Law Society of Singapore v Nor'ain bte Abu Bakar and Others
[2008] SGHC 169

Case Number : OS 1785/2007, SUM 252/2008

Decision Date : 08 October 2008

Tribunal/Court : High Court

Coram : Chan Sek Keong CJ; Andrew Phang Boon Leong JA; Tay Yong Kwang J

Counsel Name(s) : Andre Yeap SC, Lai Yew Fei and Dominic Chan (Rajah & Tann LLP) for the applicant; N Sreenivasan (Straits Law Practice LLC) for the first respondent; Shashi Nathan and Adrian Wee (Harry Elias Partnership) for the second respondent; Deborah Barker SC (KhattarWong) and Dube Vinod Kumar (Peter Chua & Partners) for the third respondent

Parties : Law Society of Singapore — Nor'ain bte Abu Bakar; Ruby Tan Kim Suan; Peter Chua Seng Hock

Legal Profession – Show cause action – Lawyers knowingly deceiving or misleading the court into releasing moneys paid into court – Fraudulent or improper conduct – Appropriate punishment – Sections 83(2)(b), 83(2)(h) and 83(2)(j) Legal Profession Act (Cap 161, 2001 Rev Ed)

8 October 2008 Judgment reserved.

Chan Sek Keong CJ (delivering the judgment of the court):

Introduction

1 This is an application by the Law Society of Singapore ("the Law Society") pursuant to s 94(1) read with s 98 of the Legal Profession Act (Cap 161, 2001 Rev Ed) ("the Act") for Nor'ain bte Abu Bakar (the first respondent), Ruby Tan Kim Suan (the second respondent) and Peter Chua Seng Hock (the third respondent) to show cause as to why they should not be dealt with under s 83 of the Act.

2 The respondents are advocates and solicitors of the Supreme Court of the Republic of Singapore. The first respondent has been in practice for about seven years and was a partner in the firm of M/s Abu Bakar, Tan Ibrahim & Partners ("ABTIP") at all material times. She is currently the sole proprietor of ABTIP. The second respondent has also been in practice for about seven years and was at all material times a partner of ABTIP. She is currently living overseas and has no intention of returning to Singapore in the foreseeable future. Nonetheless, she instructed counsel to appear for her in the proceedings before us. The third respondent is an advocate and solicitor of more than 20 years' standing, having been admitted to the Bar on 9 June 1982. He is the sole proprietor of M/s Peter Chua & Partners except for the period of 1995 to 2002 when his brother joined him as a partner.

The factual background

3 Before we consider the findings of the disciplinary committee ("DC") appointed by the Law Society and the arguments of counsel for the Law Society and for the three respondents before us, it is necessary that we set out the factual background against which the disciplinary proceedings were brought against the respondents. As the disciplinary proceedings arose out of the involvement of the respondents in the disposition of the proceeds of sale of the 29 properties belonging to the Basharahil estate ("the B Estate"), we provide below a flow chart as an easy guide to the various issues dealt with in this rather lengthy judgment.

[LawNet Admin Note: Image 1 is viewable only to LawNet subscribers via the PDF in the Case View Tools.]

The Estate and its beneficiaries

4 On 15 July 1953, Shaik Ahmad bin Abdullah Wahdain Basharahil ("the testator") died in Madura, Indonesia, survived by five widows and many children. He left an estate (the B Estate) comprising, *inter alia*, 61 immovable properties in Singapore. His will directed that the B Estate be held on trust for his heirs in accordance with "Mohamedeen Intestate Law" upon the expiry of 21 years from his death. However, the B Estate was not distributed among the beneficiaries on the date as directed by the will. Subsequently, 32 of the 61 properties were acquired by the Government of Singapore, leaving the B Estate with 29 properties ("the 29 Properties") with which the present proceedings are concerned.

5 Two groups of beneficiaries (which will be referred to as the "Camp A" and the "Camp B" beneficiaries) claimed the 29 Properties. The Camp A beneficiaries comprised the testator's grandchildren of the first wife's six children who had passed away between 1973 and 1987 ("the six sub-estates"). They were purportedly represented by one Musa Said Wachdin ("Musa") and Salim Hassan Wachdin ("Salim"). The Camp B beneficiaries comprised descendants of the testator through his second to fifth wives.

Sale of the 29 Properties by the Camp B beneficiaries

6 On 12 August 1993, the Camp B beneficiaries purported to sell the 29 Properties to Beng Tiong Trading Import and Export (1988) Pte Ltd ("Beng Tiong") for $8.26m. Later, on 19 July 1999, Beng Tiong obtained an order in Suit No 1255 of 1996 ("Beng Tiong's Suit") that it was entitled to the rights, interests, benefits and entitlements of the Camp B beneficiaries in the 29 Properties. Beng Tiong also obtained a declaration that the Public Trustee ("PT"), who had been appointed trustee of the will of the testator by an order of court of 11 October 1996, was to take "such steps as are necessary in cognisance of the [said] declaration" (see *Beng Tiong Trading, Import and Export (1988) Pte Ltd v Maria Janda Achmad bin Abdullah Wachdin Basharahil* [2003] 2 SLR 518 at [4]). One JAK Alhadad & Co Pte Ltd ("JAK") (whose involvement in the events will become evident later) had applied to be joined as a party in this action, and eventually the orders obtained by Beng Tiong were set aside.

Sale of the 29 Properties by the Camp A beneficiaries

7 By an agreement to purchase dated 5 November 1994 ("the 1994 Agreement"), one Abdurrachman Abdullah Wachdin Basyarahil ("Abdurrachman") as "the attorney of the heirs and heiresses" of the testator and the sole representative of all the beneficiaries under the will, purportedly sold the 29 Properties to JAK for $14m. JAK was the corporate alter ego of one Syed Jafaralsadeg bin Abdul Kadir Alhadad ("Jafar"). Jafar was made a bankrupt on 18 January 1998 and is at present still a bankrupt. He had also been convicted and imprisoned for criminal breach of trust. By six deeds of assignment and release, each dated 12 February 1996 ("the 1996 Agreements"), the six sub-estates purportedly assigned and released to Jafar all their interests and entitlements in the 29 Properties for $2m each, making a total of $12m. There is no explanation on record for this transaction (such as why the purchaser became Jafar instead of JAK) and why the purchase price was reduced by $2m. The first respondent's explanation that the 1996 Agreements were necessary because the beneficiaries had wanted a more concise agreement in the Indonesian language was rejected by the DC.

8 On 19 March 1996, JAK in turn sold 25 of the 29 Properties to By Products Traders Pte Ltd and one David Reginald Broadley (collectively "B&B") for which they eventually paid a total of $3,642,000. The remaining four properties were purportedly sold to one Mohamed Ayoob s/o Meera Hussain ("Ayoob").

PT appointed trustee of the B Estate

9 On 11 October 1996, the PT was appointed the trustee of the will of the testator, *ie*, the trustee of the B Estate. In view of the competing claims to the 29 Properties, the PT (together with a beneficiary from Camp B) made an application in Originating Summons No 1030 of 2000 ("OS 1030/2000") on 11 July 2000 for an order to sell the 29 Properties. All the known claimants were made respondents to the application, including B&B, JAK, and Musa and Salim. Musa and Salim objected to this joint application for the sale of the properties. To prosecute their own claim, Musa and Salim filed Originating Summons No 600626 of 2001 ("the opposing OS") as plaintiffs and named the PT and the beneficiary from Camp B as defendants.

10 In those proceedings (*ie*, OS 1030/2000 and the opposing OS), JAK produced the following documents as evidence of its claim to the 29 Properties:

(a) the 1994 Agreement;

(b) the 1996 Agreements;

(c) a power of attorney management dated 10 April 1997 executed by:

(i) Musa,

(ii) Saleh Umar Wachdin,

(iii) Abdurrahim bin Awad Wachdin,

(iv) Abdurrachman Ali Wachdin (also known as Abdurrachman bin Ali bin Achmad bin Abdullah Wachdin Basyarahil),

(v) Salim, and

(vi) Azizah Wachdin,

in favour of Musa and Salim; and

(d) an order obtained from the Pamekasan Religious Court of Madura, on 16 October 2000 ("the Pamekasan Order").

Court declares distributive shares of beneficiaries of the B Estate

11 OS 1030/2000 (consolidated with the opposing OS) was heard by Lee Seiu Kin JC over a few days. On 5 July 2002, Lee JC decided that Musa and Salim were not the agents or authorised representatives of all the beneficiaries of the B Estate (see *Re Will of Shaik Ahmad bin Abdullah Wahdain Basharahil* [2003] 1 SLR 433 ("*Re Will of Shaik Ahmad*")). As a result, they did not have, at the material time, the capacity to sell and/or transfer the 29 Properties to JAK.

12 On 30 July 2002, Lee JC held that the Camp A beneficiaries were only entitled to 43.75% of the B Estate. Lee JC also authorised the PT to sell the 29 Properties at a reserved price of $17,970,000 and that the PT "shall not make any payment out of the proceeds of sale to the beneficiaries without the leave of the Court" (see *Re Will of Shaik Ahmad* at [23]). The first and second respondents, and the third respondent were aware of this direction as they were at the hearing, representing, respectively, JAK, and Musa and Salim. Pursuant to this order, the PT sold the 29 Properties for some $12m ("the Sale Proceeds").

13 Lee JC's decision rendered null and void the purported sale of the 29 Properties by the beneficiaries of Camp A and of Camp B to JAK and Beng Tiong respectively and also the purported sub-sales by JAK to B&B and Ayoob. The total failure of consideration resulting from Lee JC's decision led to the purchasers and sub-purchasers taking steps to recover the purchase moneys paid to the vendors. This was when the respondents got involved in the machinations of Jafar to try to recover the purchase moneys he had purportedly paid to the Camp A beneficiaries.

Suit against Musa and Salim and default judgment

14 On 13 December 2002, ABTIP (the first and second respondents' firm) commenced Suit No 1497 of 2002 ("the JAK Suit") on behalf of JAK against Musa and Salim (as the trustees of the Camp A beneficiaries pursuant to the Pamekasan Order) to recover the sum of $4,270,096 being moneys allegedly paid by JAK to the Camp A beneficiaries, plus interest and costs. The payments were made up of $3,348,970 being deposits to the beneficiaries and $921,126 for disbursements and expenses. The statement of claim alleged that Musa and Salim were aware of the full particulars of these payments. Salim accepted service of the writ in Singapore by prior arrangement with ABTIP on 5 January 2003, but subsequently failed to enter an appearance, resulting in judgment in default of appearance being entered against him on 14 January 2003. ABTIP acted for JAK, and the third respondent acted for Musa and Salim in this action. On 10 March 2003, JAK discontinued the action against Musa. No explanation has been given why Musa was not served or why the action was discontinued against him. Furthermore, the DC did not appear to have addressed the issue of whether this judgment against Salim alone was a regular or valid judgment that was binding against the Camp A beneficiaries.

JAK's opposition to B&B's application for payment out

15 On 6 May 2003, B&B applied in OS 1030/2000 ("the B&B Payment Out Application") by way of Summons in Chambers No 600283 of 2003 for payment of $3,622,000 from the PT out of the distributive shares of the Sale Proceeds payable to the Camp A beneficiaries. This application was served on the PT, JAK, and Musa and Salim as representatives of the Camp A beneficiaries. JAK filed an affidavit through ABTIP to oppose the application.

Suit by B&B and judgment against JAK

16 One day later, on 7 May 2003, B&B commenced Suit No 453 of 2003 ("the B&B Suit") against JAK for a refund of the deposit of the moneys they had paid to JAK for the 25 properties they had purchased. On 26 November 2004, judgment was entered in their favour for $3,425,000 (plus interest) (see *By Products Traders Pte Ltd v JAK Alhadad & Co Pte Ltd* [2004] SGHC 265 ("*By Products Traders*") and [29] below). ABTIP also acted for JAK in this action.

No order made on the B&B Payment Out Application

17 The B&B Payment Out Application was heard on 26 August 2003. All the claimants to the Sale

Proceeds were represented by counsel. Judith Prakash J, who heard the application, made no order on the application but directed that the PT notify B&B of any future application for payment out of the Sale Proceeds. The first and second respondents, and the third respondent were aware of this direction as they were at the hearing, representing, respectively, JAK, and Musa and Salim.

JAK's garnishee application dismissed and appeal withdrawn

18 In October 2003, JAK applied via Summons in Chambers No 6556 of 2003 in the JAK Suit to enforce the default judgment against Salim by way of garnishee proceedings against part of the Sale Proceeds held by the PT ("the JAK Garnishee Application"). On 12 December 2003, Assistant Registrar Amy Tung ("AR Tung") dismissed the application on the ground that she was not satisfied that the JAK default judgment was a *bona fide* judgment as the 1996 Agreements on which it was based were signed by Jafar on his own behalf and not as the agent of JAK.

