IN THE COURT OF THREE JUDGES OF THE REPUBLIC OF SINGAPORE

[2019] SGHC 290

Court of Three Judges — Originating Summons No 4 of 2019

In the matter of Sections 94(1) and 98(1) of the Legal Profession Act (Cap 161, 2009 Rev Ed)

And

In the matter of Dhanwant Singh an Advocate and Solicitor of the Supreme Court of the Republic of Singapore

Between

The Law Society of Singapore

… *Applicant*

And

Dhanwant Singh

… *Respondent*

GROUNDS OF DECISION

[Legal Profession] — [Disciplinary proceedings] — [Professional conduct] — [Breach] — [Conveyancing account]

[Statutory interpretation] — [Construction of statute] — [Purposive approach]

[Land] — [Conveyance]

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Law Society of Singapore
v
Dhanwant Singh

[2019] SGHC 290

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Sundaresh Menon CJ, Andrew Phang Boon Leong JA and Steven Chong JA
23 October 2019

20 December 2019

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

Introduction

1 Ethical rules are the unseen – yet vital – foundations surrounding as well as supporting every legal system. Almost imperceptibly and unnoticeably, ethical rules guide the many decisions that lawyers must make every day. Chief Justice Earl Warren of the United States Supreme Court has famously observed that "law floats in a sea of ethics" (see speech at the Louise Marshall Award Dinner of the Jewish Theological Seminary (11 November 1962)). In a sense, ethical rules are *prescriptive* – they are bright beacons designed to caution lawyers against straying into and running aground upon the sharp rocks of unacceptable practices. Put simply, because of the importance of these rules to the legal system, they have *normative* content – they are guiding lights illuminating what it *means* to be a part of a noble and honourable profession

and what is *expected of* a member of such a profession. This case illustrates the necessity of interpreting ethical rules in that latter, purposive and normative sense. To do anything less will lead to the pollution of the sea of ethics, with correspondingly inimical as well as toxic consequences for the legal profession as a whole.

2 The applicant, the Law Society of Singapore ("the Law Society") had charged the respondent, Mr Dhanwant Singh ("the Respondent") with depositing $100,000 of ***conveyancing monies*** into his firm's ***client account*** instead of the ***conveyancing account***. This was alleged to have contravened the Conveyancing and Law of Property (Conveyancing) Rules 2011 (GN No S 391/2011) ("the Conveyancing Rules"). This alleged breach of the Conveyancing Rules was in turn a consequential breach of Rule 3(1A) of the Legal Profession (Solicitors' Account) Rules (Cap 161, R 8, 1999 Rev Ed) ("the LP(SA)R") pursuant to the Legal Profession Act (Cap 161, 2009 Rev Ed) ("the Act"). The Respondent was charged with improper practice as an advocate and solicitor under s 83(2)(*b*) of the Act, and in the alternative for misconduct unbefitting an advocate and solicitor as a member of an honourable profession within the meaning of s 83(2)(*h*).

3 By way of briefly setting out the relevant background, the Respondent was representing the sellers of a property ("the Vendors") at the material time. RDW International Pte Ltd ("the Complainant") was interested in purchasing the property and transferred $100,000 to the Respondent's firm. Instead of placing the $100,000 into his firm's conveyancing account where monies would be safe kept and released only by two-party authorisation, the Respondent placed it into his firm's *client account* and then *disbursed* the $100,000 to his clients, the Vendors. It transpired that the Vendors had ongoing bankruptcy applications against them, which the Complainant was never informed about.

The Complainant then sought to have the monies placed into the conveyancing account pending completion or returned to it. However, the Respondent refused to do so, claiming the monies need not be held by his firm as stakeholder as there was an agreement to release the monies to the Vendors directly. The purchase did not go through, and the Vendors kept the $100,000 (they have also since been adjudged bankrupt). To date, neither the Respondent nor the Vendors had made any restitution to the Complainant.

4 The central focus of the present proceedings was, in fact, on the definition of "conveyancing money" in the context of the Conveyancing Rules. In these proceedings, the Law Society applied for the Respondent to be sanctioned under s 83(1) of the Act. The Respondent, on the other hand argued that the sum of $100,000 was at no time "conveyancing money" and that he was therefore not liable of either of the charges preferred against him.

5 As we shall see, what we were faced with was, in substance, a series of (highly technical, as well as alternative) manoeuvres by the Respondent to try to bring himself outside of the ambit of the Conveyancing Rules (and thereby Rule 3(1A) of the LP(SA)R). In our judgment, the Respondent's manoeuvres militated wholly against the *raison d'être* of both the Conveyancing Rules and the LP(SA)R. The motivation for the Respondent's tactical approach could be gleaned from the fact that this court has heretofore treated breaches of the LP(SA)R sternly, and that liability for breaches of the LP(SA)R is strict, if not, absolute (see *Law Society of Singapore v Chiong Chin May Selena* [2005] 4 SLR(R) 320 ("*Selena Chiong*") at [22]–[24]). Such breaches simultaneously attract very serious consequences for the lawyer concerned. However, as we shall demonstrate, the Respondent's *technical* attempts to wriggle out of liability was not only (ironically) *technically flawed*, but was also an arid and

artificial interpretation that could not be accepted as it would effectively undermine the *raison d'être* of both the Conveyancing Rules and the LP(SA)R.

6 During the hearing on 23 October 2019, we affirmed the finding of the Disciplinary Tribunal ("the Tribunal") that the Respondent's liability on both the charges had been established and that cause of sufficient gravity had been shown. We proceeded to impose a sanction of a $50,000 fine on the Respondent. We now canvass the factual background to the present proceedings, and provide the detailed grounds for our decision.

Background

7 We preface our setting out of the facts by observing that several dates and details contained in the accounts or the affidavits of evidence-in-chief ("AEIC") filed by the parties before the Tribunal did not, in fact, add up.

The Initial and Revised Options to Purchase

8 Sometime around March 2017, the Complainant was interested in purchasing a property at 97/97A Serangoon Road ("the Property"). The sole director and shareholder of the Complainant was Mr Lim Ser Kuo David ("Mr Lim").

9 The Vendors of the Property were Mr Senthil Kumaran s/o Narayanasamy ("Mr Senthil"), Ms Kamala d/o P Pariasamy, and Mr Narayanasamy s/o Muthu (collectively, "the Vendors"). At the material time, the Vendors were represented by a real estate agent, Mr Shoban s/o Kumarian ("Mr Shoban"), also known to some of the parties as Mr Roy.

10 The Respondent is a partner at S K Kumar Law Practice ("the Respondent's firm"). It was not clear when the Respondent began acting for the Vendors. In his AEIC, the Respondent claimed that he was only instructed by the Vendors "[o]n or about 10 April 2017". However, we note that the warrant to act ("the Warrant to Act") was signed by the Respondent, and dated 9 April 2017. There was, unfortunately, no explanation for this incongruity.

11 In his AEIC, Mr Lim stated that he was introduced to the Vendors by a banker from Maybank Singapore, Mr Adrian Yeo ("Mr Yeo"). On 8 April 2017, Mr Lim (on behalf of the Complainant) made an offer to purchase the Property for $5.8m.

12 Two versions of the option to purchase were adduced into evidence. An initial option to purchase ("the Initial Option") stated that the $58,000 together with an additional $232,000 would constitute the deposit for the purchase. Under the Initial Option, the $232,000 was to be payable to the Respondent's firm's ***conveyancing account***. The Initial Option was signed by the Vendors on 9 April 2017, but it appeared that the Initial Option was never provided to the Complainant as Mr Lim claimed he had never seen the Initial Option.

13 The evidence was not entirely clear as to who had prepared the Initial Option. In his AEIC, Mr Senthil stated that it was Mr Shoban who had prepared the Initial Option. There was no confirmation by Mr Shoban or the Respondent that it was, in fact, Mr Shoban who had prepared the Initial Option. We note that both a letter from Mr Shoban (which the Respondent forwarded to the Inquiry Panel) and the Respondent's AEIC was silent on that specific issue.

14 It appeared that a revised option to purchase ("the Revised Option") was then drafted. The Revised Option was critical to these disciplinary proceedings.

Under the Revised Option, a larger sum of $522,000 was instead to be made payable to the Respondent's firm's ***client account***. The Revised Option was also dated 9 April 2017. Again, the record of proceedings did not make clear who had effected the amendments from the Initial Option to the Revised Option. The Respondent claimed that Mr Shoban had "renegotiated the terms in the Option", but he did not state whether it was Mr Shoban or he who had actually *amended* the Option. We note that Mr Shoban's letter to the Law Society's Inquiry Panel ("Inquiry Panel") did not go as far as to state that he had made the amendments to the Initial Option.

15 Mr Shoban claimed that the Revised Option was signed by the Vendors on 11 April 2017 and accepted by the Vendors. Conversely, Mr Lim stated that he had received the Revised Option on 10 April 2017 and on that same day, he made payment of $58,000 directly to Mr Senthil of the Vendors. This $58,000 represented 1% of the total purchase price.

The "agreement" to extend the expiry date of the Option and the transaction involving the $100,000

16 After the Revised Option was executed and the $58,000 transferred to the Vendors, Mr Lim needed more time to raise funds for the purchase of the Property. On 5 May 2017, Mr Lim wrote to the Vendors (with Mr Yeo assisting him in the drafting) to request for an extension of time to exercise the Revised Option.

17 Matters were further complicated as it appeared that Matthew Chiong Partnership ("MCP") *purportedly* began representing the Complainant from at least 19 May 2017. We say "purportedly" as Mr Lim claimed that at the material time he was not aware that MCP was, in fact, acting for the Complainant. During this time, Mr Lim (on behalf of the Complainant) had only liaised with Mr Yeo.

We note that despite their role in these events, neither Mr Yeo nor anyone from MCP had filed affidavits explaining their version of events.

