

IN THE COURT OF THREE JUDGES OF THE REPUBLIC OF SINGAPORE

[2022] SGHC 182

Originating Summons No 6 of 2021

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 Mohammed Lutfi bin Hussin, an Advocate
and Solicitor of the Supreme Court of the Republic of
Singapore

Between

Law Society of Singapore

... Applicant

And

Mohammed Lutfi bin Hussin

... Respondent

JUDGMENT

[Legal Profession — Professional conduct — Grossly improper conduct]

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Law Society of Singapore
v
Mohammed Lutfi bin Hussin

[2022] SGHC 182

Court of Three Judges — Originating Summons No 6 of 2021
Andrew Phang Boon Leong JCA, Judith Prakash JCA and Steven Chong JCA
13 April 2022

29 July 2022

Judgment reserved.

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

Introduction

1 There is a reason why a lawyer is considered a trained *professional* – he or she is not only trained in the law but also applies that learning in service of his or her clients. The responsibility is a weighty one indeed and is characterised by the responsible discharge of his or her duties to both the client and to the court. This, in turn, entails the exercise of, amongst other things, the values of honour, integrity and honesty. Diligence is also an obvious trait.

2 Unfortunately, in the present case, the lawyer concerned demonstrated the very *antithesis* of the aforementioned values. As we shall see, he attested to the client signing an important document without ever meeting the client concerned. The fact that this was effected in a conveyancing context merely underscored the total absence of responsibility on his part. Indeed, the system

of conveyancing he set up in Lutfi Law Corporation (the “Law Firm”) was – at best – a “non-system” where large swathes of authority were delegated to his (non-legally trained) secretary, and in which he would only meet clients if it was thought necessary. Such a “system” was, to put it mildly, an accident waiting to happen. The lawyer himself lacked insight into the shoddiness, laziness and total absence of professionalism that all this entailed. His counsel, Mr George Pereira (“Mr Pereira”), did not assist him by misguidedly emphasising this lack of insight as a mitigating factor in the affidavit of evidence-in-chief that was filed in the proceedings below.

3 The present proceedings relate only to the sanction which is to be imposed on the lawyer concerned. Had it not been for the fact that prior precedents and the alternative submissions of the Law Society of Singapore (the “Law Society”) suggested a more lenient sentence, as well as the fact that there was insufficient proof that there were other instances of false attestation or that he never met his clients on all other occasions (these being points which fell outside the remit of the charges as framed by the Law Society), we would have been minded to have imposed a more severe sentence (perhaps even to the extent of striking him off the Roll of Advocates and Solicitors). Certainly, any lawyer who conducts himself or herself hereafter in a similar manner would risk an even more severe sanction than that imposed here. The lawyer in the present case can count himself extremely fortunate not to have been given a more severe sentence. Let us now turn to the background to the present proceedings.

Background facts

4 Mr Mohammed Lutfi bin Hussin (the “Respondent”) was admitted to the Roll of Advocates and Solicitors of the Supreme Court of the Republic of

Singapore on 8 March 1995. He incorporated the Law Firm in 2005, by which time the bulk of his work was in conveyancing.

5 Sometime in 2014, a property agent introduced Mohammad Naseeruddin bin Allamdin (“Naseeruddin”), a prospective buyer of a property (the “Property”), to a conveyancing secretary of the Law Firm, Ms Fauziah binte Mohd Hussain, also known as Angela Veronica (“Angela”). Naseeruddin engaged the Respondent to act for him in the conveyancing transaction. At the material time, the Respondent was the sole director of the Law Firm.

6 The conveyancing documents for the purchase of the Property included a transfer instrument in the form prescribed under s 51 of the Land Titles Act (Cap 157, 2004 Rev Ed) (“LTA”) (the “Transfer Instrument”), which named Naseeruddin as the transferee, and two other persons as the transferors. As Naseeruddin took out a loan of S\$2,320,000.00 (the “Loan”) from Malayan Banking Berhad (“Maybank”) to finance the transaction, the conveyancing documents also included a mortgage instrument in the form prescribed under s 51 of the LTA (the “Mortgage Instrument”), which named Naseeruddin as the mortgagor and Maybank as the mortgagee.

7 It was undisputed that the Respondent never met Naseeruddin throughout the entire conveyancing transaction. Angela was the only one who met with Naseeruddin in relation to the purchase of the Property. It was also Angela who prepared the Mortgage Instrument and arranged for Naseeruddin to sign it. She also prepared all of the documents relating to the conveyance of the Property, including the Transfer Instrument, and placed them on the Respondent’s desk for his signature.