19 On 18 December 2003, JAK appealed against AR Tung's order. The PT filed an affidavit supporting AR Tung's decision for the reasons given by the assistant registrar and also on other grounds, such as that the 1996 Agreements were void because they were not in the English language, that a condition precedent in the 1996 Agreements had never been satisfied, and that JAK had only a personal action against Salim.

JAK's negotiations with PT

20 ABTIP briefed a Senior Counsel to advise JAK on the appeal. The Senior Counsel negotiated with the PT's solicitor on how to proceed further. The third respondent was present at these negotiations. According to him, he was requested by Jafar and the first respondent to attend the negotiations although he was not then acting for Musa and Salim on record. The negotiations resulted in JAK withdrawing the appeal subject to the PT agreeing to pay into court the distributive shares of the Camp A beneficiaries, each being entitled to a 14/192 share of the B Estate, and thus a 14/192 share of the Sale Proceeds. On 13 April 2004, the court made a consent order that, *inter alia*, the PT would apply to pay these moneys into court. The Senior Counsel and the first respondent represented JAK, and Mr Menon appeared for the PT. No explanation has been asked for or given as to why Musa and Salim were not represented at this hearing.

Distributive shares of the six sub-estates ordered to be paid into court

21 On 23 July 2004, Prakash J made an order in OS 1030/2000 for the payment into court, from the Sale Proceeds, of the distributive shares of the six sub-estates (being the Camp A beneficiaries) and for the distributive shares of the Camp B beneficiaries to be paid directly to them as there was no adverse claimant to the Camp B shares. At that date, the claimants to the moneys paid into court were JAK, the six sub-estates purportedly represented by Musa and Salim, and B&B.

Application by a sub-estate for payment out

22 In the meanwhile, on 31 August 2004, the solicitors for the estate of Umar bin Achmad bin Abdullah Wachdin Basyarahil ("the UAAWB Estate") (one of the six sub-estates in Camp A) wrote to the three respondents that their clients would be applying for payment out of the distributive shares belonging to their clients and asked if the respondents had instructions to accept service. They also requested to be served in the event that the first and third respondents were to file any application for payment out on behalf of their clients. On 1 September 2004, the UAAWB Estate duly applied to court for payment out of its distributive share of the Sale Proceeds in Summons in Chambers No 600547 of 2004 in OS 1030/2000 ("the UAAWB Application").

Payment into court of the Sale Proceeds by PT

23 On 3 September 2004, the PT informed all the claimants that he had paid into court the sum of the distributive shares of the Camp A beneficiaries. The sum paid into court amounted to $4,595,350.30.

JAK's application for payment out

24 On 8 September 2004, the second respondent filed an application on behalf of JAK via Summons in Chambers No 5008 of 2004 in the JAK Suit (see [14] above) for payment out of $4.27m ("the JAK Payment Out Application") and subsequently asked that this application be heard on an urgent basis on the ground that the Indonesian lawyer for Salim was in Singapore and wished to attend the hearing. The application was not served on the solicitors for the UAAWB Estate. The application was heard by Assistant Registar Ching Sann ("AR Ching") on 13 September 2004. The first and second respondents appeared for JAK and the third respondent appeared for Salim. The Indonesian lawyer was not present. By consent, AR Ching granted the application to pay out $4.27m (out of the total amount of $4,595,350.30 paid in by the PT) to JAK under the JAK Suit. The money was paid out on 20 September 2004.

The UAAWB Application

25 On 13 September 2004, the same day that JAK applied for payment out in the JAK Suit, ABTIP filed an affidavit on behalf of JAK to oppose the UAAWB Application (see [22] above). This application came before V K Rajah JC but was adjourned when the second respondent informed him that JAK would be objecting to the application. She did not inform the court of the JAK Payment Out Application.

Application for payment out by another sub-estate

26 On 27 September 2004, the solicitors for the ARAW Estate (another of the six sub-estates in Camp A) applied via Summons in Chambers No 600606 of 2004 in OS 1030/2000 ("the ARAW Application") for payment out of its distributive share of the Sale Proceeds. Obviously, the solicitors were unaware that the bulk of the distributive shares of the Camp A beneficiaries had been paid to JAK on 20 September 2004. The ARAW Application came up for hearing before Rajah JC on 27 October 2004. The third respondent, who appeared on behalf of Musa and Salim, informed the court that his clients opposed the application and requested that the matter be adjourned as the application had not been served on him. The first respondent was also in court as counsel for JAK. On 17 November 2004, JAK filed an affidavit to oppose the ARAW Application. Neither the first respondent nor the third respondent informed the court that the bulk of the Sale Proceeds paid into court had already been paid out to JAK.

27 On 29 November 2004, the first and second respondents (on behalf of JAK) appeared before V K Rajah J to oppose the joinder of the UAAWB Application with the ARAW Application. The court allowed the joinder. However, the ARAW Application was adjourned to 2 December 2004. The third respondent, who appeared for Musa and Salim, informed the court that he might not attend the adjourned hearing if he received no further instructions. The judge allowed the UAAWB Application and an order was made directing payment of $765,891.73 to the UAAWB Estate from the moneys in court.

28 On 2 December 2004, only the second respondent appeared at the adjourned hearing of the ARAW Application before Rajah J. The third respondent did not appear. Rajah J overruled the objection that the applicant had no *locus standi* in the present application (as raised by the second respondent

on behalf of JAK) and allowed the ARAW Application. An order was made directing payment of $765,891.73 to the ARAW Estate from the moneys in court.

B&B's judgment against JAK and application for payment out

29 In the meantime, while the UAAWB Application and the ARAW Application were going on, the trial of the B&B Suit took place in October and November 2004. Throughout the trial, the first and second respondents failed to inform the trial judge, Tan Lee Meng J, that payment out of $4.27m had been made pursuant to the JAK Payment Out Application and that there was no longer sufficient money left in court to satisfy any judgment that might be given to B&B. On 26 November 2004, Tan J gave judgment in favour of B&B against JAK in the B&B Suit (see *By Products Traders* ([16] *supra*)). On 1 December 2004, B&B applied via Summons in Chambers No 600732 of 2004 in OS 1030/2000 for payment out of $3,744,666.67 pursuant to its judgment against JAK. This application came before Rajah J on 2 December 2004 together with the ARAW Application. The applications were adjourned.

B&B's application for restitution

30 By late December 2004, B&B, having discovered that the moneys paid into court by the PT had been paid to ABTIP pursuant to the JAK Payment Out Application (see [24] above), applied via Summons in Chambers No 600797 of 2004 in OS 1030/2000 for an order that ABTIP and/or JAK make restitution of the sum paid out to ABTIP ("the Restitution Application"). When the Restitution Application came up for hearing on 20 January 2005, it was found that the remaining moneys in court would be insufficient to pay the UAAWB Estate and the ARAW Estate on their applications. Rajah J directed the first and second respondents to explain how the moneys came to be paid out to JAK and to justify their own conduct. He adjourned the matter to 24 January 2005. In compliance with this order, the first respondent filed an affidavit in which she stated that:

(a) she had not served the JAK Payment Out Application on B&B as they were not parties to the JAK Suit;

(b) she did not inform AR Ching of the order made by Prakash J on 23 July 2004 (see [21] above) as it was irrelevant because the order did not prohibit JAK from making the application in any proceedings other than OS 1030/2000.

31 When the matter came before Rajah J on 24 January 2005, the first respondent conceded that she could not justify her actions. The judge ordered JAK to return the moneys paid out to ABTIP. As a result of the events that took place before him, Rajah J directed an enquiry into the role of the respondents in enabling the bulk of the distributive shares of the six sub-estates to be paid out to JAK who, according to the documents filed in court, had no claim to the moneys. Subsequently, JAK was wound up on 8 July 2005. Jafar, the controlling mind of JAK, remains a bankrupt to this day.

Disciplinary charges against respondents

32 It was against this background of events that disciplinary proceedings were commenced against the three respondents after Rajah J made a direction under s 85(3)(*b*) of the Act that the conduct of the respondents in OS 1030/2000 be referred to a DC (see *Public Trustee v By Products Traders Pte Ltd* [2005] 3 SLR 449 ("*PT v By Products Traders*") at [49]–[51]). Additionally, David Reginald Broadley also made a complaint of the respondents arising from the same proceedings before Rajah J. This complaint was also referred by the Law Society's inquiry committee on 24 October 2005 to the same DC appointed by the Law Society.

33 The charges preferred against the three respondents are as follows:

CHARGES AGAINST THE 1ST AND 2ND RESPONDENTS

1ST CHARGE

That each and both of you, Nor'ain Abu Bte Bakar and Ruby Tan Kim Suan, are guilty of:-

(a) Fraudulent conduct in the discharge of your professional duty within the meaning of section 83(2)(b) of the Legal Profession Act (Cap. 161);

(b) Alternatively, grossly improper conduct in the discharge of your professional duty within the meaning of section 83(2)(b) of the Legal Profession Act (Cap. 161);

(c) Alternatively, such 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 section 83(2)(h) of the Legal Profession Act (Cap. 161);

(d) Alternatively, [having] knowingly deceived or misled the court thereby contravening section 83(2)(j) of the Legal Profession Act (Cap. 161) read with rule 56 of the Legal Profession (Professional Conduct) Rules (Cap. 161, R1, 2000 Rev ed).

IN THAT each and both of you, on 8 September 2004 filed Summons in Chambers No. 5008 of 2004 in Suit No. 1497 of 2002 (instead of filing it in Originating Summons No. 1030 of 2000) with the intention of withholding from the court or suppressing the information that there were competing claims to the sum of $4,595,350.38 which Justice Judith Prakash ordered to be paid into court on 23 July 2004.

2ND CHARGE

That each and both of you, Nor'ain Abu Bte Bakar and Ruby Tan Kim Suan, are guilty of:-

(a) Fraudulent conduct in the discharge of your professional duty within the meaning of section 83(2)(b) of the Legal Profession Act (Cap. 161);

(b) Alternatively, grossly improper conduct in the discharge of your professional duty within the meaning of section 83(2)(b) of the Legal Profession Act (Cap. 161);

(c) Alternatively, such 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 section 83(2)(h) of the Legal Profession Act (Cap. 161);

(d) Alternatively, [having] knowingly deceived or misled the court thereby contravening section 83(2)(j) of the Legal Profession Act (Cap. 161) read with rule 56 of the Legal Profession (Professional Conduct) Rules (Cap. 161, R1, 2000 Rev ed).

IN THAT each and both of you, between 8 September 2004 and 13 September 2004 (both dates inclusive), with the intention of withholding from the court or suppressing the information that there were competing claims to the sum of $4,595,350.38 paid into court failed to serve Summons in Chambers No. 5008 of 2004 on (1) the Public Trustee who was the trustee of the Will of Shaik Ahmad bin Abdullah Wahdain Basharahil; (2) By Products Traders Pte Ltd and David

Reginald Ellis Broadley and (3) the estate of Umar bin Achmad bin Abdul Wachdin Basyarahil, each of whom had competing claims on the said sum of $4,595,350.38.

AMENDED 3RD CHARGE

That each and both of you, Nor'ain Abu Bte Bakar and Ruby Tan Kim Suan, are guilty of:-

(a) Fraudulent conduct in the discharge of your professional duty within the meaning of section 83(2)(b) of the Legal Profession Act (Cap. 161);

(b) Alternatively, grossly improper conduct in the discharge of your professional duty within the meaning of section 83(2)(b) of the Legal Profession Act (Cap. 161);

(c) Alternatively, such 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 section 83(2)(h) of the Legal Profession Act (Cap. 161);

(d) Alternatively, [having] knowingly deceived or misled the court thereby contravening section 83(2)(j) of the Legal Profession Act (Cap. 161) read with rule 56 of the Legal Profession (Professional Conduct) Rules (Cap. 161, R1, 2000 Rev ed);

(e) Alternatively, failing to inform the court of all relevant decisions of which you are aware thereby contravening section 83(2)(j) of the Legal Profession Act (Cap. 161) read with rule 60(c) of the Legal Profession (Professional Conduct) Rules (Cap. 161, R1, 2000 Rev ed).

IN THAT each and both of you, at the hearing before the Assistant Registrar, Ms Ching Sann, on 13 September 2004, with the intention of withholding from the court or suppressing the information that there were competing claims to the sum of $4,595,350.38 paid into court, failed to point out to her any one or more of the following, namely:-

(i) JAK Alhadad & Co Pte Ltd's garnishee application in Summons in Chambers No. 6556 of 2003 made against the Public Trustee in respect of the proceeds from the sale of the 29 properties in the estate of Shaik Ahmad bin Abdullah Wahdain Basharahil ("the Estate") had been dismissed by the Assistant Registrar, Ms Amy Tung, on 12 December 2003 and/or that she was not satisfied that there was a judgment debt due to the proper party.

(ii) There were competing claims to the sum of $4,595,350.38 among By Products Traders Pte Ltd ("BP"), David Reginald Ellis Broadley ("Broadley") and JAK Alhadad & Co Pte Ltd ("JAK").