18 We leave to one side, for the moment, the questions over MCP's warrant to act on the Complainant's behalf. On 19 May 2017, MCP sent the Respondent a request to extend the Revised Option's expiry date to 31 May 2017. According to Mr Senthil, the Respondent was only provided a copy of the Initial Option on 19 May 2017. According to Mr Lim, on 22 May 2017, Mr Yeo communicated (from the Vendors) to him that the Complainant was to pay $100,000 to the Vendors as part of the balance of the deposit money of $522,000.

19 On 22 May 2017, a cheque for $100,000 was made out by the Complainant to the client account of the Respondent's firm. The Respondent accepted that his firm had received the cheque, which cleared on 23 May 2017. The $100,000 was then placed in the *client account* of the Respondent's firm and the Respondent then disbursed the sums directly to the Vendors. Mr Lim stated that following the payment of the $100,000, he was informed by Mr Yeo that the Option's expiry date had been extended to 31 May 2017.

20 The record of proceedings did not show what had been communicated between the parties to obtain the extension of the expiry date of the Revised Option. The Respondent relied on Mr Senthil's claim that there was an agreement for the 9% remainder of the Option Monies (the "$522,000") to be released to the Vendors directly instead of the usual deposit in the conveyancing account. Conversely, although Mr Lim accepted that there was a mutual agreement to extend the expiry date of the Revised Option to 31 May 2017, he categorically denied that the Complainant had agreed to have the remainder of the Option Monies released to the Vendors before completion.

21 From his letter to the Inquiry Panel, it did not appear that Mr Shoban had personal knowledge of this alleged agreement to extend the Revised Option. All he could say was that he "under[stood] that the amended option was not exercised on 5th May 2017 but was extended to 20th May 2017 as per the [Complainant's] request".

Discovery of the pending bankruptcy proceedings and discharge of MCP

22 On 31 May 2017, a legal executive from MCP emailed the Respondent to indicate that the Complainant would be exercising the Option on that day. However, MCP requested the Respondent to confirm that the 10% deposit should be made in favour of the Respondent's firm's conveyancing account instead of its client account. In his reply to MCP, the Respondent did not acknowledge the need to place the monies into the conveyancing account. Instead, the Respondent claimed that there was an agreement to release the $522,000 to the Vendors.

23 Also on 31 May 2017, Mr Matthew Chiong ("Mr Chiong") of MCP called Mr Lim to inform him that one of the Vendors was facing bankruptcy proceedings. Mr Lim was extremely surprised by this information as he was not previously informed by Mr Shoban, the Respondent, or any of the Vendors of this. Mr Chiong then told Mr Lim that MCP would no longer be acting for the Complainant. As we had alluded to at [17] earlier, Mr Lim also claimed this was the first time that he had come to know that MCP had been acting for the Complainant in the transaction.

24 We note that if Mr Lim's version of events were true, there was no explanation in these proceedings from Mr Chiong as to how MCP came to act for the Complainant without Mr Lim's knowledge, nor was there an explanation

as to why the bankruptcy searches had not been carried out earlier, or why MCP had allowed the monies to be made payable to the Respondent's firm's client account instead of its conveyancing account.

25 In any event, Mr Lim approached Edmond Pereira Law Corporation ("EPLC") to represent the Complainant. EPLC informed Mr Lim that their own searches revealed that it was not just one of the Vendors, but all three Vendors who faced pending bankruptcy applications.

26 From 1 June 2017 to 17 June 2017, EPLC wrote to the Respondent repeatedly to request that the $100,000 be placed in his firm's conveyancing account. EPLC also indicated that unless the Vendors could successfully discharge the bankruptcy applications, the Complainant would not be willing to proceed with the purchase, and would seek a refund of the $100,000. EPLC indicated to the Respondent that if the Vendors were subsequently adjudged bankrupts, s 77(1) of the Bankruptcy Act (Cap 20, 2009 Rev Ed) could render void the transactions entered into after the bankruptcy applications were made against them. The Complainant was not willing to assume the risk of the conveyancing transaction becoming void.

27 In the Respondent's replies to EPLC, he continued to insist there was no need to deposit the monies into his firm's conveyancing account. The Respondent did not mention that he had already disbursed the $100,000 to the Vendors. Instead, the Respondent requested that the remainder of $422,000 to be made payable to his clients so as to avert the pending bankruptcy suits.

28 Much of the correspondence between the Respondent and EPLC continued in the same vein, but we would observe the following:

(a) On 1 June 2017, EPLC first wrote to the Respondent to request time to investigate the pending bankruptcy applications against the Vendors. The Respondent replied noting their "request for some more time based on certain findings – bankruptcy and others and whatever".

(b) On 2 June 2017, the Respondent wrote to inquire as to whether the Complainant would exercise the Revised Option, and that "the balance of the 10% is either held in our clients [*sic*] account or in the [conveyancing] account".

(c) On 5 June 2017, the Respondent indicated that "[o]ur instructions are clear – the sum S$422,000/- is to be paid into CVY [conveyancing] Account and which we are aware will be refunded in the event completion is aborted".

(d) On 13 June 2017, EPLC highlighted the various breaches of the LP(SA)R by the Respondent's continued failure to place the monies into his firm's client account. In response, the Respondent replied stating, "Thank you for highlighting the various rules but our short response is this…we had acted in accordance with our clients [*sic*] instructions [that the $100,000 is to be released to them], that's all and that's it".

29 The conveyance over the Property did not proceed. On 20 June 2017, Mr Lim (on behalf of the Complainant) filed a complaint with the Law Society against the Respondent.

30 In the meantime, the bankruptcy applications against the Vendors proceeded apace. It appears that all three of the Vendors have since been

adjudged bankrupts. To date, the $100,000 has not been recovered by the Complainant.

The Disciplinary Tribunal's proceedings

The Law Society's case

31 On 24 July 2018, the Law Society filed its case against the Respondent. The Law Society clarified that it was not concerned with the $58,000 Option monies that had been paid directly to the Vendors. Instead, it was concerned with the $100,000 paid to the Respondent's firm, which it contended should have been placed within the firm's conveyancing account.

32 The Respondent filed his Defence on 7 September 2018. In his Defence, the Respondent averred that:

> Pursuant to an agreement with the Vendors, the [Complainant] agreed to release part of the Balance Deposit Money to the Vendors prior to the exercise of the Option and the said $100,000.00 and the [$58,000] paid earlier were to be applied towards the purchase price of the Property…

33 On 8 October 2018, about ten days before the hearing before the Tribunal, the Respondent filed his AEIC, alleging specifically (and for the first time) that the $100,000 was "consideration" for the "extension [of the Option] agreed upon by the Vendors" and was never intended to be conveyancing monies. Instead, the Respondent claimed that the $100,000 did "not constitute conveyance moneys per se" and termed it as "earnest money".

The hearing before the Disciplinary Tribunal

34 The Tribunal and the Law Society indicated at the start of the hearing that the following issues appeared to be undisputed:

(a) The $100,000 had been paid into the Respondent's firm's *client* account and ***not*** *its conveyancing account*;

(b) The $100,000 was disbursed by the Respondent to the Vendors; and

(c) The $100,000 was not over and above the purchase price, and would constitute ***part of*** *the purchase price*.[1]

35 Counsel for the Respondent, Mr S Magintharan ("Mr Magintharan"), did not dispute the aforementioned issues. However, he maintained that there had been an agreement for the $100,000 to be disbursed to the Vendors, and that the $100,000 was also consideration for the extension of the Option's expiry date.

36 Significantly, Mr Magintharan also did not dispute that the $100,000 would constitute part of the purchase price. Instead, he disputed the *timing* of when it would become part of the purchase price – in turn calling forth the obligation on the part of a solicitor to place such monies into the conveyancing account. Mr Magintharan contended, as he did before us, that the $100,000 would only become part of the purchase price ***after*** *the Option was exercised*, and it was only at this point that the Respondent was required to place these conveyancing monies in the firm's conveyancing account.

The Law Society's case before the Tribunal

37 Before the Tribunal, counsel for the Law Society, Mr Adam Maniam ("Mr Maniam"), pointed out that the Complainant had denied the existence of

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[1] LSBCP, at Tab 4 (at 10:2–13; and 12:4–19).

an agreement to disburse the monies to the Vendors. Mr Maniam further contended that the Respondent's belated claim that the $100,000 was "consideration" to extend the Option's expiry date was an afterthought. Up until the Respondent filed his AEIC, neither the contemporaneous documents, nor the Respondent's Defence had ever indicated that the $100,000 was meant to serve as such consideration.

