent had to concede under questioning that the Transaction was unusual and "seemed strange". She also admitted that this was the first time she had encountered a sale and purchase transaction which involved such a power of attorney. We find it especially telling that the Respondent had no qualms about facilitating the Transaction without probing deeper or properly documenting every stage of the Transaction (including her advice to the parties), notwithstanding her own view that the Transaction "seemed strange" and that she was treading on dangerous ground by concurrently representing the parties on both sides of the Transaction.

93 It is crucial to note that, as mentioned earlier at [87] above, the test of whether the Respondent was wilfully blind is not wholly subjective. In ascertaining whether the Respondent had reasonable grounds to believe that her advice was not only being sought but was also being sought to advance an unlicensed moneylending transaction, the court must assume her position (*ie*, including her knowledge and experience), but must reason from that position (*ie*, infer from the facts known to her) like an objective reasonable person. In our view, a reasonably circumspect and observant practitioner imbued with the

Respondent's 30-over years of experience in conveyancing practice would have had reasonable grounds to believe that the sale and purchase which the Transaction purported to effect was in fact a cover for an unlicensed moneylending transaction. It bears reiterating that such schemes to disguise unlicensed moneylending transactions are not novel. Apart from moneylending, there could, in our view, be no other explanation operating in the Respondent's mind as to why the parties were entering into such an unusual transaction. In these circumstances, the Respondent's plea of ignorance is truly alarming and strains belief. Further, as a senior member of the profession, the Respondent must be presumed to know that persons who extend loans in consideration of a larger sum being repaid are presumed to be "moneylenders" for the purposes of the MLA. The Respondent could very well have been blindsided by her long-standing professional relationship/friendship with Ho, but that, in our view, does not mitigate or excuse her misconduct. Looking at the matter in the round, we are satisfied that the facts of the present case have crossed the threshold required to prove wilful blindness.

94 For completeness, since the Chai Chee transaction came after the Transaction between Ho/Invest-Ho and the Vendors, the Respondent's knowledge of and assistance in the Chai Chee transaction cannot count towards her knowledge of the illegal nature of the Transaction between Ho/Invest-Ho and the Vendors. Nevertheless, we view with profound disquiet her subsequent involvement in another highly suspicious transaction in rather similar circumstances. We cannot stress enough the importance of the need for legal practitioners to exercise vigilance and to guard against the prospect of themselves being used (whether unwittingly or knowingly) as facilitators and enablers of illicit transactions.

The fourth charge: Whether the Respondent failed to report a transaction which she knew or had reasonable grounds to suspect involved unlicensed moneylending

95 Turning now to the fourth charge, the basis of this charge is r 11G of the LPPCR, which provides as follows:

> **Suspicious transaction reporting**
>
> **11G.** Where an advocate and solicitor or a law practice knows or has ***reasonable grounds to suspect*** any matter referred to in section 39(1) of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap. 65A), the advocate and solicitor or the law practice shall disclose the matter to —
>
> (*a*) the Suspicious Transaction Reporting Office of the Commercial Affairs Department by way of a suspicious transaction report; or
>
> (*b*) an authorised officer under that Act,
>
> in accordance with section 39 of that Act.
>
> [emphasis added in bold italics]

96 It appears that r 11G of the LPPCR was drafted to mirror the obligation imposed by s 39(1) of the CDSA, which provides thus:

> **Duty to disclose knowledge or suspicion**
>
> **39.**—(1) Where a person knows or has reasonable grounds to suspect that any property —
>
> (*a*) in whole or in part, directly or indirectly, represents the proceeds of;
>
> (*b*) was used in connection with; or
>
> (*c*) is intended to be used in connection with,
>
> any act which may constitute drug dealing or ***criminal conduct***, as the case may be, and the information or matter on which the knowledge or suspicion is based came to his attention in the course of his trade, profession, business or employment, he shall disclose the knowledge or suspicion or the information or other matter on which that knowledge or

> suspicion is based to a Suspicious Transaction Reporting Officer as soon as is reasonably practicable after it comes to his attention.
>
> [emphasis added in bold italics]

Section 2 of the CDSA defines "criminal conduct" as the "doing or being concerned in, whether in Singapore or elsewhere, any act constituting a *serious offence* or a foreign *serious offence*" [emphasis added]. Unlicensed moneylending in contravention of the MLA is listed as a "serious offence" in the second schedule of the CDSA. In short, r 11G of the LPPCR, read together with the relevant provisions of the CDSA, imposes on an advocate and solicitor the obligation to report a transaction if he or she has reasonable grounds to suspect that it involves unlicensed moneylending.