8 When the Mortgage Instrument was executed by Naseeruddin, the Respondent did not personally witness Naseeruddin signing it as he was not present. On or about 22 April 2014, the Respondent, in his capacity as an advocate and solicitor, signed as a witness to Naseeruddin’s signature, and thereafter signed the Certificate of Correctness on the Mortgage Instrument certifying that it was correct for the purposes of the LTA. It is an agreed fact that in so doing, the Respondent falsely represented that he had witnessed Naseeruddin signing on the Mortgage Instrument.

9 On or about 22 April 2014, the Respondent signed the Certificate of Correctness to the Transfer Instrument in his capacity as Naseeruddin’s solicitor. In so doing, the Respondent represented that Naseeruddin had accepted proprietorship and was of full age and legal capacity. However, before signing the Certificate of Correctness, the Respondent did not meet with Naseeruddin personally, and did not personally check with Naseeruddin whether he was of full age or lacked legal capacity. The Respondent did not ask Naseeruddin whether he accepted proprietorship of the Property.

10 After Naseeruddin defaulted on his mortgage, it was discovered that he had perpetrated fraud on Maybank by submitting forged income documents when applying for the Loan. The fraud became the subject of an investigation conducted by the Commercial Affairs Department (“CAD”), which uncovered the fact that the Respondent had not been present to witness Naseeruddin signing the Mortgage Instrument. It bears mentioning, however, that the Law Society accepted there was no evidence that the Respondent’s false attestation was causally connected to the fraud which Naseeruddin had perpetrated on Maybank.

11 On 2 December 2019, the Respondent was charged under s 59(6) of the LTA for falsely certifying to the correctness of the Mortgage Instrument by falsely stating that he had witnessed Naseeruddin’s signature on the Mortgage Instrument (the “First LTA Charge”). On 23 March 2020, the Respondent faced an additional charge under s 59(6) of the LTA for falsely certifying to the correctness of the Transfer Instrument by implying that Naseeruddin had accepted proprietorship and was of full age and legal capacity (the “Second LTA Charge”). On 5 June 2020, the Respondent pleaded guilty to both charges (collectively, the “LTA Charges”) in the State Courts. He was convicted on the LTA Charges on 10 June 2020 and sentenced to a fine of S\$2,800 for each charge, resulting in a global fine of S\$5,600.

12 On 14 July 2020, the Attorney-General requested the Law Society to refer the matter to a disciplinary tribunal (“DT”) under s 85(3)(b) of the Legal Profession Act (Cap 161, 2009 Rev Ed) (“LPA”).

13 In relation to the Mortgage Instrument, the Law Society preferred the following charges against the Respondent:

1st Charge

That you, Mohammed Lutfi bin Hussin, are guilty of grossly improper conduct in the discharge of your professional duty as amounts to improper conduct within the meaning of Section 83(2)(b) of the Legal Profession Act (Cap. 161) in that you, on or around 22 April 2014, had falsely represented that you had witnessed the signature of Mohammad Naseeruddin bin Allamdin (“**Naseeruddin**”) as it appeared on the mortgage instrument (no.: ID/954935K) (“**Mortgage Instrument**”) by signing as witness to his signature and thereafter signing the Certificate of Correctness certifying the correctness of the matters set out in the Mortgage Instrument, when you had in fact not personally witnessed Naseeruddin sign the Mortgage Instrument.

Alternative 1st Charge

That you, Mohammed Lutfi bin Hussin, are guilty of misconduct unbefitting an advocate or solicitor of the Supreme Court or as a member of an honourable profession within the meaning of Section 83(2)(h) of the Legal Profession Act (Cap. 161) in that you, on or around 22 April 2014, had falsely represented that you had witnessed the signature of Mohammad Naseeruddin bin Allamdin (“**Naseeruddin**”) as it appeared on the mortgage instrument (no.: ID/954935K) (“**Mortgage Instrument**”) by signing as witness to his signature and thereafter signing the Certificate of Correctness certifying the correctness of the matters set out in the Mortgage Instrument, when you had in fact not personally witnessed Naseeruddin sign the Mortgage Instrument.