38 The Law Society's main submission, which it substantially maintained before us, relied on Rule 2(2)(*a*) of the Conveyancing Rules, which states as follows:

> ***"conveyancing money" means all or any of the following types of money***, and includes any such money which is held by a solicitor who acts for a party in the sale, purchase or assignment of any land…after the completion of the sale and purchase of that land…as the case may be:
>
> (*a*) ***any money payable***, in the sale and purchase of any land, ***to account of the purchase price***;
> …
>
> (*c*) ***any other money payable***, in the sale and purchase of any land, ***pursuant to the sale and purchase agreement***…
>
> [emphasis added in bold italics]

39 The Law Society submitted that it was irrefutable that the $100,000 would have to go toward the overall purchase price, and would therefore fall clearly within the definition of "conveyancing money" under Rule 2(2)(*a*) of the Conveyancing Rules. Hence, in placing the $100,000 in his firm's client account, the Respondent had breached Rules 4(1) and 5(1) of the Conveyancing Rules, which state as follows:

> **General restriction on holding of conveyancing money by solicitor**
>
> **4.**—(1) A solicitor shall not, in the course of his employment or in the course of carrying on his trade, business, profession or

> vocation, ***receive or hold any conveyancing money*** (not being anticipatory conveyancing money) on behalf of another person, except in accordance with —
>
> (*a*) an escrow agreement; or
>
> (*b*) the applicable provisions of these Rules and the Legal Profession (Solicitors' Accounts) Rules (Cap. 161, R 8).
>
> …
>
> **Holding of conveyancing money, etc., by solicitor**
>
> **5.**—(1) Subject to paragraphs (2) to (6), ***every solicitor who receives any conveyancing money shall without delay*** —
>
> (*a*) pay the money into the escrow account for the conveyancing transaction which the money is received for or in connection with;
>
> (*b*) ***pay the money into a conveyancing account***; or
>
> (*c*) deposit the money with any appointed entity (not being an appointed bank).
>
> [emphasis added in bold italics]

The Respondent's case before the Tribunal

40 In our view, the Respondent's case could essentially be distilled into the following three defences:

(a) There was an alleged agreement between the Complainant and the Vendors for the Respondent to disburse the $100,000 to the Vendors directly instead of holding it in his firm's conveyancing account ("the Disbursement Agreement");

(b) There was an alleged agreement between the Complainant and the Vendors for the $100,000 to constitute consideration for the extension of the Option's expiry date ("the Consideration Agreement"); and

(c) The $100,000 would only go toward the purchase price after the Option was exercised. Since the Complainant had decided not to exercise the Option, the $100,000 would not amount to "conveyancing money" under Rule 2(2)(*a*) of the Conveyancing Rules.

41 Although the parties appeared to have lined up several witnesses to testify on the factual issues, the Tribunal indicated that it was not necessary to decide whether the Disbursement Agreement or the Consideration Agreement really existed. As the Tribunal saw it, as far as the Respondent's liability under the show cause proceedings were concerned, the ***only issue*** was the ***legal question*** of whether the $100,000 was or was not conveyancing monies given the Respondent's legal submission that the $100,000 would *only* constitute part of the purchase price *after* the Option was exercised.

42 In this regard, both the Respondent and the Law Society agreed with the Tribunal that it was not necessary for evidence to be called on this particular issue. Both parties agreed no factual evidence would be required given that the Respondent had conceded that the $100,000 had been deposited into the firm's client account and that the $100,000 would go toward the purchase price of the Property (with the only dispute pertaining to whether it would legally constitute conveyancing monies before the Option was exercised). The matter boiled down to an interpretation of the LP(SA)R and the relevant conveyancing rules.

The Disciplinary Tribunal's report

43 Having received written submissions from the parties, the Tribunal delivered its report, which can be found at *The Law Society of Singapore v Dhanwant Singh* [2019] SGDT 1 ("the DT Report").

44 As a preliminary matter, the Tribunal noted that the Respondent had conceded during the show cause proceedings before them that only written submissions were required on the sole legal issue of whether the $100,000 constituted conveyancing monies. However, in his written submissions, the Respondent subsequently *renewed* his claims and sought to rely on the existence of the alleged Disbursement Agreement and Consideration Agreement (see the DT Report at [18]–[21]).

45 The Tribunal rejected the Respondent's claim with regard to the Disbursement Agreement. It noted that Mr Lim had denied the existence of an agreement to disburse the monies directly to the Vendors. The Tribunal noted that if there really was such an agreement, it was odd that the $100,000 was not paid directly to the Vendors in the same way that the initial $58,000 had been (see the DT Report at [47] and [52]). Instead, the $100,000 was paid *into* the client account of the Respondent's firm.

46 The Tribunal was also not persuaded by the claim that there was (another) Consideration Agreement. In all of the correspondence between the Respondent on the one hand, and MCP and EPLC on the other, the Respondent had never mentioned that the $100,000 was meant as consideration for the purposes of an extension of the Option's expiry date. Moreover, the Respondent had not raised such an allegation in his letters to the Inquiry Panel, or even in his Defence before the Tribunal. The Tribunal agreed with the Law Society that the Respondent's belated claim of such an agreement was an afterthought (see the DT Report at [53]–[59]).

47 In any event, the Tribunal was of the view that even if the alleged agreements were true, the mere fact that the Respondent had deposited the $100,000 into his firm's client account would nevertheless be a breach of the

Conveyancing Rules (Cap 61) ("the Conveyancing Rules") *as long as the $100,000 was "conveyancing monies" under the Conveyancing Rules*. Such a breach of the Conveyancing Rules would be a consequential breach of Rule 3(1A) of the LP(SA)R (see the DT Report at [51] and [58]).

48 Hence, *regardless* of the existence of the alleged agreements, the central legal issue remained as follows: ***was the $100,000 considered conveyancing monies under the Conveyancing Rules?***

49 In this regard, the Tribunal was firmly of the view that the $100,000 could only be construed as *conveyancing monies*. Since the Respondent had conceded that the $100,000 would become *part of the purchase price* (see [36] above), it was clear to the Tribunal that such a sum would fall within the definition of "conveyancing money" under Rule 2(2)(*a*) of the Conveyancing Rules. Given the irrefutable fact that the Respondent had placed the $100,000 into his firm's client account instead of the conveyancing account, the Respondent had therefore breached Rule 5(1) of the Conveyancing Rules (see the DT Report at [26]–[27]).

50 The Tribunal rejected Mr Maginthran's interpretation of the Conveyancing Rules to the effect that the $100,000 would not form part of the purchase price *until after* the Option was exercised for three reasons.

51 First, such an interpretation would circumvent the wording and intent of the Conveyancing Rules, which were intended to afford the public protection in respect of conveyancing monies. If the Respondent's interpretation were to be accepted, solicitors' duties to hold conveyancing monies as stakeholders would be rendered nugatory (see the DT Report at [60]–[64]).

52 Second, the Respondent's interpretation was also unworkable. It would lead to the absurd result that if the Option was *later* exercised by the Complainant, the Respondent's duty to hold the $100,000 would come into effect. But he would have disbursed the $100,000 to the Vendors by then. On the one hand, the Respondent would be in breach of the rules because he would, at that moment, not be holding the $100,000 as stakeholder. On the other hand, he could claim that he had not acted in breach, since he had disbursed the monies prior to his obligations under the Conveyancing Rules arising (see the DT Report at [65]).

53 Third, the Respondent's interpretation would leave conveyancing solicitors in complete uncertainty as to their obligations under the Conveyancing Rules. A solicitor would have no idea whether to deposit the monies into his or her firm's client account, or conveyancing account. He or she would also be at a loss if he or she were told by his or her clients to release the funds to them prior to the exercise of an option. This was untenable (see the DT Report at [67]).

54 In the circumstances, the Tribunal found that sufficient cause had been shown on the improper conduct charge, and in the alternative, on the misconduct charge (see the DT Report at [72]).

The Respondent's case on liability and due cause

55 The Respondent's case before us substantially replicated his written submissions before the Tribunal (see [40] and [44] above):

> (a) The Respondent maintained the existence of the alleged Disbursement and Consideration Agreements between the Vendors and the Complainant. In this regard, the Respondent submitted that the

Tribunal had erred in not accepting his account of the alleged agreements, and in deciding not to hear oral evidence from the witnesses;

(b) The Respondent maintained that the $100,000 would not constitute "conveyancing money" under Rule 2(2)(*a*) of the Conveyancing Rules until the Option was exercised. In this regard, the Respondent submitted that the obligation to hold monies in the conveyancing account was contingent on *a sale and purchase agreement materialising*;

(c) In the alternative, the Respondent suggested even if he had breached the Conveyancing Rules, he had done so out of a *bona fide* belief that the $100,000 was not conveyancing monies. His alleged lack of *mens rea* should therefore absolve him of liability under the LP(SA)R; and

(d) In the further alternative, the Respondent submitted that even if he had breached the Conveyancing Rules and the LP(SA)R, his breach was not cause of sufficient gravity to warrant being sanctioned under s 83(1) of the Legal Profession Act.

Our analysis of the alleged Disbursement and Consideration Agreements

56 We start with the Respondent's submissions in relation to the alleged agreements. The Respondent forcefully argued that the Tribunal had erred in declining to hear factual evidence on the alleged agreements, and in limiting the Respondent's defences to a purely legal question of whether the $100,000 was conveyancing money. The Respondent claimed that he had been "deprived…of a fair hearing before [the Tribunal]".

57 We found the Respondent's submissions here odd and somewhat surprising given that the Respondent had *repeatedly* ***accepted*** before the Tribunal that there was no need for factual evidence to be called. The Respondent had also readily conceded to the Tribunal that the sole issue was a legal one – *ie*, whether the $100,000 was conveyancing money within the meaning of s 2(2) of the Conveyancing Rules.

58 Leaving aside the Respondent's *volte-face*, we did not think the Respondent had been prejudiced in the least. On the contrary, the DT Report at [48] made plain that "[e]ven if it could be established that there was such [a Disbursement Agreement]…the Respondent would still be in breach of the Rules". Similarly, the Tribunal noted, at [58] of the DT Report, that "[e]ven if the $100,000 was payment to revive the Option this would not be a defence to the Charge as it is not an exception to Rule 5(1) of the [Conveyancing Rules]". Hence, the Tribunal's findings were ***not*** predicated on the existence or absence of the alleged agreements at all. Rather, it was stating that *even an acceptance the Respondent's account of the agreements would not absolve him of liability*.

59 In our judgment, the Tribunal's allusions to the effect that the agreements did not likely exist (see the DT Report at [52], [54] and [59]) were simply comments made by way of *obiter dicta*, and were in fact necessitated by the Respondent's own about turns on the issue despite his earlier concessions on the matter (see the DT Report at [21]). The evidence adduced also did not show anything to support the Respondent's bald assertions of the existence of a Disbursement Agreement, or of a Consideration Agreement. Be that as it may, given the approach taken by the Tribunal, and the Law Society, we were prepared to give the Respondent the benefit of the doubt and proceeded on the basis that alleged agreements *did* exist.