(iii) JAK had acknowledged in an affidavit filed on 14 February 2001 that most of the funds claimed by JAK from Musa Said Wachdin ("Musa") and Salim Hasan Wachdin ("Salim") in Suit No. 1497 of 2002 were provided by BP and Broadley, both of whom had sued JAK for the refund of such funds in Suit No. 453 of 2003.

(iv) There were competing claims among the 6 beneficiaries purportedly represented by Musa and Salim and that the estate of Umar bin Achmad bin Abdul Wachdin Basyarahil, deceased had filed an application on 1 September 2004 for payment out from the said sum of $4,595,350.38.

(v) Justice Judith Prakash had on 23 July 2004 made an order in Originating Summons 1030 of 2000 for payment of the proceeds from the sale of the 29 properties in the Estate into court in order to defer payment to any competing claimant pending a proper determination of rights to these moneys.

(vi) Justice Judith Prakash had on 26 August 2003 directed the Public Trustee to notify BP and Broadley of any future application made to the court for approval of payment of any part of the proceeds from the sale of the 29 properties in the Estate so as to ensure that any future application with regard to the said sale proceeds would have to be served on the Public Trustee, BP and Broadley and/or made by the PT.

(vii) JAK's application for payment out vide Summons-in-Chambers No. 5008 of 2004 made in Suit No. 1497 of 2002 ought to have been made in Originating Summons No. 1030 of 2000 instead.

thereby procuring the Assistant Registrar, Ms Ching Sann, to make an order for the payment out of court of the sum of $4,270,000.00 to Abu Bakar Tan Ibrahim & Partners.

4TH CHARGE

That you, Ruby Tan Kim Suan, are guilty of:-

(a) Fraudulent conduct in the discharge of your professional duty within the meaning of section 83(2)(b) of the Legal Profession Act (Cap. 161);

(b) Alternatively, grossly improper conduct in the discharge of your professional duty within the meaning of section 83(2)(b) of the Legal Profession Act (Cap. 161);

(c) Alternatively, such 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 section 83(2)(h) of the Legal Profession Act (Cap. 161);

(d) Alternatively, [having] knowingly deceived or misled the court thereby contravening section 83(2)(j) of the Legal Profession Act (Cap. 161) read with rule 56 of the Legal Profession (Professional Conduct) Rules (Cap. 161, R1, 2000 Rev ed);

(e) Alternatively, failing to inform the court of all relevant decisions of which you are aware thereby contravening section 83(2)(j) of the Legal Profession Act (Cap. 161) read with rule 60(c) of the Legal Profession (Professional Conduct) Rules (Cap. 161, R1, 2000 Rev ed).

IN THAT you at the hearing before Justice V K Rajah on 15 September 2004 failed to point out to Justice V K Rajah that as a result of the directions made by the Assistant Registrar, Ms Ching Sann, on 13 September 2004 for payment out of court of the sum of $4,270,000.00, there were insufficient moneys remaining in court to give effect to the application of the estate of Umar bin Achmad bin Abdul Wachdin Basyarahil, deceased in Summons in Chambers No. 600547 of 2004.

5TH CHARGE

That you, Nor'ain Abu Bte Bakar, are guilty of:-

(a) Fraudulent conduct in the discharge of your professional duty within the meaning of section 83(2)(b) of the Legal Profession Act (Cap. 161);

(b) Alternatively, grossly improper conduct in the discharge of your professional duty within the meaning of section 83(2)(b) of the Legal Profession Act (Cap. 161);

(c) Alternatively, such 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 section 83(2)(h) of the Legal Profession Act (Cap. 161);

(d) Alternatively, [having] knowingly deceived or misled the court thereby contravening section 83(2)(j) of the Legal Profession Act (Cap. 161) read with rule 56 of the Legal Profession (Professional Conduct) Rules (Cap. 161, R1, 2000 Rev ed);

(e) Alternatively, failing to inform the court of all relevant decisions of which you are aware thereby contravening section 83(2)(j) of the Legal Profession Act (Cap. 161) read with rule 60(c) of the Legal Profession (Professional Conduct) Rules (Cap. 161, R1, 2000 Rev ed).

IN THAT you at the hearing before Justice V K Rajah on 27 October 2004 failed to point out to Justice V K Rajah that as a result of the directions made by the Assistant Registrar, Ms Ching Sann, on 13 September 2004 for payment out of court of the sum of $4,270,000.00, there were insufficient moneys remaining in court to give effect to the application of the estate of Umar bin Achmad bin Abdul Wachdin Basyarahil, deceased in Summons in Chambers No. 600547 of 2004.

AMENDED 6TH CHARGE

That each and both of you, Nor'ain Abu Bte Bakar and Ruby Tan Kim Suan, are guilty of:-

(a) Fraudulent conduct in the discharge of your professional duty within the meaning of section 83(2)(b) of the Legal Profession Act (Cap. 161);

(b) Alternatively, grossly improper conduct in the discharge of your professional duty within the meaning of section 83(2)(b) of the Legal Profession Act (Cap. 161);

(c) Alternatively, such 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 section 83(2)(h) of the Legal Profession Act (Cap. 161);

(d) Alternatively, [having] knowingly deceived or misled the court thereby contravening section 83(2)(j) of the Legal Profession Act (Cap. 161) read with rule 56 of the Legal Profession (Professional Conduct) Rules (Cap. 161, R1, 2000 Rev ed);

(e) Alternatively, failing to inform the court of all relevant decisions of which you are aware thereby contravening section 83(2)(j) of the Legal Profession Act (Cap. 161) read with rule 60(c) of the Legal Profession (Professional Conduct) Rules (Cap. 161, R1, 2000 Rev ed).

IN THAT each and both of you at the hearing before Justice V K Rajah on 29 November 2004 failed to point out to Justice V K Rajah that as a result of the directions made by the Assistant Registrar, Ms Ching Sann, on 13 September 2004 for payment out of court of the sum of

$4,270,000.00, there were insufficient moneys remaining in court to give effect to the application of the estate of Umar bin Achmad bin Wachdin Basyarahil, deceased in Summons in Chambers No. 600547 of 2004 and the application of the estate of Awat bin Achmad bin Abdullah Wachdin Basyarahil, deceased in Summons in Chambers No. 600606 of 2004.

AMENDED 7TH CHARGE

That each and both of you, Nor'ain Abu Bte Bakar and Ruby Tan Kim Suan, are guilty of:-

(a) Fraudulent conduct in the discharge of your professional duty within the meaning of section 83(2)(b) of the Legal Profession Act (Cap. 161);

(b) Alternatively, grossly improper conduct in the discharge of your professional duty within the meaning of section 83(2)(b) of the Legal Profession Act (Cap. 161);

(c) Alternatively, such 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 section 83(2)(h) of the Legal Profession Act (Cap. 161);

(d) Alternatively, [having] knowingly deceived or misled the court thereby contravening section 83(2)(j) of the Legal Profession Act (Cap. 161) read with rule 56 of the Legal Profession (Professional Conduct) Rules (Cap. 161, R1, 2000 Rev ed);

(e) Alternatively, failing to inform the court of all relevant decisions of which you are aware thereby contravening section 83(2)(j) of the Legal Profession Act (Cap. 161) read with rule 60(c) of the Legal Profession (Professional Conduct) Rules (Cap. 161, R1, 2000 Rev ed).

IN THAT each and both of you at the hearing before Justice V K Rajah on 2 December 2004 failed to point out to Justice V K Rajah that as a result of the directions made by the Assistant Registrar, Ms Ching Sann, on 13 September 2004 for payment out of court of the sum of $4,270,000.00, there were insufficient moneys remaining in court to give effect to the application of the estate of Awat bin Achmad bin Abdullah Wachdin Basyarahil, deceased in Summons in Chambers No. 600606 of 2004 and to the application of By Products Traders Pte Ltd and David Reginald Ellis Broadley in Summons in Chambers No. 600732 of 2004.

8TH CHARGE

That each and both of you, Nor'ain Abu Bte Bakar and Ruby Tan Kim Suan, are guilty of:-

(a) Fraudulent conduct in the discharge of your professional duty within the meaning of section 83(2)(b) of the Legal Profession Act (Cap. 161);

(b) Alternatively, grossly improper conduct in the discharge of your professional duty within the meaning of section 83(2)(b) of the Legal Profession Act (Cap. 161);

(c) Alternatively, such 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 section 83(2)(h) of the Legal Profession Act (Cap. 161);

(d) Alternatively, [having] knowingly deceived or misled the court thereby contravening

section 83(2)(j) of the Legal Profession Act (Cap. 161) read with rule 56 of the Legal Profession (Professional Conduct) Rules (Cap. 161, R1, 2000 Rev ed);

(e) Alternatively, failing to inform the court of all relevant decisions of which you are aware thereby contravening section 83(2)(j) of the Legal Profession Act (Cap. 161) read with rule 60(c) of the Legal Profession (Professional Conduct) Rules (Cap. 161, R1, 2000 Rev ed).

IN THAT each and both of you at the trial of Suit No. 453 of 2003 before Justice Tan Lee Meng on 4, 5, 6 and 16 October 2004 failed to point out to Justice Tan Lee Meng that as a result of the directions made by the Assistant Registrar, Ms Ching Sann, on 13 September 2004 for payment out of court of the sum of $4,270,000.00, there were insufficient moneys remaining in court to give effect to the claim by By Products Traders Pte Ltd and David Reginald Ellis Broadley against JAK Alhadad & Co Pte Ltd.

CHARGES AGAINST THE 3RD RESPONDENT

AMENDED 1ST CHARGE

That you, Peter Chua Seng Hock, are guilty of:-

(a) Fraudulent conduct in the discharge of your professional duty within the meaning of section 83(2)(b) of the Legal Profession Act (Cap. 161);

(b) Alternatively, grossly improper conduct in the discharge of your professional duty within the meaning of section 83(2)(b) of the Legal Profession Act (Cap. 161);

(c) Alternatively, such 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 section 83(2)(h) of the Legal Profession Act (Cap. 161);

(d) Alternatively, [having] knowingly deceived or misled the court thereby contravening section 83(2)(j) of the Legal Profession Act (Cap. 161) read with rule 56 of the Legal Profession (Professional Conduct) Rules (Cap. 161, R1, 2000 Rev ed);

(e) Alternatively, failing to inform the court of all relevant decisions of which you are aware thereby contravening section 83(2)(j) of the Legal Profession Act (Cap. 161) read with rule 60(c) of the Legal Profession (Professional Conduct) Rules (Cap. 161, R1, 2000 Rev ed).

IN THAT you, at the hearing before the Assistant Registrar, Ms Ching Sann, on 13 September 2004, with the intention of withholding from the court or suppressing the information that there were competing claims to the sum of $4,595,350.38, failed to point out to her any one or more of the following, namely:-

(i) There were competing claims to the sum of $4,595,350.38 among By Products Traders Pte ltd ("BP"), David Reginald Ellis Broadley ("Broadley") and JAK Alhadad & Co Pte Ltd ("JAK").

(ii) JAK had acknowledged in an affidavit filed on 14 February 2001 that most of the funds claimed by JAK from Musa Said Wachdin ("Musa") and Salim Hasan Wachdin ("Salim") in Suit

No. 1497 of 2002 were provided by BP and Broadley, both of whom had sued JAK Alhadad & Co Pte Ltd for the refund of such funds in Suit No. 453 of 2003.

(iii) There were competing claims among the 6 beneficiaries purportedly represented by Musa and Salim and that the estate of Umar bin Achmad bin Abdul Wachdin Basyarahil, deceased had filed an application on 1 September 2004 for payment out from the said sum of $4,595,350.38.

(iv) Justice Judith Prakash had on 23 July 2004 made an order in Originating Summons 1030 of 2000 for payment of the proceeds from the sale of the 29 properties in the estate of Shaik Ahmad bin Abdullah Wahdain Basharahil ("the Estate") into court in order to defer payment to any competing claimant pending a proper determination of rights to these moneys.

(v) Justice Judith Prakash had on 26 August 2003 directed the Public Trustee to notify BP and Broadley of any future application made to the court for approval of payment of any part of the proceeds from the sale of the 29 properties in the Estate so as to ensure that any future application with regard to the said sale proceeds would have to be served on the Public Trustee, BP and Broadley and/or made by the PT.

(vi) JAK's application for payment out vide Summons-in-Chambers No. 5008 of 2004 made in Suit No. 1497 of 2002 ought to have been made in Originating Summons No. 1030 of 2000 instead.

(vii) JAK should have served the application for payment out vide Summons-in-Chambers No. 5008 of 2004 on the Public Trustee and on the competing claimants to the sum of $4,595,350.38, namely BP Products Traders Pte Ltd ("BP"), David Reginald Ellis Broadley ("Broadley"), and the 6 beneficiaries, especially the estate of Umar bin Achmad bin Abdul Wachdin Basyarahil ("UAAWB"), deceased or otherwise notify them of the hearing.

