

Law Society of Singapore v Caines Colin
[2004] SGHC 250

Case Number : OS 959/2004, NM 63/2004
Decision Date : 08 November 2004
Tribunal/Court : High Court
Coram : Chao Hick Tin JA; Tay Yong Kwang J; Yong Pung How CJ
Counsel Name(s) : Leslie Phua Oei Heong (Phua Wai Partnership) for applicant; Respondent absent
Parties : Law Society of Singapore — Caines Colin

Legal Profession – Show cause action – Advocate and solicitor convicted on four charges of criminal breach of trust – Whether show cause order should be made absolute – Appropriate order to be made – Section 83 Legal Profession Act (Cap 161, 2001 Rev Ed)

8 November 2004

Yong Pung How CJ (delivering the judgment of the court):

1 This was an application by the Law Society of Singapore (“the Law Society”) to make absolute an order to show cause under s 98(5) of the Legal Profession Act (Cap 161, 2001 Rev Ed) (“the LPA”). The respondent, Colin Caines, did not attend the hearing. After hearing counsel for the Law Society, we granted the application and ordered the respondent to be struck off the roll of advocates and solicitors. We now give our reasons.

Facts

2 The facts of this case were undisputed. The respondent was an advocate and solicitor of the Supreme Court of Singapore. At all material times, he was practising as a sole proprietor in the firm M/s Khosa & Caines (“the firm”).

3 On 6 June 2002, the Commercial Affairs Department received a complaint against the respondent from one of his clients, Diana Chan Sun Sun (“Diana Chan”), alleging that he had misappropriated moneys entrusted to him as a stakeholder. Subsequent investigations revealed that the respondent had made a number of unauthorised withdrawals from the firm’s clients’ account. The account was finally closed on 31 December 2001 with a nil balance, and no restitution was made to any of the respondent’s clients.

4 On 2 September 2002, the respondent pleaded guilty and was convicted on four charges of criminal breach of trust under s 409 of the Penal Code (Cap 224, 1985 Rev Ed). The facts relating to each of the four charges are briefly set out below.

The first charge (DAC 30465/02)

5 The respondent acted for Diana Chan and Richard Kong Guan Huat in the sale of their matrimonial property. He was appointed as stakeholder of the sale proceeds pending a decision from the court as to the division of the moneys. On or about 4 July 2001, the respondent received a \$2,000 deposit from the purchaser. A further \$180,410.51 was received on 29 September 2001, and the total sum of \$182,410.51 was deposited into the firm’s clients’ account. However, instead of retaining the money on behalf of his clients, the respondent dishonestly misappropriated it to his own use.

The third charge (DAC 34120/02)

6 The respondent was engaged by Lim Wong Choong ("Lim") to represent him in a third party claim for damages from NTUC Income Insurance Cooperative Limited ("NTUC") after Lim's vehicle was involved in an accident. On or about 29 August 2001, NTUC paid the respondent \$8,200 as settlement for Lim's claim. The money was deposited into the firm's clients' account, but was later withdrawn by the respondent to pay for his personal debts and expenses.

The fifth charge (DAC 34122/02)

7 The respondent also represented Yeo Soh Choo ("Yeo") in her third party claim for damages arising from a traffic accident. The insurance company, India International Insurance Pte Ltd, paid the respondent \$4,500 as partial settlement of Yeo's claim on or about 11 April 2001. On 16 June 2001, a further \$440 was received. The total sum of \$4,940 was also misappropriated by the respondent.

The eleventh charge (DAC 34128/02)

8 The respondent acted for Fortunecom, which was sued by Nokia Corporation and Nokia Mobile Phones Ltd (collectively referred to as "Nokia") over their unauthorised use of the "Nokia" trademark. Fortunecom agreed to pay \$4,000 to Nokia to settle the legal proceedings, and the respondent persuaded Fortunecom's representative to make the payment in cash. On or about 19 July 2001, Fortunecom entrusted the respondent with \$4,000 cash. Instead of paying the money over to Nokia, the respondent kept the money for himself.

9 All in all, the respondent dishonestly misappropriated at least \$199,550.51 of his clients' moneys. Seven other charges were also taken into consideration for sentencing purposes. In mitigation before the district judge, the respondent highlighted his contributions to the Law Society, his remorse by pleading guilty at the first available opportunity and his medical history. Balancing these factors with the seriousness of the offences, the substantial amounts of money involved and the respondent's failure to make restitution, the district judge sentenced him to three years' imprisonment on the first charge and 12 months' imprisonment on each of the remaining charges. The sentences for the first and third charges were ordered to run consecutively, bringing his total sentence to four years' imprisonment.