The obligation to hold conveyancing monies as stakeholder remains extant regardless of the existence of the Agreements

60 Even if we proceeded on assumptions favourable to the Respondent, we agreed with the Tribunal that the issue would still boil down to the legal question of whether the $100,000 was "conveyancing money" under the Conveyancing Rules. We say this for three reasons.

61 First, clause 3 of the Revised Option states that:

> …Where the terms and conditions of this Agreement are in conflict with the Conveyancing Rules and/or the SAL (Conveyancing Money) Rules, ***the Conveyancing Rules*** and the SAL (Conveyancing Money) Rules ***shall prevail***.
>
> [emphasis added in bold italics]

Hence, even assuming that the Vendors and the Complainant had indeed entered into the Disbursement and Consideration Agreements, under the Revised Option, any obligation to place the monies in the conveyancing account of the Respondent's firm under the Conveyancing Rules would *still* be extant.

62 Second, and taking the argument a step further in the Respondent's favour, even assuming that the Vendors and Complainant had made *separate* arrangements to *specifically* contract *out* of the terms of the Revised Option, this was also a *non sequitur*. This is because such an arrangement applies as between the parties to that contract and *not the solicitor*. In our judgment, the statutes impose a duty, which is the *solicitor's own to bear* once conveyancing monies reach his or her hands, and nothing in the transacting parties' contract between themselves can absolve the solicitor of his or her burden to comply with the relevant Rules.

63 In this regard, Mr Maginthran referred to the "Fact Sheet for Proposed Measures to Safeguard Conveyancing Money" ("the Fact Sheet") issued by the Ministry of Law. Paragraph 7 of the Fact Sheet stated that "[t]he option fee is usually paid directly to the seller and is unaffected by the measures", the "measures" referring to the relevant Conveyancing Rules and the LP(SA)R. This was, with respect, quite beside the point because the option fees referred to in the Fact Sheet were monies paid ***directly to the seller***, which was in fact what had happened to the initial $58,000 paid by the Complainant to Mr Senthil of the Vendors, and which was ***not*** the subject of the charges preferred by the Law Society. Conversely, Paragraph 8 of the Fact Sheet made clear that option deposits remained subject to protections conferred by the relevant Rules.

64 It is open to the parties in a transaction to waive the protection conferred by the Conveyancing Rules via a solicitor. However, both the Fact Sheet and the plain textual interpretation of the Conveyancing Rules made clear that *once monies pertaining to the sale and purchase of land reach the hands of a solicitor*, the obligation to safe keep the monies in a *conveyancing* account *immediately* comes into effect (hence the term "without delay" in Rule 5(1) of the Conveyancing Rules (quoted at [39] above)). As Mr Maniam rightly pointed out, the solicitor's duty to hold conveyancing monies as stakeholder is imposed as a matter of *statute* by the Conveyancing Rules and the LP(SA)R, and does *not* arise out of contract.

65 Third, and on a related note, Mr Maginthran could not point to any part of the Conveyancing Rules which would allow the Respondent to escape liability by way of an alleged agreement between the transacting parties. This much was obvious given the careful design of Rule 5 of the Conveyancing Rules. Under Rules 5(1)(*a*)–(*c*) of the Conveyancing Rules, a solicitor was mandated to place *without delay* the monies into the relevant escrow account,

conveyancing account, or an appointed entity, save for the exceptions in Rules 5(2)–(6). Hence, a solicitor's duty to hold the monies as stakeholder in the prescribed modalities under Rules 5(1)(*a*)–(*c*) could be put to one side only under ***exhaustively*** *stipulated* exceptions. Neither an alleged agreement to disburse sums directly to the Vendors, nor one which stipulated that the sums concerned constituted consideration to extend the expiry date of an option to purchase, would fall into any of those exceptions set out in Rules 5(2)–(6).

Our analysis of the Conveyancing Rules and the LP(SA)R

66 Given the foregoing, we returned full circle to the Tribunal's observation that the Respondent's liability ultimately reduced to the legal question of whether the $100,000 was conveyancing monies. In the interests of clarity, it is useful to set out the interaction between the Conveyancing Rules and the LP(SA)R.

67 The Respondent's liability under the Conveyancing Rules arose by way of Rules 4(1) and 5(1)(*b*), which are replicated for ease of reference:

> **General restriction on holding of conveyancing money by solicitor**
>
> **4.**—(1) A solicitor shall not, in the course of his employment or in the course of carrying on his trade, business, profession or vocation, receive or hold any conveyancing money (not being anticipatory conveyancing money) on behalf of another person, except in accordance with —
>
> (*a*) an escrow agreement; or
>
> (*b*) the applicable provisions of these Rules and the Legal Profession (Solicitors' Accounts) Rules (Cap. 161, R 8).
>
> …
>
> **Holding of conveyancing money, etc., by solicitor**
>
> **5.**—(1) Subject to paragraphs (2) to (6), every solicitor who receives any conveyancing money shall without delay —

> …
>
> (*b*) pay the money into a conveyancing account;
>
> …

68 The resolution of the matter depended wholly on the definition of conveyancing money as set out in Rule 2(2) of the Conveyancing Rules, the relevant part of which reads as follows:

> "conveyancing money" means all or any of the following types of money, and ***includes any such money which is held by a solicitor who acts for a party in the sale, purchase or assignment of any land***, or in the grant or surrender of a lease, licence or tenancy in respect of land, after the completion of the sale and purchase of that land, assignment of that land, or grant of that lease, licence or tenancy, or after the surrender of that lease, licence or tenancy, as the case may be:
>
> > (*a*) ***any money payable, in the sale and purchase of any land, to account of the purchase price***;
> >
> > (*b*) any interest payable for the late completion of the sale and purchase of any land;
> >
> > (*c*) any other money payable, in the sale and purchase of any land, pursuant to the sale and purchase agreement;
> >
> > (*d*) any money payable, in the assignment of any land, to account of any consideration for the assignment;
> >
> > (*e*) any interest payable for the late completion of the assignment of any land;
> >
> > (*f*) any other money payable, in the assignment of any land, pursuant to any agreement relating to the assignment;
> >
> > (*g*) any money payable, in the grant of a lease, licence or tenancy in respect of land, to account of any consideration for the lease, licence or tenancy;
> >
> > (*h*) any interest payable for the late completion of the grant of a lease, licence or tenancy in respect of land;
> >
> > (*i*) any other money payable, in the grant of a lease, licence or tenancy in respect of land, pursuant to any agreement relating to the lease, licence or tenancy, not being money payable only for repairs or improvements to the land;

> (*j*) any rent, licence fee or deposit payable pursuant to the grant of a lease, licence or tenancy in respect of land;
>
> (*k*) any money payable, in the surrender of a lease, licence or tenancy in respect of land, to account of any consideration for the surrender of the lease, licence or tenancy;
>
> (*l*) any other money payable, in the surrender of a lease, licence or tenancy in respect of land, pursuant to any agreement relating to the surrender of the lease, licence or tenancy;
>
> …
>
> [emphasis added in bold italics]

69 The Respondent's liability under the LP(SA)R arose by way of Rules 2(1) and 3(1A), which state as follows:

> **2.**—(1) In these Rules, unless the context otherwise requires —
>
> …
>
> …"conveyancing account"… and "conveyancing money" have the same meanings as in rule 2(2) of the Conveyancing Rules;
>
> …
>
> **Client accounts, conveyancing accounts and conveyancing (CPF) accounts**
>
> **3.** …
>
> …
>
> (1A) A solicitor shall not hold or receive conveyancing money except in accordance with the applicable provisions of these Rules and the Conveyancing Rules.

70 Before delving into the interpretation of Rule 2(2)(*a*) of the Conveyancing Rules, we briefly disposed of the preliminary matter of the Respondent's attempt to revive the argument that the $100,000 was part of the Consideration Agreement (this time placing the additional gloss that it was paid *solely* as consideration for extending the Option's expiry date and *not* to account for the purchase price).

71 For the reasons we had set out at [60]–[65] above, we did not agree that the existence of the Consideration Agreement would permit the Respondent to escape liability under the Conveyancing Rules. We also rejected the additional gloss that the $100,000 was solely for the purposes of the extending Option's expiry date.

72 As we had noted at [36] above, the Respondent had already *conceded* before the Tribunal that the $100,000 would eventually go toward the purchase price. The only caveat that Mr Maginthran placed on the concession was ***when*** the monies would form part of the purchase price, but not ***whether*** it would satisfy the total purchase sum of $5.8m for the Property.

73 More importantly, Mr Maginthran's concession before the Tribunal had been rightly made. The highest that the Respondent was capable of pitching his case could not possibly be that $100,000 was paid outright as consideration – at most, what he could argue was that the *earlier and partial* payment of the $100,000 was the consideration for extending the Option's expiry date.

74 In our view, Mr Maginthran could not logically submit otherwise. If he were to suggest that the $100,000 would *never* constitute part of the purchase price, this would beg the question. It assumed that the Complainant would never exercise the Option. Moreover, taking this tack would contradict all of the contemporaneous correspondence and would also jettison the Respondent's claim of the alleged Disbursement Agreement, and material facts that he relied upon such as the claim that the $100,000 was paid into his firm's client account *pursuant to the Revised Option*, and *as part of the deposit* (and consequently part of the purchase price).

75 Hence, no matter how the Respondent sought to cast and re-cast his argument, there was no gainsaying the indubitable fact that the $100,000 would form part of the purchase price.

The principles of statutory interpretation in ethical and professional rules

76 We turn to the Respondent's argument that Rule 2(2)(*a*) of Conveyancing Rules would only take effect *after* the Option was exercised and *only when* a sale and purchase agreement was formed. It was this aspect of his case which constituted the crux of the present proceedings.