[emphasis in original]

14 In respect of the Transfer Instrument, the Law Society preferred the following charges against the Respondent:

2nd Charge

That you, Mohammed Lutfi bin Hussin, are guilty of grossly improper conduct in the discharge of your professional duty as amounts to improper conduct within the meaning of Section 83(2)(b) of the Legal Profession Act (Cap. 161) in that you, on or around 22 April 2014, had recklessly or negligently certified that Mohammad Naseeruddin bin Allamdin (“**Naseeruddin**”) had accepted proprietorship and was of full age and legal capacity by signing the Certificate of Correctness certifying the correctness of the matters set out in the transfer instrument (no.: ID/943410Q) (“**Transfer Instrument**”) in your capacity as Naseeruddin’s solicitor, when you had in fact never personally confirmed that Naseeruddin had accepted proprietorship and was of full age and legal capacity, had left the preparation of the Transfer Instrument to your staff, and did not check the contents of the Transfer Instrument before signing the Certificate of Correctness.

Alternative 2nd Charge

That you, Mohammed Lutfi bin Hussin, are guilty of misconduct unbefitting an advocate and solicitor of the Supreme Court or as a member of an honourable profession within the meaning of Section 83(2)(h) of the Legal Profession Act (Cap. 161) in that you, on or around 22 April 2014, had recklessly or negligently certified that Mohammad Naseeruddin bin Allamdin (“**Naseeruddin**”) had accepted proprietorship and

was of full age and legal capacity by signing the Certificate of Correctness certifying the correctness of the matters set out in the transfer instrument (no.: ID/943410Q) (“**Transfer Instrument**”) in your capacity as Naseeruddin’s solicitor, when you had in fact never personally confirmed that Naseeruddin had accepted proprietorship and was of full age and legal capacity, had left the preparation of the Transfer Instrument to your staff, and did not check the contents of the Transfer Instrument before signing the Certificate of Correctness.

[emphasis in original]

15 Before the DT, the Respondent pleaded guilty to the Alternative 1st Charge but contested the 1st Charge as well as the 2nd and Alternative 2nd Charges (see the Report of the DT (“DT Report”) at [12]).

16 The DT found that the 1st Charge had been made out against the Respondent, *ie*, the Respondent’s false representation of having witnessed Naseeruddin signing on the Mortgage Instrument was sufficiently serious to constitute grossly improper conduct in the discharge of his professional duties within the meaning of s 83(2)(b) of the LPA. In making this finding, the DT observed that “[t]here can be no doubt that an act of certification is an important aspect of a solicitor’s duty under s 59 of the LTA” (see the DT Report at [37]).

17 The 1st Charge having been made out, the DT found that there was cause of sufficient gravity for disciplinary action within the meaning of s 93(1)(c) of the LPA, given that the Respondent had acted dishonestly in the course of performing his statutory duty under the LTA (see the DT Report at [39]).

18 Next, the DT held that the facts underlying the 2nd Charge and the Alternative 2nd Charge had been established (see the DT Report at [48]). The Respondent had a duty to personally verify with Naseeruddin that he was of full age, had legal capacity, and had accepted proprietorship, before signing the

Certificate of Correctness in the Transfer Instrument. By his own admission, as well as the facts to which he had pleaded guilty in relation to the Second LTA Charge, the Respondent had simply relied on his staff: he did not contact Naseeruddin, had signed the conveyancing documents left on his desk without examining their contents, and was only aware that the Law Firm had acted for Naseeruddin in relation to the Property when he was subsequently questioned by officers from the CAD (see the DT Report at [40]–[41] and [47]).

19 Nevertheless, the DT held that only the Alternative 2nd Charge, and not the 2nd Charge, was made out. This was because the Respondent’s conduct, while improper, did not rise to the level of being grossly improper. Noting that the Law Society did not allege that the Respondent was dishonest, the DT found that the Respondent had “simply lacked diligence” (see the DT Report at [50]).

20 The DT observed that if the Alternative 2nd Charge was considered on its own, it might have been persuaded that cause of sufficient gravity might not be established. However, since cause of sufficient gravity had been established in relation to the 1st Charge, and both charges were related to a single conveyancing transaction in respect of which the Respondent was the solicitor in charge, the DT formed the view that the Respondent’s convictions on both the 1st Charge and the Alternative 2nd Charge should be considered holistically when determining the appropriate sanction to impose. Accordingly, the DT was satisfied, in relation to both the 1st Charge and the Alternative 2nd Charge, that there was a *prima facie* case of due cause, and in the circumstances, referred the entire matter encompassing both charges to the Court of Three Judges (“C3J”) (see the DT Report at [51]).