(viii) Letters of Administration De Bonis Non to the UAAWB estate were granted to Nuh Bin Saleh Bin Umar Bin Achmad Wachdin Basyarahil in Probate No. DCP 600460 of 2001 on or about 6 July 2001 and that it was in issue whether Musa and Salim were still authorized to represent the UAAWB estate and/or the rest of the 6 beneficiaries and/or that the authority of the 3rd Respondent and his firm, M/s Peter Chua & Partners, to act for the UAAWB estate and/or or the rest of the 6 beneficiaries was likewise in issue.

(ix) Letters of Administration De Bonis Non to the estate of Amat bin Achmad bin Adbullah Wachdin Basyarahil ("ARAW") were granted to Abdul Rahim bin Awad bin Achmad Wachdin Basyarahil in Probate No. DCP 729 of 1987 on or about 6 December 2003 and that it was in issue whether Musa and Salim were still authorized to represent the ARAW estate and/or the rest of the 6 beneficiaries and/or that the authority of the 3rd Respondent and his firm, M/s Peter Chua & Partners, to act for the ARAW estate and/or or the rest of the 6 beneficiaries was likewise in issue.

thereby causing the Assistant Registrar, Ms Ching Sann, to make an order for the payment out of court of the sum of $4,270,000.00 to M/s Abu Bakar Tan Ibrahim & Partners.

2ND CHARGE

That you, Peter Chua Seng Hock, are guilty of:-

(a) Fraudulent conduct in the discharge of your professional duty within the meaning of section 83(2)(b) of the Legal Profession Act (Cap. 161);

(b) Alternatively, grossly improper conduct in the discharge of your professional duty within the meaning of section 83(2)(b) of the Legal Profession Act (Cap. 161);

(c) Alternatively, such 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 section 83(2)(h) of the Legal Profession Act (Cap. 161);

(d) Alternatively, [having] knowingly deceived or misled the court thereby contravening section 83(2)(j) of the Legal Profession Act (Cap. 161) read with rule 56 of the Legal Profession (Professional Conduct) Rules (Cap. 161, R1, 2000 Rev ed);

(e) Alternatively, failing to inform the court of all relevant decisions of which you are aware thereby contravening section 83(2)(j) of the Legal Profession Act (Cap. 161) read with rule 60(c) of the Legal Profession (Professional Conduct) Rules (Cap. 161, R1, 2000 Rev ed).

IN THAT you, at the hearing before Justice V K Rajah on 27 October 2004 failed to point out to Justice V K Rajah that as a result of the directions made by the Assistant Registrar, Ms Ching Sann, on 13 September 2004 for payment out of court of the sum of $4,270,000.00, there were insufficient moneys remaining in court to give effect to the application of the estate of Umar bin Achmad bin Abdul Wachdin Basyarahil, deceased in Summons in Chambers No. 600547 of 2004.

AMENDED 3RD CHARGE

That you, Peter Chua Seng Hock, are guilty of:-

(a) Fraudulent conduct in the discharge of your professional duty within the meaning of section 83(2)(b) of the Legal Profession Act (Cap. 161);

(b) Alternatively, grossly improper conduct in the discharge of your professional duty within the meaning of section 83(2)(b) of the Legal Profession Act (Cap. 161);

(c) Alternatively, such 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 section 83(2)(h) of the Legal Profession Act (Cap. 161);

(d) Alternatively, [having] knowingly deceived or misled the court thereby contravening section 83(2)(j) of the Legal Profession Act (Cap. 161) read with rule 56 of the Legal Profession (Professional Conduct) Rules (Cap. 161, R1, 2000 Rev ed);

(e) Alternatively, failing to inform the court of all relevant decisions of which you are aware thereby contravening section 83(2)(j) of the Legal Profession Act (Cap. 161) read with rule 60(c) of the Legal Profession (Professional Conduct) Rules (Cap. 161, R1, 2000 Rev ed).

IN THAT you, at the hearing before Justice V K Rajah on 29 November 2004 failed to point out to Justice V K Rajah that as a result of the directions made by the Assistant Registrar, Ms Ching Sann, on 13 September 2004 for payment out of court of the sum of $4,270,000.00, there were

insufficient moneys remaining in court to give effect to the application of the estate of Umar bin Achmad bin Abdul Wachdin Basyarahil, deceased in Summons in Chambers No. 600547 of 2004 and the application of the estate of Awat bin Achmad bin Abdullah Wachdin Basyarahil, deceased in Summons in Chambers No. 600606 of 2004.

Summary of the proceedings before the DC

34 The DC heard all the charges against the respondents over a period of about 25 days and found that the respondents had been guilty of all the charges preferred against them (other than the amended seventh charge against the first respondent). The DC issued its report (*The Law Society of Singapore v Nor'ain Bte Abu Bakar* [2007] SGDSC 9) on 25 October 2007 ("the DC Report").

Findings against the first and second respondents

35 The first respondent had denied all the charges of fraudulent conduct but had admitted to grossly improper misconduct due to inexperience; manipulation by her client, Jafar; and reliance on the wrong advice of a senior practitioner, Mr Mohan Das Naidu ("Naidu"), who was her pupil master. The DC rejected her explanations as unbelievable on the ground that if they were credible, then her level of professional competence would be such that she should not have been in practice as she would have been a danger to her clients. The DC found her guilty on all the charges preferred against her, except the amended seventh charge.

36 The second respondent faced the same charges as the first respondent as she had appeared in place of or together with the first respondent in some of the relevant proceedings. However, the Law Society eventually decided not to base the charges against her on fraud or deceit or misleading the court, but on gross impropriety unbefitting an advocate and solicitor to which she admitted. The DC accordingly found her guilty of all the charges preferred against her.

Findings against the third respondent

37 The third respondent denied all the charges against him but the DC found him guilty of all of them. The DC found that the third respondent's professional relationship with Jafar, spanning back to 1992, showed impropriety which was relevant in the present proceedings. The third respondent acted against the interests of his own clients, Musa and Salim, in the JAK Suit by being involved in the appeal against the dismissal of the JAK Garnishee Application against the duo. He also knew that the default judgment obtained by JAK in the JAK Suit against Musa and Salim was challengeable on several grounds but he did not so challenge. His retainer by Musa and Salim was thus found to be a sham and he was effectively acting on Jafar's instructions in the JAK Suit to get at the moneys paid into court by the PT. His failure to point out to AR Ching that the JAK Payment Out Application should have been made in OS 1030/2000 and not the JAK Suit was thus deceitful. Similarly, his appearance before Rajah J and his failure to inform him of the material acts were likewise driven by fraudulent intentions.

38 Before us, the first and third respondents have not contested the underlying facts as found by the DC, particularly in relation to their acts in the relevant court proceedings. However, they contested the inferential findings of the DC, based on those acts, that they had been guilty of fraud, grossly improper conduct, deception and the litany of acts of misconduct set out in the charges against them. The first respondent maintained her position that she had acted out of gullibility and ignorance of the law. The third respondent, on the other hand, reiterated his arguments before the DC that he had acted properly in all the relevant matters in which he was involved as counsel for Musa and Salim. The second respondent accepted the DC's findings of grossly improper conduct

against her.

Meaning of "fraudulent conduct" in section 83(2)(*b*) of the Act

39 A crucial issue before us is whether the first and third respondents acted fraudulently under s 83(2)(*b*) of the Act when they applied in the JAK Payment Out Application to take out the moneys paid into court by the PT in OS 1030/2000 and in failing to inform Rajah J of this fact in subsequent proceedings by the UAAWB Estate and the ARAW Estate to take out the same moneys. Accordingly, before we consider the factual issues in these proceedings, it is convenient that we first dispose of the issue whether the conduct of the first and third respondents was "fraudulent" under s 83(2)(*b*) of the Act. We set out s 83 of the Act as follows:

> **Power to strike off roll or suspend or censure**
>
> **83.**—(1) All advocates and solicitors shall be subject to the control of the Supreme Court and shall be liable on due cause shown to be struck off the roll or suspended from practice for any period not exceeding 5 years or censured.
>
> (2) Such 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 usage or rule of conduct made by the Council under the provisions of this Act as amounts to improper conduct or practice as an advocate and solicitor;
>
> …
>
> (*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;
>
> …
>
> (*j*) has contravened any of the provisions of this Act in relation thereto if such contravention warrants disciplinary action; ...

The provisions alleged to have been contravened pursuant to s 83(2)(*j*) of the Act are rr 56 and 60(*c*) of the Legal Profession (Professional Conduct) Rules (Cap 161, R 1, 2000 Rev Ed), which provide as follows:

> **Not to mislead or deceive Court**
>
> **56.** An advocate and solicitor shall not knowingly deceive or mislead the Court, any other advocate and solicitor, witness, Court officer, or other person or body involved in or associated with Court proceedings.
>
> **Conduct of Court proceedings**
>
> **60.** An advocate and solicitor when conducting proceedings in Court —
>
> …

(*c*) shall inform the Court of all relevant decisions and legislative provisions of which he is aware whether the effect is favourable or unfavourable towards the contention for which he argues;

…

40 The word "fraudulent" is not defined in the Act. In *Re Lim Kiap Khee* [2001] 3 SLR 616, this court held that an intention to deceive was a requirement of fraudulent conduct. This is consistent with the meaning of "fraud" at common law. In the case of *In re London and Globe Finance Corporation, Limited* [1903] 1 Ch 728 at 732–733, Buckley J said:

> To deceive is … to induce a man to believe that a thing is true which is false, and which the person practising the deceit knows or believes to be false. To defraud is to deprive by deceit: it is by deceit to induce a man to act to his injury. More tersely it may be put, that to deceive is by falsehood to induce a state of mind; to defraud is by deceit to induce a course of action.

41 In *William Derry v Sir Henry William Peek* (1889) 14 App Cas 337 ("*Derry v Peek*") at 374, Lord Herschell defined fraud at common law as follows:

> First, in order to sustain an action of deceit, there must be proof of fraud, and nothing short of that will suffice. Secondly, fraud is proved when it is shewn that a false representation has been made (1) knowingly, or (2) without belief in its truth, or (3) recklessly, careless whether it be true or false. Although I have treated the second and third as distinct cases, I think the third is but an instance of the second, for one who makes a statement under such circumstances can have no real belief in the truth of what he states.

Lord Herschell went on to point out (at 375) that making a false statement through want of care fell far short of fraud; so too did a false representation honestly believed, though on insufficient grounds. However, he also pointed out that when a false statement had been made, the questions whether there were reasonable grounds for believing it, and what were the means of knowledge in the possession of the person making it, were weighty matters for consideration, for the ground upon which an alleged belief was founded was an important test of its reality.

42 *Derry v Peek* thus establishes that, to constitute fraud, it is not necessary that there should be a clear knowledge that the statement made was false. What is essential is an absence of any belief in its truth. Further, it has been held that the motive of the person making the representation is irrelevant. It is no justification to show that the representation was made without criminal dishonesty or bad motive, or that there was no intention to cheat or cause loss to another by the deception. Similarly, in *Anson's Law of Contract* (Oxford University Press, 28th Ed, 2002), the editor, Sir Jack Beatson, pointed out at p 245:

> [I]t is not necessary to prove any specific representation to have been false. It is fraud intentionally to give a false impression and induce a person to act upon it, even though each fact stated taken by itself may be literally true. So it is possible by stating a thing partially to make a statement which, in the sense that it must be known it will be understood, is really false. A half-truth may be fraudulent because further relevant facts are suppressed. Also a statement which is believed to be true when made and which is subsequently discovered to be false, will be considered to be fraudulent if the mistake is not communicated to the other person before that person acts on it.

43 The above statements of the law are helpful. However, *Derry v Peek* concerned a civil action, and, in our view, the meaning given to fraudulent misrepresentation in that case, while helpful, would not be determinative of the meaning to be ascribed to what is fraudulent conduct under s 83(2)(*b*) of the Act. In our view, an intention to cheat or cause loss is an essential requirement of fraudulent conduct under that provision.

44 In our view, a more relevant consideration in these proceedings is s 25 of the Penal Code (Cap 224, 1985 Rev Ed) which defines "fraudulently" as follows:

> **"Fraudulently".**
>
> **25.** A person is said to do a thing fraudulently if he does that thing with intent to defraud, but not otherwise.

In *Seet Soon Guan v Public Prosecutor* [1955] MLJ 223 at 225, Buhagiar J, after examining the local and Indian cases and also the Indian and Malay States' contract legislation, held (at 228) that a person would have acted fraudulently or with intent to defraud under the Malaysian equivalent of s 25 of the Penal Code if:

> … he acts with the intention that some person be deceived and by means of such deception that either an advantage should accrue to him or injury, loss or detriment should befall some other person or persons.