77 The principles of statutory interpretation are well-established, and in our view, apply with equal force to legislative provisions or regulations concerning lawyers' ethical and professional duties:

> (a) The court first ascertains the possible interpretations of the text, having regard not just to the text of the provision in isolation, but also having regard to the textual context of that provision within the written law as a whole;
>
> (b) The court must next ascertain the purposes or objects of the statute. This may be discerned from the language of the words used in the enactment, but can also be discerned from the extraneous material in certain circumstances; and
>
> (c) The court must then compare the possible interpretations of the text against the purposes or objects of the statute. If the purposes of the provision clearly support only one of the possible interpretations, the extraneous material serves a limited function of confirming, but not altering the purposively ascertained ordinary meaning of the provision.

See the Court of Appeal's observations in *Kong Hoo (Pte) Ltd and another v Public Prosecutor* [2019] 1 SLR 1131 ("*Kong Hoo*") at [72]; *Tan Cheng Bock v Attorney-General* [2017] 2 SLR 850 ("*Tan Cheng Bock*") at [37]; and *Attorney-General v Ting Choon Meng and another appeal* [2017] 1 SLR 373 at [59].

The possible textual interpretations of the Conveyancing Rules

78 To support his interpretation of Rule 2(2)(*a*) of the Conveyancing Rules, Mr Maginthran relied on the Court of Appeal's observations in *Aqua Art Pte Ltd v Goodman Development (S) Pte Ltd* [2011] 2 SLR 865 ("*Aqua Art*") at [34], where the court held that an option to purchase and the subsequent sale and purchase agreement were two separate contracts. Mr Maginthran suggested that Rule 2(2)(*a*) did not apply, since no sale and purchase agreement had arisen and the only contract between the Vendors and the Complainant was the Revised Option.

79 With respect, we found Mr Maginthran's interpretation to be wholly misplaced. The plain text of Rule 2(2)(*a*) of the Conveyancing Rules does not state that monies are only considered conveyancing monies when they are governed by a sale and purchase ***agreement***; instead it states that it is "any money payable, ***in the sale and purchase of any land***, to account of the purchase price" [emphasis added]. In our judgment, Rule 2(2)(*a*) operates in sales and purchases of land *regardless of* the presence of a formal sale and purchase agreement.

80 Our interpretation is supported by the case law on options to purchase. In *Teo Siew Peng v Guok Sing Ong and another* [1981–1982] SLR(R) 699 ("*Teo Siew Peng*") at [14], the Court of Appeal (in the context of s 92(*d*) of the

Evidence Act (Cap 5, 1970 Rev Ed)) observed that "an option to purchase land is a contract, grant or ***disposition of property***" [emphasis added in bold italics].

81 Similarly, in *Re 41B Lorong 17 Geylang, Singapore 388564* [2007] 3 SLR(R) 729 ("*Re 41B*") at [4], the High Court observed that:

> It would be noted therefore that although there was only one document [the option to purchase], it was capable of giving rise to two distinct contracts, a rather odd situation which, however, is commonly encountered in relation to real property transactions in Singapore. ***The first contract would be the unilateral contract (the option) constituted by the offer (for valuable consideration) by the vendor to sell the property to the purchasers if they signed the Acceptance Copy and paid the deposit by a certain date***. The second would be the actual synallagmatic contract for the sale and purchase of the property (the sale contract) which would come into existence upon the proper exercise of the option by the purchasers … [emphasis added in bold italics]

82 While *Re 41B* and *Aqua Art* suggest that an option to purchase and a sale and purchase agreement are different *contracts*, none of them go so far as to suggest that this distinction has a bearing for the purposes of the Conveyancing Rules. On the contrary, all of the foregoing authorities suggest that both contracts (the option to purchase and the sale and purchase agreement) nevertheless take place ***within the same transaction*** – *ie,* a sale of land. In our view, it could not be otherwise because an option to purchase is *quite literally* an option *for the purchase of land*. The analysis does not change just because the option is only a unilateral contract later giving rise to a sale and purchase *agreement*. The subject matter of the transaction constantly remains the sale and purchase of *land*, which would then result in Rule 2(2)(*a*) of the Conveyancing Rules applying.

Textual context of the Conveyancing Rules as a whole

83 Mr Maginthran's interpretation is also *not* supported by the surrounding provisions of the Conveyancing Rules. Rule 2(2) states that "conveyancing money" means "any such money which is held by a solicitor who acts for a party in the ***sale, purchase or assignment of any land***…" [emphasis added in bold italics]. Rule 2(2) does not *limit* conveyancing monies to only sale and purchase agreements.

84 In this regard, the sub-rules of Rule 2(2) are organised sequentially and thematically in accordance with the paragraph header, with Rules 2(2)(*a*)–(*c*) pertaining to a sale and purchase of land, Rules 2(2)(*d*)–(*f*) pertaining to an assignment of land, Rules 2(2)(*g*)–(*j*) pertaining to a lease, licence or tenancy of land, and Rules 2(2)(*k*)–(*l*) pertaining to the surrender of a lease, licence, or tenancy of land.

85 Hence, the *symmetry* and logic of Rule 2(2) of the Conveyancing Rules implies that monies payable pursuant to sale and purchase agreements under Rule 2(2)(*c*) are but a *subset* of the wider categories of *any monies* payable pursuant to sale and purchases of land more *generally* under Rules 2(2)(*a*)–(*c*). Rule 2(2)(*a*) is *another* subset under that wider category under Rules (2)(2)(*a*)–(*c*), but one ***specifically concerned with monies that account toward the purchase price***. With respect to Mr Maginthran's submission, sale and purchase agreements are already *specifically* covered by Rule 2(2)(*c*). If we were to accept the Respondent's interpretation that Rule 2(2)(*a*) was meant to cover *only* monies paid pursuant to a sale and purchase *agreement*, then Rule 2(2)(*a*) would be rendered entirely otiose by Rule 2(2)(*c*) or *vice versa*. It was amply clear to us that both Rules covered different situations, and that the present situation where the $100,000 would account toward the purchase price of the

Property would necessarily be "conveyancing money" for the purposes of Rule 2(2)(*a*).

The purposive interpretation of the Conveyancing Rules and the LP(SA)R

86 We now turn to the second step of statutory interpretation. As we had alluded to at the start of these grounds of decision, it is axiomatic that ethical rules must also be read in light of their object and purpose. As this court had observed in *Law Society of Singapore v Tan Phuay Khiang* [2007] 3 SLR(R) 477 at [100], "the spirit and intent…of the professional ethical rules…breathe life and legitimacy into the standards that are relevant in assessing whether a lawyer has discharged his professional obligations".

87 In our judgment, the overriding purpose of the LP(SA)R is to impose obligations upon solicitors in conveyancing transactions to keep safe the monies by way of adherence to the relevant Conveyancing Rules. In *Law Society of Singapore v Tay Eng Kwee Edwin* [2007] 4 SLR(R) 171 ("*Edwin Tay*") at [17], this court had emphasised that the primary purpose of the LP(SA)R was *preventive*, and was to "protect first and foremost the public against any unauthorised use of clients' money held by solicitors through carefully calibrated procedures and processes to ensure that the legal profession is properly policed and regulated in this singularly crucial aspect of its practice".

88 We were in full agreement with Mr Maniam that the legislative *raison d'être* of the Conveyancing Rules is to provide the public with the additional safeguard of requiring solicitors to hold conveyancing monies in conveyancing accounts as stakeholders. Such conveyancing accounts would in turn provide that very protection by requiring "two-party authorisation" before any funds could be disbursed from a conveyancing account (see also the High

Court's observations in *Public Prosecutor v Tan Cheng Yew and another appeal* [2013] 1 SLR 1095 at [135]).

89 In our view, this legislative intent can also be gleaned from the fact that Parliament had deemed a breach of Rule 4(1) of the Conveyancing Rules to also be an offence under Rule 4(3), which states as follows:

> (3) Any solicitor who contravenes paragraph (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 3 years, or to both.

The criminal liability imposed by Rule 4(3), which may attract punishments as severe as a term of imprisonment, therefore underscores the importance of the ***negative*** obligation on the Respondent under Rule 4(1) *not* to hold on to conveyancing monies except in the manner prescribed in the Conveyancing Rules. This also indirectly emphasises the ***positive*** obligation under Rule 5(1) for the Respondent to have placed such conveyancing monies into a *conveyancing* account.

Extraneous material in the form of Parliamentary statements on the Conveyancing Rules and the LP(SA)R

90 In *Kong Hoo* at [72] and *Tan Cheng Bock* at [47], the Court of Appeal also alluded to the fact that extraneous material could be referred to in confirming the ordinary meaning of the provision (taking into account its context and purpose). In this regard, it was appropriate to consider the observations made by the Minister for Law, Mr K Shanmugam, during the second reading of the Conveyancing (Miscellaneous Amendments) Bill (Bill 12 of 2011), with regard to the Conveyancing and Law of Property Act (Cap 61, 1994 Rev Ed) and the Act (*Singapore Parliamentary Debates, Official Report* (11 April 2011) vol 87):

> *New conveyancing accounts*
>
> Most of the changes will be detailed in the [Conveyancing] Rules. It will be useful for me to give a brief overview of the new regime to the House.
>
> At present, conveyancing money may be banked into law firm's client accounts. Withdrawal may be made with two authorised signatures from lawyers in the law firm.
>
> ***When the new Rules are in place, conveyancing money must be held in special accounts, termed "Conveyancing Accounts"***. …
>
> …
>
> Money to be withdrawn from a Conveyancing Account … would, in the majority of cases, require prescribed pay-out forms and two-party authorisation. ***Generally, the lawyer acting for the other party will serve as a check on the payment details and then counter-sign on the payment instructions***. …
>
> …
>
> *Scope of new measures*
>
> In order to ensure compliance with these measures, there will be a prohibition against lawyers receiving and holding conveyancing money other than in accordance with the new conveyancing rules. ***Breach of this prohibition will attract a criminal penalty, which could be a fine of $50,000, or imprisonment for up to three months*** [*sic*].
>
> …
>
> Sir, ***these measures have, as their object, the striking of a good balance between protecting the public***, on the one hand, and ensuring, on the other, the efficacy of commercial life.
>
> [emphasis added in bold italics]

91 In this third step of statutory interpretation, the foregoing Parliamentary statements confirmed that the only and ***unambiguous*** interpretation of the Conveyancing Rules and the LP(SA)R is that conveyancing money *includes* monies that are payable *prior* to the execution of a sale and purchase agreement and that a solicitor in receipt of such monies is regulated by those Rules. First, and most obviously, the stated legislative purpose is for the "protect[ion of] the

public" – which could only be done by placing such large sums within the safety of *conveyancing* accounts. This aim had to be balanced against commercial efficacy (which subject we will return to discuss in a moment).