21 The present application, C3J/OS 6/2021, is the Law Society’s application for an order that the Respondent be made to suffer punishment as

provided for in s 83(1) of the LPA. As the Respondent is not challenging the findings of the DT, the main issue before this court relates to the sanction which is to be imposed on the Respondent.

Applicable legal principles

22 The imposition of sanctions pursuant to s 83(1) of the LPA serves to achieve the following well-established objectives (see the decision of this court in *Law Society of Singapore v Ezekiel Peter Latimer* [2019] 4 SLR 1427 (“*Ezekiel Peter*”) at [45]):

- (a) to uphold public confidence in the administration of justice and in the integrity of the legal profession;
- (b) to protect the public who are dependent on solicitors in the administration of justice;
- (c) to deter errant solicitors and other like-minded solicitors from committing similar offences; and
- (d) to punish the errant solicitor for his misconduct.

Where these matters pull the court in different directions in any given case, it is the interest of the public that will be paramount and must therefore prevail. Hence, the principal purpose of sanctions is not to punish the errant solicitor but to protect the public and uphold confidence in the integrity of the legal profession. A particular sanction that might appear excessive when assessed solely from the perspective of the errant solicitor’s culpability may nonetheless be warranted to protect the public and uphold confidence in the profession (see *Ezekiel Peter* at [46]).

23 In the present case, it is undisputed that the Respondent was dishonest in falsely attesting that he had witnessed Naseeruddin signing on the Mortgage Instrument. While this dishonesty can be described as being “technical” in nature, this court has taken the uncompromising position that any form of dishonesty, even “technical” dishonesty, will almost invariably lead to an order for striking off. In this vein, this court does not accept that there is a spectrum of dishonesty inviting a corresponding spectrum of punishment. A solicitor either conducts himself honestly, or he does not (see the decision of this court in *Law Society of Singapore v Udeh Kumar s/o Sethuraju and another matter* [2017] 4 SLR 1369 (“*Udeh Kumar*”) at [104], cited with approval in *Law Society of Singapore v Chia Choon Yang* [2018] 5 SLR 1068 (“*Chia Choon Yang*”) at [18] and *Loh Der Ming Andrew v Koh Tien Hua* [2022] SGHC 84 (“*Loh Der Ming Andrew*”) at [69]).

24 *Chia Choon Yang* sets out the firm stance that this court takes towards dishonest conduct, and the operative legal principles for determining the appropriate sanction against a dishonest errant solicitor (at [38]–[41]):

- (a) Misconduct involving dishonesty will almost invariably warrant an order for striking off where the dishonesty reveals a character defect rendering the errant solicitor unsuitable for the profession, or where it undermines the administration of justice. One such situation is where the dishonesty is integral to the commission of a criminal offence of which the solicitor has been convicted. In such cases, striking off will be the presumptive penalty unless there are truly exceptional facts showing that a striking off would be disproportionate. Personal culpability (as well as mitigating factors generally) has little relevance in cases where the presumptive position of striking off applies, save that the court might

entertain an application for reinstatement earlier than would otherwise be the case.

(b) In cases where the dishonest act may fairly be said to reveal an error of judgment (even if a serious one) rather than a grave character defect, striking off will not be the presumptive sanction, and the court will have to examine the facts closely to determine whether there are circumstances that render a striking off order appropriate. In particular, the court should ascertain the following non-exhaustive factors:

- (i) the real nature of the wrong and the interest that has been implicated;
- (ii) the extent and nature of the deception;
- (iii) the motivations and reasons behind the dishonesty and whether it indicates a fundamental lack of integrity on the one hand or a case of misjudgment on the other;
- (iv) whether the errant solicitor benefited from the dishonesty; and
- (v) whether the dishonesty caused actual harm or had the potential to cause harm that the errant solicitor ought to have or in fact recognised.

In assessing the circumstances holistically, the court should bear in mind that the principal purpose of disciplinary sanctions is to protect the public and uphold public confidence in the legal profession.

Parties' cases before the C3J

25 The Law Society submits that the Respondent's convictions on the 1st Charge and the Alternative 2nd Charge should be considered holistically in determining the sanction to be imposed on the Respondent, because both charges arise from the same conveyancing transaction. On this basis, the Law Society submits that the appropriate sentence is for the Respondent to be struck off the roll. In the *alternative*, the Law Society submits that the Respondent should be suspended from practice for a period of *not less* than 21 months.