The show cause proceedings

10 As the respondent was convicted of offences involving fraud and dishonesty, the Law Society was obliged under s 94A of the LPA to make an application for him to show cause as to why he should not be dealt with under s 83(1). The Law Society argued that due cause had been shown under s 83(2)(a) of the LPA, which provides that:

Such due cause may be shown by proof that an advocate and solicitor has been convicted of a criminal offence, implying a defect of character which makes him unfit for his profession.

11 Section 83(6) of the LPA clearly states that this court must accept the respondent's conviction as final and conclusive. It was thus not open to either the respondent or this court to go behind his convictions: *Re Mohamed Jiffry Muljee* [1994] 3 SLR 520; *Law Society of Singapore v Narmal Singh* [1996] 2 SLR 184.

12 Of course, it does not follow that every conviction of a criminal offence implies a defect of character that renders an advocate and solicitor unfit for his profession: *Law Society of Singapore v*

Wong Sin Yee [2003] 3 SLR 209. The nature of the offence, and the circumstances in which it was committed, must be scrutinised. Nonetheless, the facts of the present case were straightforward. The respondent had deliberately betrayed the trust of his clients and misappropriated their money for his personal use. Given that the offences involved dishonesty committed in his capacity as an advocate and solicitor, that was sufficient in itself to demonstrate that due cause had been shown: *Law Society of Singapore v Loh Wai Mun Daniel* [2004] 2 SLR 261.

Appropriate order to be made

13 We then turned to consider the appropriate order to be made under s 83(1) of the LPA, which reads:

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.

14 The respondent was not present to make submissions on any mitigating factors. In any case, we found that any mitigating factors, even if present, would have been of little avail. Where a solicitor has been convicted of a criminal offence, the court has almost invariably, no matter how strong the mitigating factors, chosen to strike the offending solicitor off the roll: *Law Society of Singapore v Loh Wai Mun Daniel*, following *Law Society of Singapore v Ravindra Samuel* [1996] 1 SLR 696.

15 While the mitigating factors raised by the respondent before the district judge may have been relevant to the criminal proceedings, they did not carry the same weight in this disciplinary action. While criminal proceedings are essentially punitive in nature, disciplinary action under s 83 of the LPA serves a variety of functions. Besides punishment of the errant solicitor, disciplinary action is also aimed at deterring other like-minded solicitors from similar defaults and ensuring the protection of public confidence in the administration of justice: *Law Society of Singapore v Tham Yu Xian Rick* [1999] 4 SLR 168. In a case where an advocate and solicitor has been convicted of a criminal offence involving dishonesty, the paramount considerations must be the protection of the public and the preservation of the good name of the profession: *Law Society of Singapore v Ezekiel Caleb Charles James* [2004] 2 SLR 256, following *Law Society of Singapore v Wee Wei Fen* [2000] 1 SLR 234.

16 These considerations weighed heavily in our minds in the present case. Solicitors are frequently entrusted with large amounts of money as part of their professional obligations, and members of the public must have confidence in the integrity of the solicitors in whom they repose so much of their trust. This confidence has been shaken by the recent spate of incidents involving errant solicitors who, blinded by avarice and desperation, have completely disregarded their professional obligations and chosen to steal from the very people whose interests they are meant to protect. Given the worrying prevalence of such deplorable conduct, we found it necessary to send a strong message that such misbehaviour would not be tolerated. As L P Thean JA opined in *Re Nirmal Singh s/o Fauja Singh* [2001] 3 SLR 608 at [20]:

The court must be every bit as jealous of the honour of those admitted to the Singapore legal profession as a man is of his own reputation, for the integrity of the profession is dependant wholly on the character and virtue of its members. At the same time, we must be conscious of the ever-compelling need to protect the public from errant lawyers and the serious harm which such lawyers could inflict on the public and the reputation of the legal profession.

17 The respondent's conduct in the present case warranted nothing less than a striking-off

order. The amounts he misappropriated were substantial and could hardly be dismissed as isolated incidents. He was convicted of four charges, and no less than seven other charges were taken into consideration for sentencing. He had obviously embarked on a deliberate and dishonest scheme to defraud his clients and, to this day, has failed to make restitution to any one of them. The practice of law is an honourable profession that demands the highest degree of integrity and trustworthiness from its members. The respondent's appalling conduct demonstrated that he was entirely unfit to remain on the roll of advocates and solicitors. In our opinion, the only appropriate order was one of striking the respondent off the roll of advocates and solicitors.

Conclusion

18 In the event, we made absolute the order to show cause and ordered the respondent to be struck off the roll. We further ordered that he should bear the costs of these proceedings.

Order accordingly.

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