92 Second, the ***principal*** statutory change enacted in 2011 was the creation of conveyancing accounts – which mandated two-*party* authorisation (generally by conveyancing solicitors in *different* firms) – as opposed to two-lawyer authorisation *within* the same firm. Rules 2(2), 4(1) and 5(1) of the Conveyancing Rules, and Rules 2(1) and 3(1A) of the LP(SA)R must therefore be read with the creation of *conveyancing* accounts in mind. That new device and its attendant features of increased security support a purposive approach to interpreting the Rules in a way that would *protect* the public's monies.

93 Third, and this point has already been underscored at [89] above, compliance with the Conveyancing Rules *to hold conveyancing money in the manner prescribed* was enhanced by the imposition of criminal penalties. The Disciplinary Tribunal in *The Law Society of Singapore v Troy Yeo Siew Chye* [2018] SGDT 4 at [146] (which decision this court had affirmed in *Law Society of Singapore v Yeo Siew Chye Troy* [2019] SGHC 115) had similarly observed that:

> Under the Conveyancing Rules, lawyers must receive and hold conveyancing money in a special conveyancing account opened with designated appointed banks, and not their normal client accounts. ***A breach of this rule is serious, and may result in criminal liability. The requirement of paying conveyancing money into conveyancing accounts protects such money as "there are measures in place to safeguard the withdrawal of conveyancing accounts from these accounts"***: Singapore Academy of Law (*Safeguarding Conveyancing Money Guidebook for Lawyers*, Ministry of Law [at para 11]) … [emphasis added in bold italics]

94 We turn to several arguments mounted by Mr Maginthran in the Respondent's bid to escape the overwhelmingly clear responsibility placed upon him by the relevant Rules. A repeated assertion made before the Tribunal and during these proceedings was that the potential loss of the conveyancing monies of $100,000 was suffered by the Complainant, who was not the Respondent's client. The Respondent argued that the protection conferred by the relevant Rules was for a solicitor's client, and not for the counterparty to a conveyancing transaction. The Respondent argued that his failure to secure the monies in his firm's conveyancing account, and subsequent disbursement of the $100,000 on his client's instructions was irrelevant as the Complainant was not his client, but was purportedly represented by MCP.

95 We did *not* accept this argument. To put it plainly, the protection of the Conveyancing Rules and the LP(SA)R is for the protection of the ***public*** and *not* simply for the client of a solicitor. The Respondent's interpretation would also *contradict* the entire legislative mechanism of two-*party* authorisation. It would mean that every counterparty (and his solicitor) in a conveyancing transaction could disburse the conveyancing monies to themselves, completely circumventing the protection conferred by the conveyancing account, with no consequences for a solicitor who had so acted. It has not escaped our notice that this was exactly what the Respondent and the Vendors had done in the present case with the sum of $100,000.

96 As for MCP's purported representation of the Complainant in this episode, MCP's possible lapses of its professional legal duties were not the subject matter of the present proceedings, and no further information on this issue was placed before us. In the circumstances, we proposed to say no more about this. It sufficed to state that failures by MCP in its professional legal duties (if any), would not absolve the Respondent of *his* breaches.

97 Returning to the point in relation to commercial efficacy which we had alluded to at [91] above, Mr Maginthran suggested that if conveyancing monies paid to a solicitor prior to the exercise of an option to purchase were subject to the Rules, this would be "illogical" and did not accord with "commercial realities and conveyancing practices". Mr Maginthran argued that this would prevent option fees from being forfeited when options to purchase were not exercised.

98 With great respect to Mr Maginthran, we found ourselves wholly unpersuaded by this submission. On the contrary, we were of the view that the Respondent's interpretation was a rigid and formalistic approach to interpretation, which led to an entirely commercially insensible result (as well as emptying the legislative mechanism of the Conveyancing Rules of its content) (see the Court of Appeal's observations in *MCH International Pte Ltd and others v YG Group Pte Ltd and others and other appeals* [2019] SGCA 68 at [38]).

99 We agreed with the Tribunal that the Respondent's approach (that conveyancing monies paid to a solicitor prior to an exercise of an option to purchase need not be placed in a conveyancing account and could be freely disbursed) was entirely unworkable (see [52]–[53] above). The Respondent's approach would cast conveyancing practitioners entirely adrift in a sea of uncertainty as to their professional and ethical obligations. If a lawyer were to receive conveyancing monies prior to the exercise of an option to purchase, he or she would be placed in an *invidious* position where he or she would not know whether to place it into a conveyancing or client account. He or she would also be at a loss as to whether he or she should disburse such sums on his or her client's instructions, or choose to contravene their instructions since the purchaser might yet exercise the option.

100 In any event, we were of the view that the Respondent's argument on this front was yet another red herring. According to the Respondent, the $100,000 was received as part of the Consideration Agreement, which meant that the Revised Option had been extended to 31 May 2017. Hence, when the Respondent failed to place the monies into his firm's conveyancing account, and disbursed it to the Vendors on 23 May 2017, this would necessarily have been *prior* to the expiry of the Revised Option. Even taking the Respondent's case at its highest, he could not logically claim that the $100,000 was forfeited option monies. This suggested to us that the Respondent's argument on this front was simply tactical and not based on any principle as such.

Knowledge that the $100,000 was conveyancing monies

101 The Respondent alleged that even if he had failed to place conveyancing monies into his firm's conveyancing account, he did not have the requisite knowledge as "he was of the bona fide belief that the $100,000 was in fact not conveyancing money and he certainly had reasonable grounds in law and on the facts for such a belief".

102 We did not agree. To begin with, this court in *Selena Chiong* at [22] had pointed out that "breaches of accounting rules made pursuant to the states governing the legal profession impose strict, ***if not absolute***, liability on solicitors" [emphasis added in bold italics].

103 Even if we were to countenance the Respondent's argument that the Conveyancing Rules imposed strict rather than *absolute* liability, it was not a defence to a strict liability provision to claim that he had a *bona fide* belief. Mr Maginthran relied on the High Court's decision in *Public Prosecutor v Yong*

Heng Yew [1996] 3 SLR(R) 22 ("*Yong Heng Yew*"), but the case did not assist him at all. In *Yong Heng Yew* at [13], the High Court observed that:

> ...The phrase [strict liability] does not refer to an offence where no mental element exists at all: rather, it refers to an offence where no blameworthy mental element need be shown. In *Gammon (Hong Kong) Ltd v Attorney-General of Hong Kong* ([9] *supra*), for example, the builders were charged with an offence of deviating in a material way from works shown in a plan approved by building authorities. The Privy Council ruled that this offence did contain an element of *mens rea* in that the builders had to know of the approved plan and the fact of deviation. ***Beyond this, however, no element of fault or blame was required, in that no knowledge was required as to the materiality of the deviation; and the offence was, accordingly, treated as one of strict liability. In the present case, too, once the act of throwing down the cigarette butt was shown to be a deliberate one, the Prosecution did not need to go one to show the presence of some blameworthy state of mind***. [emphasis added in bold italics]

104 There is no dispute that the Respondent had not only deliberately failed to place the $100,000 of conveyancing monies into a conveyancing account, he had also deliberately placed it instead into his firm's client account and disbursed it. In the circumstances, *even if* the Conveyancing Rules imposed strict rather than absolute liability, the Respondent's actions were sufficient to amount to a breach.

105 As for the submission that he had a *bona fide* belief, we find the High Court's decision in *Public Prosecutor v Jurong Country Club and another appeal* [2019] SGHC 150 ("*Jurong Country Club*") to be instructive. In that case, the court considered whether s 58(*b*) of the Central Provident Fund Act (Cap 36, 2013 Rev Ed) ("the CPFA") imposed strict liability. Having considered at [100] that the offence under s 58(*b*) of the CPFA was one of strict liability, the High Court went on state at [101] and [103] as follows:

> 101 … The imposition of strict liability would signal to employers that ***their honest belief is insufficient to avoid liability under section 58(b) CPFA. Rather, what is necessary is the exercise of reasonable care***. The CPFA places the responsibility for ensuring that contributions are made on employers (s 7(1) CPFA), and employers are best placed to ensure that they comply with the law: see *Chua Hock Soon James* at [166]. As in *Chua Hock Soon James*, ***employers can do so by seeking legal advice and by utilising sound guidelines in classifying its employees***. In my view, these are not unduly onerous expectations.
>
> …
>
> 103 In any event, any steps taken by an employer evincing reasonable care would nevertheless be relevant. As parties acknowledged, ***strict liability is distinguishable from absolute liability in so far as there is a defence of reasonable care. Steps taken such as the seeking of legal advice and/or guidance from a lawyer***, MOM or the CPF Board would certainly go some way towards showing reasonable care …
>
> [emphasis added in bold italics]

106 The observations in *Jurong Country Club* made clear that mere *bona fide* belief is insufficient to evade liability under a strict liability provision. As Mr Maniam rightly pointed out, if the Respondent's submission were accepted, this would perversely mean that it would be in a solicitor's interest to deliberately refrain from familiarising himself with the relevant professional conduct rules so as to provide himself a shield or immunity against liability.