26 In contrast, the Respondent's position is that the C3J can impose two separate sanctions in relation to each charge, in which case the Alternative 2nd Charge should attract only a fine, censure or warning, while the 1st Charge is deserving of a three to eight month suspension. Alternatively, the C3J can impose a composite sanction of four to eight months suspension for both the 1st and Alternative 2nd Charges. This position, however, was taken prior to the release of the decision in *Law Society of Singapore v Thirumurthy Ayernaar Pambayan* [2022] SGHC 79 ("*Thirumurthy*"), where the C3J imposed a suspension of nine months to sanction an act of false attestation. When Mr Pereira was queried at the hearing on what he thought the appropriate sanction ought to be in light of *Thirumurthy* as well as the Law Society's submissions, he revised his position to a term of nine to 10 months suspension.

Issues before this court

27 Given that the 1st Charge and the Alternative 2nd Charge arise from the same transaction, we think it is sensible to arrive at a composite sanction in respect of both these charges. The analysis of what this composite sanction should be would naturally center on the 1st Charge, since it involves dishonest

conduct which our courts have consistently taken a firm stance on. In this regard, two issues must be considered:

- (a) Does the Respondent’s dishonesty imply a character defect rendering him unfit for the profession?
- (b) If not, what should the appropriate sanction be?

28 The first issue is of central importance. The Respondent’s dishonesty in falsely attesting to Naseeruddin signing the Mortgage Instrument is plainly integral to his conviction under the First LTA Charge. But what must be determined, before the presumptive sanction of striking off applies, is whether the misconduct involves dishonesty which *implies a character defect rendering the errant solicitor unsuitable for the profession*. If this is answered in the affirmative, the sanction to be imposed, according to well-established case law, would “almost invariably” be an order for striking off save in exceptionally rare situations: see above at [24(a)]. It is to this issue which we will now turn.

Is the Respondent’s dishonesty indicative of a character defect rendering him unfit for the profession?

29 As a preliminary point, we note the Respondent’s contention that the Law Society is precluded from submitting that his criminal conviction under the First LTA Charge implies a defect in his character rendering him unfit for the profession. According to the Respondent, the Law Society, by making this submission, acted as though the Respondent was guilty under s 83(2)(a) of the LPA, when it did not prefer a charge under s 83(2)(a) of the LPA and this issue was never raised before the DT. This allegedly prejudiced the Respondent, who did not have the opportunity to address this issue before the DT. During the hearing, we asked counsel for the Law Society, Mr Mahesh Rai (“Mr Rai”),

why the Law Society had not proceeded with a charge under s 83(2)(a) of the LPA. No explanation, however, was forthcoming.

30 There is, nevertheless, no merit in the Respondent's contention that the Law Society should be precluded from making the said submission. The Law Society is currently proceeding on the basis that the Respondent has been convicted under ss 83(2)(b) and 83(2)(h) of the LPA and is now arguing at the sentencing stage that the misconduct underlying the Respondent's criminal conviction involves dishonesty which implies a character defect unbefitting of a solicitor, and that a striking off order should follow. This is the proper forum for such a submission in view of this court's pronouncement in *Chia Choon Yang* (see above at [24]), and there is no indication in *Chia Choon Yang* that this holding is confined only to circumstances where a charge under s 83(2)(a) of the LPA is preferred. In any event, the Respondent's allegation of prejudice rings hollow: he had the opportunity to meet the Law Society's sentencing-related submission at the current stage of the proceedings and had in fact done so in his submissions. This court therefore can, and should, consider the Law Society's submission that the Respondent's criminal conviction under the First LTA Charge implies a defect in his character.

31 Turning to this issue proper, it is apposite to start with the Respondent's explanation as to how his act of false attestation came about. We make two observations in this respect.