45 The same meaning is given to the definition in the Penal Code (Act No 45 of 1860) (India) by the Indian Supreme Court in *S P Chengalvaraya Naidu v Jagannath* AIR 1994 SC 853. In that case, a clerk had bought a property on behalf of his employer and later executed a deed of release in favour of his employer. The clerk then commenced an action for and obtained a preliminary decree for the partition of the property on the ground that he had purchased the property on his own behalf and not on behalf of his employer. In the course of the hearing of the final decree of partition, it was discovered that the clerk had failed to disclose the release in favour of the employer, which would have extinguished the basis of his claim. The court set aside the preliminary decree and held that the non-production and even non-mentioning of the release deed at the trial constituted fraud on the court, the reason being that a litigant was bound to produce all the documents executed by him which were relevant to the action. The court stated the rationale as follows (at [8]):

> The facts of the present case leave no manner of doubt that [the clerk] obtained the preliminary decree by playing fraud on the court. A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. ... *Non-production and even non-mentioning of the release deed at the trial tantamounts to playing fraud on the court.* … A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side [then] he would be guilty of playing fraud on the court as well as on the opposite party. [emphasis added]

46 It is not necessary for this court to state whether or not the italicised words in the above passage apply to discovery proceedings in civil trials as the issue does not arise in these proceedings. However, we are prepared to accept that those words should apply to the expression "fraudulent conduct" in s 83(2)(*b*) of the Act on the ground that advocates and solicitors should be held to a higher standard of conduct than others who have not been accorded the privileges that advocates and solicitors have under the law and whose professional ethos requires them to act honestly and

with utmost integrity in their vocation, especially as counsel before the court. An advocate and solicitor will be held to have acted fraudulently or deceitfully if he has acted with the intention that some person, including the Judge, be deceived and, by means of such deception, that either an advantage should accrue to him or his client, or injury, loss or detriment should befall some other person or persons. He need not make an explicit false representation; it is fraudulent if he intentionally seeks to create a false impression by concealing the truth: *suppressio veri, suggestio falsi*.

47 With this principle in mind, we will now deal with the DC's reasoning in the proceedings below.

The DC's reasoning

The DC's crucial findings against the first respondent

48 The crucial findings of the DC against the first respondent are set out in [63] to [70] of the DC Report. They may be summarised below.

(a) The first respondent could not have overlooked the contents of the 1994 Agreement and the 1996 Agreements (which she read[note: 1]) which show that Jafar, and not JAK, was the purchaser of the 29 Properties. Yet she acted for JAK in the JAK Suit to claim the repayment of the moneys allegedly paid by JAK under the said agreements. At the time of the JAK Suit, or at least by the time of the JAK Garnishee Application, the first respondent also knew that Jafar was an undischarged bankrupt.[note: 2] The inference was that JAK was being used as a ploy to get the moneys for Jafar.

(b) The service of the writ in the JAK Suit on Salim in Singapore was arranged as Salim appeared at the Garden Hotel to accept service with the knowledge of Jafar. After accepting service, Salim conveniently allowed judgment to be entered against him in default of filing a defence. The action against Musa was then discontinued. The DC found at [65] of the DC Report that "this was a charade perpetrated to bring about a judgment debt in order to get the monies paid into court by the PT as the distributive shares of the 6 sub-estates [the Camp A beneficiaries]". Since the third respondent was then acting for Salim, there was no reason why the third respondent could not have accepted service on behalf of Salim. (As we shall see, this is one instance of the third respondent trying to distance himself from these dubious actions).

(c) The JAK Suit against Musa and Salim as the legal representatives of the six sub-estates was clearly wrong as no letters of administration had been taken out with respect to these sub-estates. The first respondent admitted that the idea of suing Musa and Salim, rather than the sub-estates, could have been on her advice. The DC was of the view that she colluded with Jafar, who had conspired with Musa and Salim, for JAK to obtain a default judgment against both Musa and Salim.

(d) She obtained, by a ruse, an early date for the hearing of the JAK Payment Out Application in order to pre-empt the UAAWB Application and the ARAW Application, both being applications for payment out of the moneys in court (see [24] above). There was no need for the Indonesian lawyer to be present as Musa and Salim were represented by the third respondent. This was confirmed by the absence of the Indonesian lawyer at the hearing. Furthermore, the request by JAK for an early date to accommodate Musa and Salim made no sense unless they were also part of a scheme to take the moneys out of court as soon as possible.

(e) In the JAK Suit, the first respondent filed nine invoices for which JAK was seeking

reimbursement from Musa and Salim for payments which had nothing to do with them or the six sub-estates. We will consider these reimbursements, which are quite revealing, later (see [52(e)] below). She was aware of this fact as she had informed the DC that she had verified the invoices prior to filing the JAK Suit.

In the light of these facts, the first respondent's denial of all the charges of fraudulent conduct on the ground that she was an inexperienced lawyer and had been manipulated by Jafar and wrongly advised by her pupil master (Naidu) was clearly untenable. Her denial was rejected as it amounted to an admission of her total incompetence as a lawyer.

The DC's crucial findings against the third respondent

49 The crucial findings of the DC against the third respondent are set out at [74] to [93] of the DC Report. They are summarised below.

(a) The third respondent's professional relationship with Jafar went as far back as 1992 when he was a partner in M/s Peter Chua, Sobaran & Partners. His partner then, Sobaran, had drafted a deed of appointment of trustee dated 24 July 1992 ("the DOAT") whereby Jafar was appointed a co-trustee of an estate known as "the Aljunied Estate" by the administrators of the estate to act jointly with them. The third respondent's initials appeared on the backing page of the summons in chambers which was filed to validate the DOAT at a hearing in court on 27 November 1992 before K S Rajah JC who granted the order ("the 1992 Order"). Pursuant to the powers purportedly granted to Jafar under the DOAT, the 1992 Order and a power of attorney dated 5 August 1992 by which his so-called co-trustees granted to him power to act for the trustees, Jafar disposed of numerous properties belonging to the Aljunied Estate improperly. This in turn spawned a series of litigation known as the "Spanish dollar" cases.

(b) On 29 January 1997, the 1992 Order and the DOAT were set aside by Warren Khoo J in *Syed Salim Alhadad v Dickson Holdings Pte Ltd* [1997] 2 SLR 257. Khoo J, in his judgment, criticised the manner in which the 1992 Order was obtained by the third respondent's firm, specifically that the court's attention was not drawn to certain crucial matters, that any conscientious or diligent legal adviser would have doubted the entitlement of the applicants to make the application and also the validity of the DOAT. In relation to the failure to disclose relevant matters, Khoo J said (at [37]):

> I think I would not be far off the mark if I say that their conduct was quite deplorable. The gravamen of the complaint about the first two plaintiffs' conduct in the 1992 proceedings [*ie*, the application before K S Rajah JC], as I see it, is not that they actually mis-stated any historical facts as facts; it is that they concealed or omitted to disclose, apparently deliberately, what they ought to have disclosed in the circumstances in which they alone had the conduct of the proceedings.

(c) The third respondent was involved in a shady transaction in which Jafar, pursuant to the DOAT and the 1992 Order, sold (on 7 January 1994) the freehold reversion of a 999-year lease of Nos 23 and 27 Dickson Road to BM San Holdings Pte Ltd ("BM San") and one Heng Kim Chuan ("Heng") for $50,000 as tenants in common in equal shares. On 17 January 1994, Heng sold his half share in the freehold reversion to BM San for $100,000. After the sale, Jafar purported to forfeit the 999-year lease on the ground that the lessees had not paid the annual rent of "one Spanish dollar". On or about 22 July 1994, Jafar and the co-trustees assigned the forfeited 999-year lease to BM San for $2,150,000. Although BM San's solicitor in these transactions was Naidu, the third respondent prepared two instruments to effect the sale, a draft deed of assignment and

a deed of assignment and rectification. While the third respondent averred that Jafar did not follow up on the draft deed of assignment, the Alhadad Trustees, a group of persons purportedly appointed as trustees of the Aljunied Estate, executed a deed of assignment and rectification on 10 November 1994, which effect was in substance the same as the draft deed of assignment prepared by the third respondent. When Naidu was later sued by BM San for negligence in Suit No 1685 of 1999, the third respondent filed an affidavit in support of Naidu's defence. (This is the same Naidu from whom the first respondent sought advice, as to which see [55] below).

(d) At around the same time, the third respondent met with Jafar at Duxton Hill (on 22 March 2000) to map out a strategy to take moneys from the B Estate. At this meeting, it was agreed that Jafar would pay the third respondent's legal fees for acting for Musa and Salim, and that the third respondent would appoint Lubis (the Indonesian lawyer) to obtain an order from an Indonesian court (the Pamekasan Order) to declare that the six sub-estates (the Camp A beneficiaries) were the only rightful beneficiaries of the B Estate.

(e) The Pamekasan Order was obtained *ex parte*. The Camp B beneficiaries were not served with the application. The third respondent was either present in court or in the vicinity of the courthouse when the order was made. As it transpired, Lee Seiu Kin JC rejected the Pamekasan Order as being spurious and held that the six sub-estates (Camp A) were only entitled to 43.75% of the B Estate, while Camp B was entitled to the rest (in *Re Will of Shaik Ahmad* ([11] *supra*) and see [12] above).

(f) The DC referred to the JAK Suit in which judgment against Salim was entered in default of appearance. In that action, the third respondent was not instructed to act for Musa and Salim. But, later, he became involved in JAK's negotiations with the PT after the JAK Garnishee Application was dismissed by AR Tung. The DC concluded from these two events that the third respondent, like the first respondent, was in collusion with Jafar to obtain the default judgment.

(g) He tried to distance himself from the actions of Jafar, but he was actually retained and remunerated by Jafar, although he acted for Musa and Salim. His retainer by Musa and Salim was a sham. He claimed not to have contact with Musa and Salim for two years from October 2002 to September 2004, and yet appeared for them in several court proceedings during this period, including the hearing before AR Ching. He claimed ignorance of the JAK default judgment but had to admit that he had contacted Jafar on numerous occasions, asking Jafar to help him to contact Musa and Salim. He also disclaimed knowledge of the JAK Suit but admitted such knowledge when confronted with the PT's affidavit in the B&B Payment Out Application. He was present when JAK negotiated with the PT on JAK's withdrawal of its appeal against AR Tung's decision. He did not inform AR Ching that the JAK Payment Out Application should have been made in OS 1030/2000 and not in the JAK Suit. He did not inform AR Ching that there were competing claims pending against the moneys paid into court in OS 1030/2000. He did not inform Rajah J that the bulk of the moneys in court had been paid out to JAK when he appeared to object to the UAAWB Application and the ARAW Application for payment out of these moneys.

50 Taking all these actions and omissions together, the DC found that the third respondent had colluded with Jafar who had conspired with Musa and Salim to get hold of the Sale Proceeds in some way or another.

Proceedings before this court in relation to the first respondent

Submissions for the first respondent

51 Before us, the first respondent attacked the DC's findings against her in three broad areas. First, she challenged the DC's findings (see [48] above), particularly its conclusion that the findings collectively justified an inference of fraudulent and deceitful conduct on her part. Secondly, she argued that, notwithstanding the inadequacy of the DC's findings, the evidence showed that she had no fraudulent and/or deceitful intention at the hearings before AR Ching and Rajah J. Finally, she submitted that she had been discriminated against by the Law Society which had chosen not to charge the second respondent with fraudulent conduct and with deception of the courts. We will elaborate on these arguments in turn.

The first area where the DC had erred – no grounds to show fraudulent intent in the DC Report

52 The first respondent's first argument is as follows:

(a) She made the JAK Payment Out Application out of ignorance or misunderstanding of the legal background.[note: 3] When she was retained by JAK in 2000, all the parties had accepted that the 1994 Agreement and the 1996 Agreements were valid agreements, and there was no reason for her to examine the validity of these agreements.

(b) The finding that the default judgment was a charade perpetrated to bring about a judgment debt in order the get the moneys paid into court by the PT as the distributive shares of the six sub-estates (see [48(b)] above) was factually insupportable as the JAK Suit was commenced in January 2003 but the order of court that the PT pay the proceeds of sale of the 29 Properties was only made in June 2004. Accordingly, the first respondent could not have colluded with JAK or anyone else to apply to take the moneys out on behalf of JAK.

(c) The DC's finding that she had applied for an urgent hearing of the JAK Payment Out Application in order to pre-empt the UAAWB Application and the ARAW Application was not supported by the evidence as she had acted on instructions and there was no reason for her to be suspicious of any evil intent in seeking an early hearing of the JAK Payment Out Application.[note: 4]

(d) She was not aware that, legally, Musa and Salim were not the proper defendants to be sued in the JAK Suit. No inference of an intent to defraud should be drawn against her as many other experienced solicitors could have made the same mistake.

(e) As regards the DC's findings on the nine invoices (see [48(e)] above), they constituted less than 10% of the claim against Musa and Salim. She had verified JAK's claims against the invoices and while she might well have failed to inquire further and determine whether each of the invoices was in fact a legitimate item of claim, carelessness was not evidence of fraud or deceit.

53 For these reasons, the first respondent submitted that the grounds set out in the DC Report did not justify the finding of an intent on her part to defraud or deceive in relation to the JAK Payment Out Application.