107 Furthermore, even on the assumption that the Conveyancing Rules imposed strict rather than absolute liability, it was obvious the Respondent had not taken any steps evincing reasonable care. Even accepting Mr Senthil's evidence on behalf of the Respondent, a copy of the Initial Option was provided to the Respondent on 19 May 2017, which had *originally* stated that money was to be placed in his firm's *conveyancing* account (see [18] above). By this time, the Respondent must also have had sight of the Revised Option, which stated the money was now to be placed in his firm's client account. All of this was

before the Complainant provided the cheque for $100,000 on 22 May 2017. However, no steps were taken by the Respondent to verify which of the two accounts was proper in the circumstances.

108 The undisputed evidence was also that the Respondent had immediately cashed the Complainant's cheque for $100,000 into his firm's client account and then disbursed it directly to the Vendors. As we pointed out at [100], when he breached his obligations, the Respondent could not logically have known that the Option would not be exercised. As such, it did not lie in the Respondent's mouth to claim he could have known that the $100,000 would not form part of the purchase price. Hence, it is clear that the Respondent's state of knowledge at the material time was not even one of misinterpretation of the law, much less one of *bona fide* belief. In any event, the existence of either state of knowledge was insufficient to evade strict liability and would at best go toward his culpability for the purposes of cause being shown or the sanctions to be imposed.

109 In fact, it seemed to us that when the Respondent transferred the conveyancing money into his firm's client account and paid it out to the Vendors, he had done so either in blatant disregard, or at least in blatant ignorance, of his legal professional obligations. In this regard, this court has observed in *Selena Chiong* at [25] that "[t]o say that [a solicitor] was unaware that the [LP(SA)R] applied is hardly an excuse. ***All solicitors ought to be familiar with the rules made under [the Act] and will at any rate be deemed to be aware of their existence and applicability***" [emphasis added in bold italics]. In the circumstances, we were amply satisfied that the Respondent had materially breached Rules 4(1) and 5(1) of the Conveyancing Rules, and had consequently breached Rule 3(1A) of the LP(SA)R.

Cause of sufficient gravity shown

110 We rejected the Respondent's submission that his breach was of insufficient gravity to found due cause under s 83(1) of the Legal Profession Act. In our view, the totality of the circumstances, and the Respondent's conduct, were sufficiently serious so as to warrant the imposition of sanctions (see this court's observations in *Law Society of Singapore v Chan Chun Hwee Allan* [2018] 4 SLR 859 ("*Allan Chan*") at [35]).

111 The main charge proceeded upon by the Law Society was one under s 83(2)(*b*) of the Legal Profession Act for improper practice. We are satisfied that due cause has been shown. In *Selena Chiong* at [20], this court had observed quite categorically that "[a]ny breach of the Solicitors' Accounts Rules will be deemed to warrant disciplinary attention". In our view, the present case fell further along the spectrum of seriousness of breaches and could not be said to be merely technical. This was not some momentary lapse by the Respondent, which, upon having been informed by the Complainant's solicitors, he had then swiftly put right. On the contrary, the Respondent had ignored the request to place the monies into the conveyancing account and continued to insist that the remaining sum of $422,000 be transferred to his clients – all this while the sums had already been disbursed to the Vendors. Nor could the breach be said to be trivial as the Respondent's breach had caused the Complainant a potential loss of $100,000, which was a significant sum.

112 We were also satisfied that due cause would have been shown on the alternative charge under s 83(2)(*h*) of the Legal Profession Act for misconduct unbefitting of an advocate and solicitor. In *Law Society of Singapore v Wong Sin Yee* [2018] 5 SLR 1261, this court had observed at [24] that the test was whether "reasonable people, on hearing what the solicitor had done, would have

said without hesitation that as a solicitor he should not have done it". In our judgment, any reasonable person would agree that the Respondent's breach of the Conveyancing Rules brought discredit to lawyers. The whole purpose of the Conveyancing Rules is to preserve safety and security in conveyancing transactions, which is precisely why the public entrusts the process to lawyers in the first place.

The sanction to be imposed on the Respondent

The conduct of the Disciplinary Tribunal's hearing and its impact on sanctions

113 As a preliminary matter, we should highlight some aspects of the conduct of the hearing before the Tribunal, which we hope will provide guidance to future disciplinary tribunals and counsel acting on the Law Society's behalf.

114 There were several aspects of this case, which suggested that the Respondent's culpability was *higher* than what was otherwise assumed. For instance, the Tribunal and Mr Maniam suggested that the Consideration Agreement was an "afterthought" (see the DT Report at [54]). We must stress that those observations were made with regard to *liability* and the Law Society was not relying on this submission with regard to the appropriate sanctions. Nevertheless, *if* it had indeed been established that the Respondent had manufactured defences by way of afterthoughts, this might have constituted a relevant aggravating factor in so far as the imposition of sanctions was concerned. In the event, the Tribunal and the parties had opted not to call further evidence to test the existence of the alleged Consideration Agreement (see [20] above).

115 Moreover, as we had observed at [7] above, there were several discrepancies in the factual evidence adduced. It was not clear when the Respondent had begun acting for the Vendors in this transaction (see [10] above), whether the Respondent had drafted the Initial Option for which monies were originally stated to have been payable to the conveyancing account (see [13] above), and whether the Respondent had *amended* the Initial Option to state that the monies should be made payable instead to his firm's client account (see [14] above). All of these facts might have had a bearing on the degree of knowledge the Respondent possessed and thereby on the appropriate calibration of the sanctions imposed.

116 In *Law Society of Singapore v Wan Hui Hong James* [2013] 3 SLR 221 ("*James Wan*") at [49]–[51], this court had observed that disciplinary proceedings against an advocate and solicitor were akin to criminal proceedings, particularly where the allegations were of a serious nature. In *Law Society of Singapore v Ahmad Khalis bin Abdul Ghani* [2006] 4 SLR(R) 308 ("*Ahmad Khalis*") at [6], this court had also considered that the moral censure and professional disapprobation cast upon the solicitor would impact adversely upon his reputation as well as his livelihood, and as a result a criminal standard of proof consisting of a finding beyond a reasonable doubt must be adhered to for the purposes of finding liability in such disciplinary proceedings.

117 In our judgment, that standard of proof suggests there must also be a secure sub-stratum of fact upon which sanctions must be grounded. As a result of the Tribunal and the parties' agreement, we were prepared to proceed in the Respondent's favour on the assumption that the Disbursement and Consideration Agreements did exist for the purposes of both liability (as to which, see [58] above) and *sanctions*. We were also prepared to resolve the various factual incongruities in the evidence as to the Respondent's state of

knowledge for the purposes of liability and *sanctions*. The Respondent could therefore not have been said to have been prejudiced in any way. We would nevertheless stress that in future contested cases, where disciplinary tribunals and counsel acting for the Law Society foresee that an application under s 98 of the Act may be made for this court to impose sanctions upon a solicitor, the relevant facts impacting upon the issue of sanctions must be firmly established by way of concrete and relevant evidence.

The aggravating and mitigating factors

118 The Law Society submitted that the following four factors were relevant to the appropriate sanction:

(a) The Respondent had continued to argue, late into the proceedings, that his actions were justified. The protection of the public required a deterrent sanction against a solicitor who exhibited no remorse despite strong objective evidence to the contrary;

(b) The Respondent's breach had caused financial loss to a member of the public (presumably, Mr Lim). The Respondent had disbursed the sum of $100,000 to the Vendors who had been undergoing bankruptcy proceedings. To date, the Complainant had not been able to retrieve any amount of this lost sum;

(c) The Respondent had a prior antecedent. In *Law Society of Singapore v Dhanwant Singh* [1996] 1 SLR(R) 1 ("*Dhanwant Singh*"), the Respondent had been struck off the roll of advocates and solicitors previously for intentionally abetting his clients in producing false medical certificates to a court in order to delay criminal proceedings. In

his written submissions, Mr Maniam also alluded to the fact that there were two ongoing complaints against the Respondent; and

(d) The Respondent was a senior lawyer who had first entered practice in 1986. The more senior the lawyer, the more damage his breach would cause to the integrity and standing of the legal profession as a whole.

119 In his oral submissions, Mr Maniam conceded that the facts did not show dishonesty on the part of the Respondent. Mr Maniam also accepted that it did not appear that there was a pattern of systematic breaches of the Conveyancing Rules by the Respondent. Taking into account the totality of the circumstances, Mr Maniam suggested that a heavy fine would be an appropriate sanction.

120 The Respondent, on the other hand, submitted that he should simply be reprimanded and fined $15,000.

The Respondent's lack of remorse

121 We note that on 31 May 2017, after MCP and EPLC contacted the Respondent reminding him of his obligation to place the monies into the conveyancing account, the Respondent continued to refute the need to fulfil his obligations. On 2 June 2017, when EPLC pointed out that the Vendors had ongoing bankruptcy applications, the Respondent flippantly replied "whatever" (see [28(a)] above). On 13 June 2017, the Respondent also replied to EPLC belligerently stating, "that's all and that's it" (see [28(d)] above).

122 We agreed with Mr Maniam that the Respondent had continued to vigorously challenge his liability in these disciplinary proceedings right up to the hearing before us. With great respect to Mr Maginthran's efforts, the

defence run by the Respondent was not one that could reasonably have been pressed in light of the operation of the Conveyancing Rules and the LP(SA)R that the Law Society had already clearly spelt out.