32 The first is the Respondent's own description of how he had conducted his conveyancing practice, which demonstrates a patent lack of effort in the way he discharged his professional duties:

40. ... This was a routine purchase of the Property by Naseeruddin financed by a loan taken from a bank. ***The transaction could be carried out without my seeing***

Naseeruddin. *My staff are fully capable of dealing with routine transactions such as Naseeruddin’s purchase of the Property. If anything out of the ordinary crops up, they will inform me and I will then see the client and sort out whatever problem has arisen. There were no issues at all relating to Naseeruddin’s purchase and for that reason, I did not have to see him.*

[emphasis added in italics and bold italics]

The foregoing extract, which is disconcerting to say the least, is taken from the Respondent’s affidavit of evidence-in-chief before the DT. In line with what is stated in that affidavit, the Respondent’s written submissions before this court acknowledge that there was a “system” [emphasis added] in the Law Firm which “lulled him into assuming that all was in order” in so far as the Mortgage Instrument was concerned. During the hearing, Mr Pereira described this system as one where the Respondent’s client would sign conveyancing documents before the Respondent’s secretary, rather than before the Respondent himself.

33 In other words, the Respondent had put in place a “system” pursuant to which he entrusted his non-legally trained staff to carry out conveyancing transactions, including witnessing the execution of conveyancing documents, so that he did not have to meet his own clients, unless he deemed it necessary. Under this “system”, he presupposed that everything was in order until and unless his staff flagged any issues. In relation to Naseeruddin’s conveyancing transaction, nothing out of the ordinary was brought to his attention. He therefore assumed that all was in order and *never* met Naseeruddin, notwithstanding the fact that the latter had engaged him as his conveyancing solicitor. This ultimately culminated in the act of false attestation which is the subject of the 1st Charge.

34 We are appalled by the Respondent’s irresponsible and neglectful conduct of his conveyancing practice. It cannot be gainsaid that in order for a solicitor to discharge his or her professional responsibilities to his or her client,

as well as to the public at large, he or she *must* meet the client. This basic point appears, however, to have been lost on the Respondent. When we observed that such a practice was unacceptable during the hearing, Mr Pereira readily accepted that the Respondent’s mode of practice was “shoddy” and was *not* how a diligent solicitor would act. Indeed, the Respondent had exercised little, if any, diligence in the discharge of his professional duties, and this in turn betrays the insouciant attitude he adopted towards those responsibilities.

35 To avoid attracting the penalty of striking off, however, Mr Pereira attributed the Respondent’s lack of conscientiousness to a “grave error of judgment” as opposed to a “character defect”.

36 We have significant reservations about such an argument, which brings us to our second observation: the Respondent, at the time of the misconduct, did not appreciate the impropriety of his actions. This observation is borne out of the same affidavit which the Respondent filed before the DT:

39. *I do not dispute at all that I signed the Certificate of Correctness on the Mortgage and that I did not personally witness Naseeruddin sign the Mortgage. I had no reason whatsoever to doubt that Naseeruddin did sign the Mortgage in Lutfi Law Corporation in the presence of Angela. Angela was an experienced conveyancing staff of Lutfi Law Corporation and I did not doubt that Angela had seen to the execution of the Mortgage by Naseeruddin and had seen him do it. She did this as part of her job. She lost her job when Lutfi Law Corporation ceased operating and I lost touch with her. **I sincerely believe that I did not do anything dishonest in witnessing Naseeruddin’s signature in the circumstances since I had no reason to doubt that it was his signature.** There is no allegation that Naseeruddin did not sign the Mortgage. **I therefore did not think there was anything wrong or dishonest in signing the Certificate of Correctness on the Mortgage.***

[emphasis added in italics and bold italics]

37 Struck by the apparent lack of remorse in the Respondent’s brazen statement that he “sincerely believe[d]” that “[he] did not do anything dishonest” or “wrong”, we queried Mr Pereira as to how such a statement could be made when it was undisputed that the Respondent had falsely attested to Naseeruddin signing the Mortgage Instrument. We also asked Mr Pereira whether this statement was included on his advice. Mr Pereira informed us that he was the one who drafted this paragraph, and that his intention was to convey the Respondent’s subjective frame of mind back in 2014 when the misconduct took place. He also clarified that the Respondent had, since the commencement of disciplinary proceedings, acknowledged that his conduct was dishonest. Mr Pereira brought us to his opening speech before the DT, wherein he stated that the Respondent “was wrong in ... sign[ing] as a witness”. In that same opening statement, Mr Pereira also highlighted to the DT that “[n]owhere in [his] AEIC or in the defence do we say that he was honest or there was no dishonesty”.