The second area where the DC had erred – no intention to defraud or deceive at court hearings

54 The first respondent's second submission was that it was not fraudulent or deceitful on her part not to inform AR Ching at the hearing of the JAK Payment Out Application of the competing claims to the moneys paid into court by the PT under OS 1030/2000, as the supporting affidavit in the JAK Payment Out Application had referred to OS 1030/2000.[note: 5] Furthermore, all the relevant documents were in the court's electronic filing system (to which AR Ching had access) and she had

not raised any query about the correctness of the JAK Payment Out Application. The first respondent also argued that she was justified in not referring to the failed JAK Garnishee Application before AR Tung as she was of the view that the default judgment obtained in the JAK Suit "was good and valid notwithstanding the reasoning of AR Amy Tung". [note: 6] She further contended that there was no necessity to serve the application on the other interested parties because there was "no duty to do so under the Rules of Court". [note: 7].

55 However, the first respondent admitted (on hindsight) that it was necessary for her to inform AR Ching of the competing claim of the UAAWB Estate, [note: 8] but contended that her failure to do so did not amount to fraudulent and deceitful conduct on her part. She also admitted that she ought to have informed Rajah JC on 24 October 2004 of AR Ching's order but submitted that this omission did not amount to fraudulent and deceitful conduct as she had been expressly instructed by her client not to do so. Moreover, she had also consulted a senior lawyer, Naidu, who had advised her that her client had a "privilege" in respect of the matter. It was finally submitted that there was no need to inform Tan J (see [29] above) of AR Ching's order in the B&B Suit as it was "not in any way relevant to the issues" before Tan J.

The third area where the DC had erred – no distinction between conduct of the first respondent and the second respondent

56 Finally, the first respondent submitted that the Law Society was wrong in making a distinction between her conduct and that of the second respondent by withdrawing the charges of fraudulent and deceitful conduct against the second respondent. She contended that her conduct was the same as that of the second respondent as the charges were concerned with the same incidents.

The Law Society's submissions in reply

Fraudulent and deceitful conduct

57 The gist of the Law Society's submissions against the first respondent focused on the first respondent's state of knowledge leading up to the hearings before AR Ching and Rajah J. It was submitted that at all material times she was aware that: (a) JAK was not entitled to apply for payment out of the Sale Proceeds as it was not the purchaser; and (b) there were several claimants to the Sale Proceeds when she made the application for payment out on behalf of JAK. There were further reasons submitted as to why the first respondent's actions were fraudulent:

(a) the suspicious circumstances under which Salim was served the writ in JAK Suit;

(b) the questionable reasons given for obtaining an urgent date for the hearing of the JAK Payment Out Application;

(c) the first respondent's unjustified use of JAK as the plaintiff in the JAK Suit;

(d) the first respondent's unsupportable reliance on the 1994 Agreement to justify the naming of JAK as the plaintiff;

(e) the first respondent's totally unjustifiable naming of just Musa and Salim in the JAK Suit when her intention was to sue the legal representatives of each of the six sub-estates;

(f) the lack of a valid cause of action in the JAK Suit;

(g) the first respondent's alleged but unsupportable reliance on certain admissions and liability of Musa and Salim for expenses sought by JAK for reimbursement under the 1994 Agreement and the 1996 Agreements.

Court's decision on charges against the first respondent

58 Having considered the parties' submissions, we would agree with the DC's conclusion as to the guilt of the first respondent, but for slightly different reasons.

Grossly improper conduct

59 It is clear that the first respondent had, by concealing certain information from both AR Ching and Rajah J, engaged in grossly improper conduct unbefitting of a solicitor. Indeed the point was conceded by the first respondent. Grossly improper conduct under s 83(2)(*b*) of the Act would be conduct which is dishonourable to the solicitor as a man and dishonourable in his profession. It will not suffice if the conduct was only such as to support an action for negligence or want of skill. An intention to deceive need not be present to constitute grossly improper conduct (see, for example, *Re Lim Kiap Khee* ([40] *supra*)).

60 First, we do not agree with the first respondent's argument that because AR Ching had access to all relevant court documents in the court's electronic filing system, and OS 1030/2000 was mentioned in the supporting affidavit in the JAK Payment Out Application, the assistant registrar should have checked the relevant documents and ascertained for herself the truth of the application. The mere reference of OS 1030/2000 in the supporting affidavit cannot mean that the court is expected to peruse each and every file in OS 1030/2000. The solicitor has a duty to point out the material facts to the court. Thus, while there was a reference to OS 1030/2000, there was no specific mention in the affidavit of the material fact that the moneys in court, the subject matter of the application, had been paid in by order of court in another proceeding. If AR Ching had known about this, it is likely that she would have inquired of counsel why the application was made by JAK in the JAK Suit and not in OS 1030/2000. In any event, this submission had no substance as OS 1030/2000 was filed at a time when electronic versions of such documents were not available (see [84] below).

61 Secondly, it is clear that the first respondent knew about the competing application (the UAAWB Application) for the moneys paid into court, which application was filed a few days before the JAK Payment Out Application was heard. The mere failure by the first respondent to disclose this to AR Ching was grossly improper conduct in and of itself. This was clearly not due to carelessness or forgetfulness but a deliberate non-disclosure as the first respondent must have known of the materiality of this fact because the JAK Payment Out Application concerned the very same sum of moneys under the UAAWB Application.

62 Thirdly, the alleged instances of non-disclosure before Rajah J, while not resulting in the same serious consequences before AR Ching (since the non-disclosures before AR Ching had led to the moneys being improperly paid out and then dissipated), were nonetheless the concealment of material facts before a court of law. The defence of acting on client's instructions does not ameliorate the gravity of the first respondent's conduct since she knew why she was being instructed to mislead the court by keeping silent. The fact that she consulted a senior lawyer is also not a defence. In any case, we do not know what the lawyer advised her. In such a situation, any lawyer with any sense of ethics and professionalism should have discharged himself or herself.

63 Finally, for all the reasons already given, the first respondent was also plainly wrong in failing to

disclose the material information to Tan J in the B&B Suit.

Fraudulent and deceitful conduct

64 The remaining question left for us to consider is whether the first respondent was guilty of fraudulent and deceitful conduct. As we held above (at [46]), a solicitor will be held to have acted fraudulently or deceitfully if he acted with the intention that some person be deceived and by means of such deception that either an advantage should accrue to the solicitor or his client, or injury, loss or detriment should befall some other person or persons. It is clear that the first respondent obtained a benefit to the tune of some $96,000 for work done in relation to the JAK Suit. The crucial factor at the time when she made the application for payment out in that manner was her state of knowledge. What did she know or not know that motivated her to make the application in the JAK Suit and not OS 1030/2000? Why was she paid so much for doing such routine legal work?

65 The most damning evidence against the first respondent must surely be the fact that she knew that AR Tung had refused to grant JAK the garnishee order on the ground that she was not satisfied with either the legality or validity of the default judgment in the JAK Suit. This knowledge would explain why another garnishee application was not filed in OS 1030/2000, why the application for payment out was made in the JAK Suit with the consent of Musa and Salim, and why AR Ching was not fully informed of all the material facts concerning the moneys in court. The question is who gave her the idea to proceed in this manner? What else did she know about JAK?

66 First, she was the solicitor for JAK as the plaintiff in the JAK Suit. Next she knew that Jafar (the alter ego of JAK) was a bankrupt by the time of the JAK Garnishee Application.[note: 9] She was aware, on her own admission, of the terms of the 1994 Agreement and the 1996 Agreements before filing the JAK Suit.[note: 10] She was therefore aware that Jafar, and not JAK, was the true purchaser in the 1994 Agreement and the 1996 Agreements. Moreover, the PT had pointed this fact out to her and had reiterated that JAK was not a party to the 1996 Agreements. In an affidavit made in OS 1030/2000 on 5 December 2000, the PT took the position that JAK had no *locus standi* to make any claim to the Sale Proceeds as it was not a party to the 1996 Agreements and that JAK was nothing more than Jafar's vehicle to conduct litigation as Jafar was a bankrupt.[note: 11] In our view, when the first respondent got the file of OS 1030/2000 in August 2000, she ought to have had sight of this affidavit and should have been aware of the irregularities highlighted therein.

67 Secondly, although the point was not pressed by any of the parties in the present proceedings, we do not think that JAK had any basis in commencing the JAK Suit, let alone obtaining the default judgment. The evidence is that JAK purported to sub-sell a total of 25 of the 29 Properties to B&B between 10 January 1996 and 19 March 1996. According to Tan J's judgment in the B&B Suit, *viz*, *By Products Traders* ([16] *supra*), apart from the initial deposits paid, sums for the purchase were paid over to JAK between 19 March 1996 and 27 March 1997. Thus, JAK had money in its hands relating to this sub-sale by 1997. Tan J gave judgment against JAK only on 26 November 2004. The JAK Suit was commenced on 13 December 2002 and default judgment obtained on 14 January 2003. It is unclear to us whether JAK could properly quantify the losses it claimed from Musa and Salim at the time the JAK Payment Out Application was filed on 8 September 2004.

68 From the state of the first respondent's knowledge we have recounted above, it is quite impossible to infer anything less than that she took all those steps with her eyes wide open in order to deceive the court into making an order to pay out the moneys in court to JAK. The inference is irresistible that she acted for JAK with the intention to defraud the court. Accordingly, we agree with the DC that the charges against the first respondent (save for the amended seventh charge) were made out against her.

Whether the Law Society justifiably differentiated between the first respondent and the second respondent

69 With respect to the first respondent's argument that the Law Society was wrong in withdrawing the charges of fraudulent and deceitful conduct against the second respondent, the short answer is that this is entirely a matter of discretion for the Law Society and is not subject to judicial scrutiny unless it was not exercised in good faith or was discriminatory against the first respondent. This court referred to the prosecutorial discretion in *Law Society of Singapore v Tan Guat Neo Phyllis* [2008] 2 SLR 239 and noted that while the Law Society's discretion to prosecute was not of the same order as that of the Attorney-General under the Constitution of the Republic of Singapore (1999 Reprint), the same principles relating to good faith and abuse of discretion were applicable to the Law Society's exercise of discretion as to what disciplinary charges should be preferred against an advocate and solicitor. The first respondent has produced no evidence that the Law Society has breached the principles stated above. As a matter of fact, the DC has recorded in the DC Report the reason, which was that the second respondent had accepted her conduct as being improper and she had played a lesser role in the entire affair. Accordingly, we uphold the Law Society's decision to proceed on different charges against the first and the second respondents.

Finding on charges against the first respondent

70 For the reasons above, we agree with the DC that the charges against the first respondent have all been made out, save for the amended seventh charge.

Proceedings before this court in relation to the second respondent

71 The second respondent has admitted to all the charges preferred against her, and the DC has accepted her admission. The DC noted at [71] of the DC Report as follows:

> Although the 2nd Respondent faced the same charges as those preferred against the 1st Respondent, the Law Society decided not to proceed against her on the charges based on fraudulent conduct under section 83(2)(b) of the Act, or conduct involving knowingly deceiving or misleading the court under section 83(2)(j) read with rule 56 of the Legal Profession (Professional Conduct) Rules. That left the alternative charges of grossly improper conduct under section 83(2)(b) of the Act and that of conduct unbefitting an advocate and solicitor as an officer of the court under section 83(2)(h) or conduct amounting to failure to inform the court of all relevant decisions under section 83(2)(j) of the Act. The 2nd Respondent admitted to the charges proceeded against her.

In his submission, counsel for the second respondent has affirmed his client's plea of guilty to the charge, but has pleaded for a punishment commensurate with the degree of culpability in committing the disciplinary offences.

Proceedings before this court in relation to the third respondent

Submissions for the third respondent before the court

72 The crux of the third respondent's submissions before us was that the DC had not given him a fair hearing and had summarily found him guilty without a proper consideration of the exculpatory evidence he had adduced. His arguments are summarised below.

First error of the DC – improper reliance on his past conduct

73 His first submission was that the DC erred in taking into account his previous association with Jafar and this had prejudiced his defence. He had not been charged for any offence or disciplined for breach of professional ethics in relation to such association. Also, his legal representation of Musa and Salim in the JAK Suit was not a sham. According to the third respondent, it had resulted from an approach made by Jafar or at a meeting he had had with Jafar, B&B, Ayoob and their solicitors. At that juncture, the interests of Musa and Salim and the six sub-estates they represented, on the one hand, and the interests of JAK/Jafar and the sub-purchasers, on the other, were the same. It was in all their interests that a sale of the 29 Properties by the PT be stayed and a court order declaring that the six sub-estates were the sole beneficiaries of the 29 Properties be obtained. Jafar and the sub-purchasers were keen to procure legal representation for Musa and Salim and they allegedly agreed to be responsible for the legal costs in the event that Musa and Salim could not pay. The third respondent made it clear that he would only do so if the representatives of the six sub-estates approached him directly and he was instructed by Indonesian solicitors. In the result, Musa and Salim appointed Lubis, and Lubis appointed the third respondent, instructing him to act by a letter dated 16 August 2000. As such, the DC's finding that he was not retained by Lubis was wrong. It was said that there was nothing suspicious in all of this nor did it prove the existence of any conspiracy. Musa and Salim's claim to represent the six sub-estates was supported by Indonesian documents and the third respondent wished to ensure that a reputable Indonesian law firm would examine those documents and give instructions to the third respondent on behalf of Musa and Salim. The position, so far as the third respondent was concerned, was that he was being asked by the duly appointed attorneys for the beneficiaries of the estate to assist them in asserting their rights. It was clear that the third respondent's conduct in acting for Musa and Salim to stay the sale of the 29 Properties and to procure a declaration as to the persons entitled to the 29 Properties was proper such that there was no basis for the DC's conclusion that the third respondent's retainer by Musa and Salim was a sham.