97 It is quite clear that the crux of the fourth charge is essentially similar to that of the third charge. However, a significant difference is that the *mens rea* requirement of "reasonable grounds to suspect" (in r 11G) engages a lower threshold as compared to that of "reasonable grounds to believe" (in r 22), since belief is obviously stronger than suspicion. Given our finding (in relation to the third charge) that the Respondent knew or at least had reasonable grounds to believe that the parties were entering into a transaction which involved unlicensed moneylending, it stands to reason that the fourth charge, which involves a lower degree of knowledge, has also been established.

The Vendors' credibility and lack of probity

98 We note that the Respondent has sought to undermine the Vendors' credibility by highlighting the inconsistencies in their evidence as well as what she says to be a false police report by the Complainant. The Law Society admits that the Vendors' evidence is neither perfect nor free from

inconsistencies, but submits that the inconsistencies are not fatal to establishing the charges brought against the Respondent. It suffices for us to state that we do not think it necessary to delve into the issue of the Vendors' credibility and lack of probity given that many, if not all, of our findings are premised on objective facts (such as the terms of the Option and the POA) as well as admissions made by the Respondent in the proceedings before the Disciplinary Tribunal.

Conclusion on conviction

99 For the foregoing reasons, we are satisfied that due cause for disciplinary action against the Respondent has been shown inasmuch as all the charges preferred against her have been proved beyond reasonable doubt. We note that the charges against the Respondent have been brought under s 83(2)(*b*) of the LPA and, in the alternative, s 83(2)(*h*) of the same. For ease of reference, these provisions are set out below:

> (2) … [S]uch due cause may be shown by proof that an advocate and solicitor —
>
> …
>
> (*b*) has been guilty of fraudulent or grossly improper conduct in the discharge of his professional duty or guilty of such a breach of any of the following as amounts to improper conduct or practice as an advocate and solicitor:
>
> (i) any usage or rule of conduct made by the Professional Conduct Council under section 71 or by the Council under the provisions of this Act;
>
> (ii) Part VA or any rules made under section 70H;

> (iii) any rules made under section 36M(2)(*r*);
>
> …
>
> (*h*) has been guilty of such misconduct unbefitting an advocate and solicitor as an officer of the Supreme Court or as a member of an honourable profession …
>
> …

100 Returning to the present case, we have found the Respondent guilty of the following: (a) failing to advise the Vendors of the potential conflict of interests that might arise from her concurrently acting for them as well as for Ho/Invest-Ho in relation to the Transaction, and of her duty as an advocate and solicitor in the event that such conflict materialised; (b) preferring the interests of Ho/Invest-Ho over those of the Vendors; (c) tendering advice in furtherance of the Transaction, which she knew or at least had reasonable grounds to believe involved an illegal purpose; and (d) failing to report the Transaction, which she knew or at least had reasonable grounds to suspect involved unlicensed moneylending, one of the forms of "criminal conduct" falling within the ambit of s 39(1) of the CDSA. We are of the view that the Respondent's misconduct is sufficiently serious to fall within s 83(2)(*b*) of the LPA and, *a fortiori*, her conduct would fall within s 83(2)(*h*) as well since the standard of "unbefitting" conduct (under s 83(2)(*h*)) is clearly less strict than the standard of "fraudulent or grossly improper conduct" (under s 83(2)(*b*)): see, for example, the decision of this court in *Law Society of Singapore v Arjan Chotrani Bisham* [2001] 1 SLR(R) 231 at [35].

101 The parties are to submit to this court written arguments (not exceeding ten pages) on the issue of the appropriate sanction to be imposed on the Respondent no later than three weeks from the date of release of the

present judgment, after which we will hear the parties with respect to this particular issue on a date to be fixed.

Chao Hick Tin	Andrew Phang Boon Leong	Judith Prakash
Judge of Appeal	Judge of Appeal	Judge of Appeal

Dhillon Dinesh Singh and Felicia Tan May Lian
(Allen & Gledhill LLP) for the applicant;
Michael Khoo SC, Josephine Low and Chiok Beng Piow Andy
(Michael Khoo & Partners) for the respondent.