123 We should note that the Respondent's conduct was not, strictly speaking, an aggravating factor, but rather was the *lack* of a mitigating factor. In other words, unlike solicitors in other cases who had pleaded guilty and in that way evidenced remorse and saved resources, there was no mitigating weight to be attributed to the Respondent's conduct in these proceedings (see the High Court's observations in *Angliss Singapore Pte Ltd v Public Prosecutor* [2006] 4 SLR(R) 653 at [77]; see also *Allan Chan* at [42]).

The potential loss caused to the Complainant

124 We hesitated to accept the Law Society's submission that the Respondent's conduct had caused the Complainant to lose $100,000. Although the Vendors have since been adjudged bankrupts, as Mr Maniam informed us, proofs of debt had been filed by the Complainant against the Vendors. It was therefore not entirely clear whether the Complainant would eventually recover such monies, and also whether the Complainant was entitled to recover such monies (which would be the subject of other civil proceedings). At best, what could be said was not that the Respondent had caused the Complainant *the definite* loss of $100,000, but that the Respondent had caused the Complainant to lose a *potential* method of recovery (via the safekeeping in the conveyancing account) if the Complainant should eventually turn out to be so entitled to recover the $100,000.

125 This is not to say that the breach by the Respondent is made less egregious. It must be recalled that the Conveyancing Rules and the LP(SA)R

were developed to protect members of the public who conduct conveyancing transactions using solicitors via this very mechanism – the conveyancing account. Hence, until disputes between the transacting parties are resolved by adjudication, the monies would be safe kept in the conveyancing account with the solicitors acting as stakeholders. In this case, the Respondent's action had caused those precise adverse consequences to the Complainant that the Conveyancing Rules were in fact designed to prevent.

126 In our view, the fact that the Respondent had to date failed to make good on his breach by restoring the monies into the conveyancing account pending the resolution of civil proceedings meant that no restitution had been undertaken (see generally *Gan Chai Bee Anne v Public Prosecutor* [2019] 4 SLR 838 at [62]). This, too, meant there was the absence of another possible mitigating factor.

The Respondent's antecedent and the ongoing complaints against him

127 With respect, we did not accept Mr Maniam's submission that the Respondent's antecedent was a relevant aggravating factor. The Respondent's antecedent in *Dhanwant Singh*, though egregious, were breaches committed in 1989 and 1990, and the Respondent was struck off the roll of advocates and solicitors in 1995. As the High Court noted in *Public Prosecutor v NF* [2006] 4 SLR(R) 849 at [72]:

> The rationale for according weight to the length of time that an offender has stayed cleaned is two-fold. First, "isolated convictions in the long distant past" should not, as a matter of logic, be considered evidence of irretrievably bad character. They might simply be indicative of an occasional lapse of judgment. Secondly, the nature of the lapse being scrutinised is crucial. A substantial gap between one conviction and another may be testament to a genuine effort to amend wanton ways which may even lead a court to consider the possibility of rehabilitation: see also D A Thomas ([68] *supra*) at pp 200–202.

128 In our view, these observations in the context of criminal sentencing apply equally to the meting out of sanctions against solicitors in disciplinary proceedings. In this regard, the Respondent's antecedent was very dated and could not at all be said to be a material aggravating factor.

129 In so far as the ongoing complaints were concerned, in his oral submissions, Mr Maniam suggested that they were not "hugely relevant". Mr Maniam stated that he had raised these ongoing complaints in accordance with this court's exhortations in *Edwin Tay* at [29] and *Law Society of Singapore v Ng Bock Hoh Dixon* [2012] 1 SLR 348 at [38] to draw the court's attention to *concluded* or *pending* disciplinary proceedings that a solicitor had faced, or was currently facing. While we appreciated the effort made by Mr Maniam to place such facts before the court, we should stress that the fact of *pending* proceedings was only relevant for administrative purposes. As the High Court has noted in *Public Prosecutor v Low Ji Qing* [2019] SGHC 174 at [42] in the context of criminal sentencing, it is another matter for a prosecuting authority to rely on pending proceedings for the purposes of sentencing as the subject has yet to be convicted of those fresh charges.

130 We also note that the Law Society had filed an affidavit, suggesting that it was raising the pending proceedings in response to the Respondent's claim that he had "not been subject [to] any similar [*sic*] or antecedents since then until the complaint in 2019". This implied that the Law Society was raising the pending proceedings as a "shield" against the Respondent's assertions, rather than a "sword" to submit for a harsher sanction. In any event, should the Respondent be found liable for the breaches alleged in those pending complaints, a future court may be entitled to utilise a pattern of breaches as an aggravating factor to be taken into account in calibrating the appropriate sanctions to be meted out in *that* future case.

The Respondent's standing as a senior member of the Bar

131 We agreed with Mr Maniam that the fact that the Respondent was a senior lawyer, having started practice in 1986, was an aggravating factor. In our judgment, the harm to the public confidence in the integrity and reliability of the legal profession is correspondingly higher given the seniority of the lawyer in question (see this court's observations in *Law Society of Singapore v Nathan Edmund* [1998] 2 SLR(R) 905 at [33]). In our view, such harm is occasioned because the greater the seniority a member of the Bar possesses, the greater is the expectation that their experience and accumulated wisdom would weigh in favour of *adherence* to the relevant professional legal and ethical standards. Hence, a breach by a senior member of the Bar causes greater damage to the integrity of the profession, and to the public's perception of the profession.

132 In his oral submissions, Mr Maginthran suggested that despite his seniority, the Respondent was primarily a criminal practitioner. He claimed that since the Respondent had occasionally made forays into the conveyancing arena, his breach in this instance should be afforded mitigating weight. With respect, we could not see the basis for this submission. The Respondent's ignorance in relation to the relevant professional rules could not be said to excuse his conduct in any way. And as we pointed out to Mr Maginthran during the hearing, if the Respondent was dabbling in an area of legal practice he was unfamiliar with, there was all the more the need for him to have apprised himself of the relevant professional standards.

The appropriate sanction to be imposed

133 Given the foregoing relevant factors, we accepted Mr Maniam's submission that a heavy fine was appropriate in all the circumstances.

134 In this regard, Mr Maniam referred us to two cases to determine the appropriate quantum of the fine. In *Law Society of Singapore v Andre Ravindran Saravanapavan Arul* [2011] 4 SLR 1184 ("*Andre Arul*"), the solicitor had overcharged his client by $150,735.77. Taking into account the mitigating factors, which consisted of the fact that the solicitor in question had undertaken to refund excess fees, accepted the charges against him unequivocally, and apologised unreservedly to his client, this court had meted out a fine of $50,000 (see *Andre Arul* at [17], [18] and [43]).

135 In *Law Society of Singapore v Tay Choon Leng John* [2012] 3 SLR 150 ("*John Tay*"), the solicitor in question had erroneously deposited two sums of $2,000 and $3,000 into an office account instead of his firm's client account. This court noted that the Respondent had resisted the charges out of a *bona fide* conviction that he had reached an understanding with his client as to the fees, and also noted the small amounts of the sums involved. Accordingly, a relatively light fine of $15,000 was imposed (see *John Tay* at [63]).

136 Mr Maniam took reference from the amounts involved in the breaches of $150,735.77 in *Andre Arul* and $5,000 in *John Tay*. He submitted that the amount involved in the present case was $100,000, which was in between the sums involved in the breaches in *Andre Arul* and *John Tay*. As such, a minimum fine of $35,000 was appropriate here as it was also in between the quantum of the fines meted out in those cases.

137 In our judgment, this was not quite the appropriate approach to take in meting out sanctions. In *Mohd Akebal s/o Ghulam Jilani v Public Prosecutor and another appeal* [2019] SGCA 81, the Court of Appeal observed at [20(b)] that sentencing guidelines were not meant to yield mathematically perfect points for a sentencing court to arrive at. We are similarly of the view that, in the

context of disciplinary proceedings, Mr Maniam's approach to the precedents was overly arithmetical, and with respect, too divorced from the *specific facts* of the case.

138 In our view, reference must be made to the relevant mitigating and aggravating factors. Unlike the solicitor in *Andre Arul*, the Respondent had not accepted his liability on the charges levelled against him, nor had he undertaken some form of restitution (thus evincing his remorse), and he therefore did not have the benefit of those particular mitigating factors. The Respondent was also unlike the solicitor in *John Tay*, as even assuming the existence of the Disbursement and Consideration Agreements, we were not persuaded that he had a *bona fide* belief that the monies were not covered by the Conveyancing Rules (see [107] above). Given also the aggravating factors of the potential loss caused to the Complainant and the fact that the Respondent was a senior member of the Bar, we were of the view that a heavy fine of $50,000 was appropriate.

Conclusion

139 The Respondent has committed serious breaches of the Conveyancing Rules and the LP(SA)R and of his attendant obligations as an advocate and solicitor. As we had stressed at the outset of these grounds of decision, the Respondent could not escape these obligations by seeking to interpret them in a technical way. There was a particular purpose to the relevant Rules, which consisted in the protection of the public. The fact that monies are entrusted to lawyers is a *great privilege* enjoyed by the legal profession, and that privilege comes with corresponding *responsibilities*.

140 In the circumstances, we affirmed the Tribunal's finding that due cause had been shown. We also imposed a fine of $50,000 and further ordered the Respondent to pay the Law Society's costs of $10,000. We also ordered the Respondent to settle the Law Society's reasonable disbursements within seven days of being presented with the relevant particulars.

Sundaresh Menon Chief Justice	Andrew Phang Boon Leong Judge of Appeal	Steven Chong Judge of Appeal

Adam Muneer Yusoff Maniam, Sam Yi Ting, Toh Ming Min, Chia Jun Jie and Charmaine Yap Yun Ning (Drew & Napier LLC) for the applicant;
S Magintharan, B Uthayachanran, James Liew Boon Kwee and Benedict Tan Yixun (Essex LLC) for the respondent.