Second error of the DC – he had not acted against interests of own clients

74 His second argument was that the DC was wrong to find that he had acted against the interests of Musa and Salim. He had genuinely believed that "Musa, Salim and the [six] sub-estates had a valid judgment obtained in the JAK Suit against them".[note: 12] He also explained that he was not present at the JAK Garnishee Application and hence did not know the basis upon which it had been dismissed; he had therefore not acted against the interests of Musa and Salim in not challenging the validity of the default judgment. It also did not matter that he had not met Musa and Salim from October 2002 to September 2004. Finally, he was not paid by Jafar in acting for Musa and Salim.

Third error of the DC – he was not at fault for non-disclosure before AR Ching

75 His third submission was that his non-disclosure of the material facts to AR Ching was excusable because, with respect to the UAAWB Estate's competing claim for the moneys paid into court, he was not in Singapore between 31 August 2004 and 1 September 2004 and hence "was not aware"[note: 13] of the letter from the solicitors for the UAAWB Estate ("the UAAWB solicitors") regarding their intention to file an application for payment out of the moneys in court. He had no knowledge of the UAAWB Application until 27 October 2004 and, accordingly, was not aware that there were competing claims for the same moneys. Furthermore, it was not necessary to disclose all the details since AR Ching had access to all the relevant files in the JAK Suit, including the earlier garnishee proceedings, via the court's electronic filing system. Finally, he considered the JAK Payment Out Application as "essentially a substitution for the withdrawn garnishee proceedings and that as the application was taken out in respect of a valid judgment obtained by JAK in the JAK Suit against his clients for a claim they never refuted, JAK did not need to involve other parties".[note: 14]

Fourth error of the DC – he was not at fault in failing to disclose payment out of the moneys before Rajah J

76 His fourth argument was that he did not inform Rajah J of AR Ching's order, which had caused $4.27m of the moneys in court to be paid out, because, *inter alia*, the first respondent had told him that the moneys were still in court and he had thereafter thought that the JAK Payment Out Application had somehow lapsed.

Fifth error of the DC – charges against him were amended late to his prejudice

77 Finally, he argued that the DC allowed the charges against him to be amended at a very late stage and he was thereby deprived of the opportunity to cross-examine material witnesses.

The Law Society's submissions in reply

78 The Law Society essentially relied on the DC's findings (see above at [49]–[50]) in support of its submission that the third respondent was guilty as charged.

The court's finding on the third respondent's arguments

79 In our view, none of the arguments of the third respondent on the alleged five errors of the DC have any substance. We will now examine each of them in turn.

Previous dealings with Jafar

80 In regard to the third respondent's first argument, it is our view that the DC's reference to his past association with Jafar was not for the purpose of showing that he, the third respondent, had a propensity to fraudulent conduct or that he was in the habit of representing crooks in legal proceedings. It was simply to show that he, with knowledge of Jafar's past history of involvement in questionable dealings and transactions with the assets of vulnerable beneficiaries of Indonesian estates, should have acted with extreme caution in carrying out the instructions of Jafar with respect to Jafar's determination to get hold of the Sale Proceeds belonging to the B Estate. In our view, the DC simply found that his background knowledge reinforced his fraudulent conduct in the two significant events in which he was involved, *ie*: (a) the JAK Suit; and (b) the JAK Payment Out Application. In the view of the DC, these two events showed the depth of iniquity to which the third respondent had descended in order to assist Jafar in getting hold of the Sale Proceeds to which, as the third respondent was aware, JAK had no claim. The DC found the third respondent guilty not because of his past association with Jafar but because he actively assisted Jafar in obtaining a judgment in the name of JAK and then in getting the Sale Proceeds out of court by devious means.

Acting against the interests of Musa and Salim

81 As regards the third respondent's argument that he had not acted against the interests of his clients, Musa and Salim, as trustees of the Camp A beneficiaries, the DC's conclusion that he had in fact so acted was based on the following findings of fact:

(a) He knew that the purported sale of the 29 Properties under the 1996 Agreements was to Jafar and not to JAK.

(b) At the time of the JAK Suit, the third respondent knew that Jafar was a bankrupt and therefore could not claim the return of the purchase consideration from the Camp A beneficiaries

from whom Jafar had purportedly purchased the properties.

(c) He played a role in obtaining the Pamekasan Order (he was seen lurking in the vicinity of the Pamekasan courthouse when the order was made on 13 October 2000 even though he had left Pamekasan by the time the order was extracted on 16 October 2000) which Lee JC subsequently declared "spurious" (see [49(e)] above). This meant that the third respondent knew that Musa and Salim had not been properly appointed as trustees of the Camp A beneficiaries and that the Camp A beneficiaries were not wholly entitled to the B Estate.

(d) He knew that AR Tung had dismissed the JAK Garnishee Application on the ground that the JAK judgment was questionable.

(e) He consented to the JAK Payment Out Application without disclosing to AR Ching that AR Tung had dismissed the JAK Garnishee Application and, together with the first respondent, concealed from AR Ching the fact that the Sale Proceeds had been paid into court in OS 1030/2000 and not in the JAK Suit in which the JAK Payment Out Application was made.

Any solicitor with such knowledge would have advised Musa and Salim to object to the JAK Payment Out Application. Instead, the third respondent did the exact opposite. There is, of course, an equally reasonable inference to be drawn from his conduct and that of Musa and Salim. He was acting *in the interests of* Musa and Salim because they were also pawns or puppets in Jafar's scheme to get hold of the Sale Proceeds.

82 The DC had in fact made such a finding on the basis, *inter alia*, that the third respondent's retainer by Musa and Salim was a charade and that the true client was Jafar. Musa and Salim had no financial means to pay the third respondent's fees. So, who paid his fees?

83 The DC did not believe his assertion that he had no contact with Musa and Salim for a period of almost one and a half years from October 2002 to September 2004 (save in one instance), a span of time covering the relevant proceedings in the JAK Suit and/or OS 1030/2000. But, in our view, it is not so unbelievable if, as the DC had also found, he was taking instructions from someone else, who could only be Jafar. Whatever the truth was, he represented Musa and Salim in all the proceedings relating to the various applications to take the Sale Proceeds out of court. A reasonable inference from the third respondent's actions and omissions in these critical events would be that he played an important role in assisting Jafar on the procedural steps to take the moneys out of court by deception. All the steps taken by JAK to get hold of the Sale Proceeds have the hallmark of a well-conceived and executed plan which was only possible for someone who knew the procedures and practices of the court. The DC did not make an express finding on who the planner and/or executioner was, but the evidence before the DC clearly showed that Jafar, Musa and Salim, as well as all the respondents, were involved in various degrees of culpability in conceiving, planning and executing the scheme successfully. In our view, the footprints of Jafar were all over the events leading up to the JAK Payment Out Application, with the footprints of the third respondent either behind or beside those of Jafar. Jafar's shadowy presence behind the scene showed that he was the puppet-master pulling the strings which the third respondent had strung for him.

Appearing before AR Ching in the JAK Payment Out Application

84 The third respondent's reasons that he was not at fault in failing to disclose material facts to AR Ching were, in our view, incredible in view of his state of knowledge as set out in [81] above. This was a case *par excellence* of *suppression veri, suggestion falsi*. He was aware of the UAAWB Application because:

(a) on 1 September 2004, the solicitors of B&B copied the third respondent on a letter sent to the UAAWB solicitors in response to their intended application;

(b) on 2 September 2004, the third respondent forwarded the letter from the UAAWB solicitors to Lubis under a cover letter which he signed;

(c) on 2 September 2004, the third respondent was copied on a letter sent by the first respondent to the UAAWB solicitors objecting to the intended application;

(d) the third respondent also forwarded this letter to Lubis on 2 September 2004, noting that it concerned "JAK's objections";

(e) on 3 September 2004, Lubis wrote to the third respondent in relation to the letter from the UAAWB solicitors; and

(f) on 6 September 2004, the third respondent wrote to Lubis to note the contents of Lubis's letter.

His defence that he did not have to disclose all the material facts to AR Ching because she could have got them from the court's database was born out of bluster, naïvete or chutzpah. It was also factually wrong as the court's electronic filing system was only introduced in December 2001, well after the filing of OS 1030/2000. As the court file in OS 1030/2000 was not produced before AR Ching, there was no way she could have known about those proceedings without being informed of them. In our view, it is reasonable to infer that the third respondent, who has not denied that he was familiar with court proceedings, deliberately kept the court file away from AR Ching. In fact, he took advantage of the efficiency of the judicial process in dealing with consent applications, especially when both parties are represented by solicitors. In our system of justice, the courts have to place implicit trust in the integrity and professionalism of advocates appearing before them. In the present case, the court's trust has been grievously abused by the third respondent. Even if we did not think there was a conspiracy between the third respondent and Jafar, it would have been sufficient to find the third respondent guilty of dishonest conduct by virtue of his conduct before AR Ching alone.

85 In any event, the evidence goes further. It shows that the egregious conduct of the third respondent had no limits. After successfully misleading AR Ching into granting the order for payment out of $4.27m, the third respondent tried to apply for the balance of the moneys in court to be paid to his firm, with prior knowledge that Musa and Salim had not been properly appointed as trustees of the Camp A beneficiaries under the Pamekasan Order. [note: 15] He had sent several drafts of an affidavit to Lubis to be affirmed by one Frederick in support of the proposed application. However, Lubis on 4 October 2004 sent a fax to the third respondent in the following terms:

> With respect to the draft of an Affidavit prepared by you and Fred[erick], I would like to let you know that based on our legal practices, the Attorney should obtain a written approval from the Client prior to commencement of any payment and/or settlement.
>
> …
>
> We hope that you can understand the circumstances given that any potential claim can be brought by Musa and Salim against us in the event that they realize such settlement payment.

In short, Lubis had stated his concern about the risk of "instructing" the third respondent to proceed with the application to pay out the balance moneys to the third respondent's own firm in the absence

of clear instructions from Musa and Salim and/or an appropriate release or indemnity in Lubis's favour. Lubis was clearly concerned about the potential claim which might be brought by Musa and Salim had such payment been made to the third respondent without their clear approval. In our view, the professional reaction of Lubis to the third respondent's proposal painted a shameful and sorry picture of the latter's professional integrity.

Conduct before Rajah J

86 In our view, the third respondent's explanation for failing to disclose to Rajah J the true situation regarding AR Ching's order was evidence of an attempt to delay the day of reckoning when the facts would become known. Since AR Ching had granted the JAK Payment Out Application to which the third respondent had consented on behalf of Musa and Salim, he could not possibly have believed that the application had lapsed.

Late amendment of charges

87 We find that there is no merit in the third respondent's complaint about the late amendment of the charges as the late amendment did not prejudice him in any way. These amendments were the addition of sub-paras (vi) to (ix) to the first charge. These sub-paragraphs were:

> (vi) JAK's application for payment out vide Summons-in-Chambers No. 5008 of 2004 made in Suit No. 1497 of 2002 ought to have been made in Originating Summons No. 1030 of 2000 instead.
>
> (vii) JAK should have served the application for payment out vide Summons-in-Chambers No. 5008 of 2004 on the Public Trustee and on the competing claimants to the sum of $4,595,350.38, namely BP Products Traders Pte Ltd ("BP"), David Reginald Ellis Broadley ("Broadley"), and the 6 beneficiaries, especially the estate of Umar bin Achmad bin Abdul Wachdin Basyarahil ("UAAWB"), deceased or otherwise notify them of the hearing.
>
> (viii) Letters of Administration De Bonis Non to the UAAWB estate were granted to Nuh Bin Saleh Bin Umar Bin Achmad Wachdin Basyarahil in Probate No. DCP 600460 of 2001 on or about 6 July 2001 and that it was in issue whether Musa and Salim were still authorized to represent the UAAWB estate and/or the rest of the 6 beneficiaries and/or that the authority of the 3rd Respondent and his firm, M/s Peter Chua & Partners, to act for the UAAWB estate and/or … the rest of the 6 beneficiaries was likewise in issue.
>
> (ix) Letters of Administration De Bonis Non to the estate of Amat bin Achmad bin Adbullah Wachdin Basyarahil ("ARAW") were granted to Abdul Rahim bin Awad bin Achmad Wachdin Basyarahil in Probate No. DCP 729 of 1987 on or about 6 December 2003 and that it was in issue whether Musa and Salim were still authorized to represent the ARAW estate and/or the rest of the 6 beneficiaries and/or that the authority of the 3rd Respondent and his firm, M/s Peter Chua & Partners, to act for the ARAW estate and/or or the rest of the 6 beneficiaries was likewise in issue.

The third respondent argued that he ought to have been given the opportunity to cross-examine the administrators of the UAAWB Estate and the ARAW Estate. In our view, the third respondent should have, and could have, applied to cross-examine those administrators at the very latest when the amendments were made. He did not do so. In fact, after the DC allowed the amendments with leave to the respondents to recall their witnesses and to amend their defence, the third respondent's counsel confirmed that he was "not applying to call any witnesses" nor was he filing an amended defence, but that he would deal with the amended particulars by way of questions during the re-

examination of the third respondent.

Conclusion in relation to charges against the third respondent

88 For the reasons above, we are of the view that the charges against the third respondent have all been made out. We have no doubt that the third respondent had acted fraudulently in assisting Jafar to get hold of the proceeds of sale of the 29 Properties, especially in respect of his conduct before AR Ching. We now consider the appropriate penalty to be meted out.

The appropriate penalty to be imposed

Duty of truthfulness to the court

89 In approaching the issue of the penalties which ought to be imposed on the respondents, the applicable legal principles have been cited time and again and it would thus serve no useful purpose to re-analyse them in any great detail. But it would do well to re-emphasise the importance of the duty of the advocate to act with the utmost integrity, propriety and candour in court. His duty to the court prevails over his duty to his client whenever the two are in conflict. Prof Jeffrey Pinsler SC states in his book, *Ethics and Professional Responsibility: A Code for the Advocate and Solicitor* (Academy Publishing, 2007), at p 75:

> Truth is the essence of justice and it is the paramount concern of a court when adjudicating a case or hearing an application. Therefore, it is incumbent upon an advocate and solicitor, as an officer of the Supreme Court, to be truthful in all his communications with, and presentations and submissions to, the court. This responsibility also requires the advocate and solicitor to comply with his duty of disclosure to the court and/or another party. The advocate and solicitor must always conduct himself honourably in the interests of the administration of justice which he is legally bound to assist.

At p 203, Prof Pinsler further states:

> Honesty is the paramount attribute of the advocate and solicitor for no man seeks the services of a person who cannot be trusted, irrespective of his abilities. An advocate and solicitor must be uncompromising in his responsibility to be honourable at all times and in all circumstances.

90 This broad duty, which has its origins in the common law, has been evaluated and expounded upon in numerous decisions: see, for example, *Myers v Elman* [1940] AC 282 at 293–294, *Rondel v Worsley* [1969] 1 AC 191, *McBrearty v HM Advocate* 2004 SLT 917, *Hollins v Russell* [2003] 1 WLR 912, *Geveran Trading Co Ltd v Skjevesland* [2003] 1 WLR 912, *Copeland v Smith* [2000] 1 WLR 1371. While the advocate and solicitor is expected to make all plausible honest endeavours to further his client's cause, he should not actively or passively mislead the court on either the facts or the law. Without misleading the court he is entitled to present his client's cause in a manner which is most favourable or advantageous to the client. This duty is described clearly and succinctly by Rajah J in *PT v By Products Traders* ([32] *supra*) at [35]:

> All solicitors *qua* officers of court have an absolute and overriding duty first and foremost to the court to serve public interest by ensuring that there is proper and efficient administration of justice. They should never mislead the court either actively or passively. Nor should they consciously furnish to the court erroneous or incomplete information or for that matter incorrect advice that may subvert the true facts. This is a sacred duty which every court is entitled to expect every solicitor appearing before it to unfailingly discharge. So overwhelming is the public

interest in maintaining the dignity and honour of the legal profession through the preservation of the highest ethical and moral standards amongst solicitors that the courts cannot risk allowing it to be compromised by even a few recalcitrant individuals within the profession. If and when any such breaches come to light, they must be dealt with swiftly and severely.

91 In relation to the first respondent's argument that she had obtained the advice of her former pupil master that she could not ignore the instructions of Jafar not to disclose the JAK Payment Out Application to the court, it is desirable that we reiterate the English Court of Appeal's recent observations in *Regina v Ulcay* [2008] 1 WLR 1209 at [27]:

> The correct meaning of the phrase "acting on instructions", as it applies to the professional responsibility of the advocate in any criminal court, is sometimes misunderstood, even by counsel. Neither the client nor, if the advocate is a barrister, his instructing solicitor, is entitled to direct counsel how the case should be conducted. The advocate is not a tinkling echo, or mouthpiece, spouting whatever his client "instructs" him to say. In the forensic process the client's "instructions" encompass whatever the client facing a criminal charge asserts to be the truth about the facts which bring him or her before the court. Those instructions represent the client's case, and that is the case which the advocate should advance. … Some decisions, of course, must be made not by the advocate but by the defendant personally, for example, and pre-eminently, the plea itself and, in the course of the trial, the decision whether or not to give evidence. The advocate must give his best professional advice, leaving the ultimate decision to the client. It is, however, always improper for the advocate to seek to challenge evidence which is accepted to be true on the basis of the *facts* agreed or described by the client, merely because the lay client, or the professional client, wishes him to do so. He may not accept nor act on such instructions. [emphasis in original]

In our view, the above observations by the English Court of Appeal very neatly sum up the advocate and solicitor's ultimate responsibility to the court. He may not hide behind the shield that is his client's instructions if such instructions are contrary to his overriding duty to the court. In the present case, the first respondent could have discharged herself from acting for Jafar. She did not, and elected to act on her client's instructions to deceive the court.

The sentencing principles

92 The relevant sentencing principles applicable to professional misconduct have been distilled by this court in *Law Society of Singapore v Ng Chee Sing* [2000] 2 SLR 165 at [49]–[50], as follows:

> (a) Where a solicitor has acted dishonestly, the court will order that he be struck off the roll of solicitors.
>
> (b) If a solicitor is not shown to have acted dishonestly, but is shown to have fallen below the required standards of integrity, probity and trustworthiness, he will nonetheless be struck off the roll of solicitors, as opposed to merely being suspended, if his lapse is such as to indicate that he lacks the qualities of character and trustworthiness which are necessary attributes of a person entrusted with the responsibilities of a legal practitioner.
>
> (c) A further consideration to be borne in mind when deciding on the appropriate penalty is the public dimension of disciplinary sentencing, which is the equivalent of public denunciation by the court in the process of punishing an offender for the offence he has committed. This process serves to preserve public confidence in the legal profession as an integral part of the legal system.

Sentences in this case

93 In the light of the above, the first respondent and the third respondent have committed, by definition, fraud on the court, resulting in the dissipation of $4.27m which are no longer recoverable to pay other competing claims of the beneficiaries of the B Estate. The misconduct of the first respondent is as egregious as that of the third respondent, although if it is necessary to rank them, the latter's conduct is first. As far as the second respondent is concerned, the Law Society has considered her conduct to be grossly improper but not dishonest or fraudulent and the DC has agreed with that assessment. This is an incredible tale of the court being taken advantage of by Jafar with the assistance of officers of the court, resulting in money being taken out by a party which is not entitled to it, and resulting in serious loss to some of the beneficiaries of the B Estate.

94 In the circumstances, the egregious misconduct of the first and third respondents in the deception warrants their being struck off the roll. They are not fit to remain on the roll as advocates and solicitors. As for the second respondent, we are of the view that because of her lesser culpability in the deception of the court, the appropriate penalty is suspension from practice for three years from today. We so order.

Costs

95 The respondents will have to pay the costs and disbursements of the Law Society in the DC proceedings and before us. Having regard to their respective culpability and the amount of time expended in relation to their roles, we consider it appropriate to apportion the costs and disbursements as follows: the second respondent shall pay costs fixed at $3,000, and the first and the third respondents shall each pay the remaining costs in the DC and in these proceedings and disbursements (including transcription fees). The costs and disbursements will be paid jointly and severally by the first and the third respondents with equal contributions from each. We certify that the costs will be on the standard basis for three counsel.

[note: 1]See *Record of Proceedings*, Vol 10; 6NOE p 667, 669, 671.

[note: 2]See *Record of Proceedings*, Vol 10; 6NOE p 637, 671.

[note: 3]At para 26 of the first respondent's written submissions.

[note: 4]At para 28 of the first respondent's written submissions.

[note: 5]At paras 38 and 40 of the first respondent's written submissions.

[note: 6]At paras 38 and 40 of the first respondent's written submissions.

[note: 7]At para 42 of the first respondent's written submissions.

[note: 8]At para 48 of the first respondent's written submissions.

[note: 9]See Record of Proceedings, Vol 10; 6NOE p 637, 671.

[note: 10]See Record of Proceedings, Vol 10; 6NOE pp 667, 669, 671.

[note: 11]See Record of Proceedings, Vol 30; 3LB-40, p 772, 777.

[note: 12]See the third respondent's Skeletal Arguments/Submissions at para 136, p 60.

[note: 13]See the third respondent's Skeletal Arguments/Submissions at para 90, pp 35–36.

[note: 14]See the third respondent's Skeletal Arguments/Submissions at para 98, p 38.

[note: 15]See Record of Proceedings, Vol 19; 23NOE p 2647.

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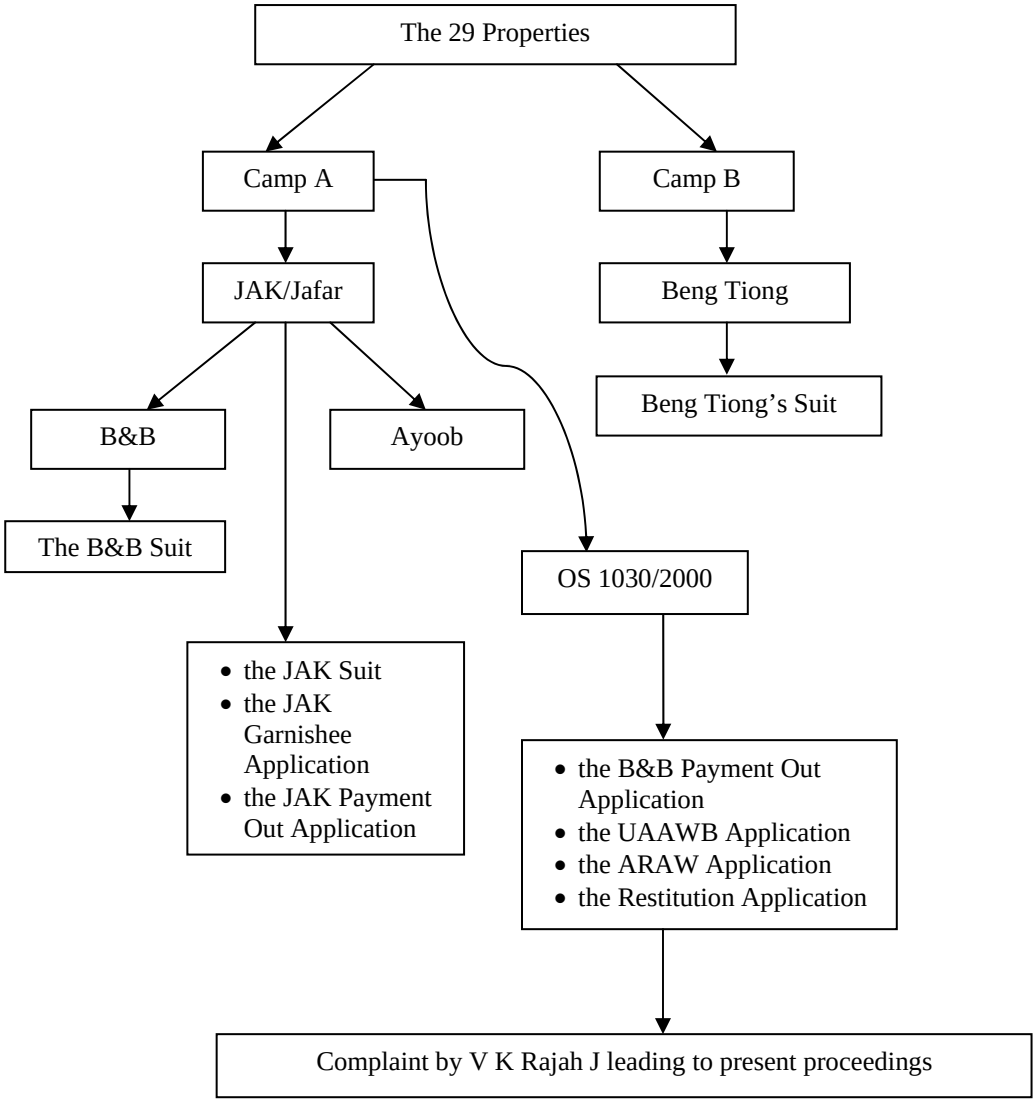
Image 1



Glossary of terms

JAK: JAK Alhadad & Co Pte Ltd

B&B: By Products Traders Pte Ltd and David Reginald Broadley

UAAWB and ARAW Applications: Competing claims to moneys paid into court