38 As we pointed out to Mr Pereira during the hearing, his clarification that the affidavit merely described the Respondent’s state of mind back in 2014 was not apparent from a plain reading of the affidavit. Nor did his opening speech before the DT contain a *positive* statement acknowledging that the Respondent had acted dishonestly. However, as Mr Pereira’s case before the DT was in substance premised on the acceptance that the Respondent’s act was dishonest, a point accepted by Mr Rai, with the result that no evidence as to the Respondent’s present state of mind was elicited during the trial before the DT, we are prepared to give the Respondent the benefit of the doubt and accept Mr Pereira’s clarification that the Respondent now recognises the error of his ways.

39 Whilst we accept that the Respondent has now acknowledged his error, it is nevertheless the case that at the time of the transaction, the Respondent did not appreciate the dishonesty entailed in falsely attesting to another's signature. At the risk of stating the obvious, members of the legal profession must have a sense of what is right and wrong, and what the public expects of them, in the course of discharging their professional duties. It is this understanding which forms the foundation of any lawyer's ability to act honourably and with integrity, and which inspires public confidence in the profession. The Respondent's explanation of his misconduct (see above at [36]), however, betrays his (then) defective judgment in not recognising the impropriety of false attestations; and it is this failure which contributed to his readiness to represent that he witnessed Naseeruddin signing the Mortgage Instrument when he in fact did not.

40 It follows from this that it is wholly inappropriate for Mr Pereira to characterise the Respondent's act of false attestation on this particular occasion as a mere lapse in judgment. This is not a situation where the Respondent was cognisant of the impropriety of his act but, on the spur of the moment or due to circumstantial factors, made the wrong judgment call to act against what he knew was the conduct expected of him. Rather, the Respondent was completely unaware of the objectionable nature of such conduct. He believed that there was nothing dishonest in knowingly making a false representation on the Mortgage Instrument and the accompanying Certificate of Correctness. We are particularly troubled by his abject lack of insight. In our judgment, therefore, the Respondent's dishonesty is symptomatic of a defect which runs deeper than a lapse in judgment.

41 In summary, the Respondent's act of false attestation in the 1st Charge was the result of his indolence and cavalier attitude towards his professional

duties (see above at [32]–[34]), which in turn stemmed from his failure to discern the impropriety of his actions in what appears to be a straightforward case of dishonesty. These indicators are certainly cause for concern.

42 That being said, we do not think that the defects exhibited by the Respondent in the present case render him unfit to remain in the profession. We say this for two reasons. First, the Respondent’s failure to appreciate the dishonesty entailed in false attestations, a particular type of conduct which some may characterise as a “technical dishonesty”, is not a shortcoming which indicates that he lacks an understanding of basic standards of honesty and integrity *altogether*. Although the so-called “system” which the Respondent set up tends to suggest that this was not the first time the Respondent had falsely attested to another’s signature, this is ultimately insufficient to sustain an inference that there were previous instances of false attestation, since the evidence also indicates that the Respondent did meet his clients, albeit only “sometimes”. In any event, we decline to draw such an inference in fairness to the Respondent, as Mr Rai did not cross-examine the Respondent on this particular point during the DT proceedings, and neither is this point within the scope of the LPA charges preferred against the Respondent. The Respondent was only charged in respect of one instance of false attestation before the DT, and what the Respondent might or might not have done in respect of other transactions is not strictly before us given the remit of his LPA charges. Secondly, and relatedly, we observe that there is insufficient evidence that the Respondent was *wholly* neglectful of his professional duties in that he *never* met his clients for all the other conveyancing transactions he was engaged in. As mentioned, the evidence tends to show that the Respondent still met his clients *sometimes*. In any case, we refrain from making any factual finding on this point as it likewise falls outside the scope of the LPA charges.

43 Hence, while it is unbecoming of a solicitor to have such an irresponsible attitude towards his work and to fail to comprehend the impropriety of falsely attesting to another's signature, we do not think that the *extent* of these flaws is sufficient for us to say that he suffers from fundamental character defects which render him unfit to continue as an advocate and solicitor.

44 In the circumstances, the Respondent's misconduct arising from the 1st Charge does not attract the presumptive sanction of striking off, and the court will have to consider the circumstances holistically to determine whether a striking off order should nevertheless be imposed. To recapitulate, this entails an examination of the following non-exhaustive factors: the real nature of the wrong and the interest that has been implicated, the extent and nature of the deception, the motivations and reasons behind the dishonesty (whether it indicates a fundamental lack of integrity on the one hand or a case of misjudgment on the other), whether the errant solicitor benefited from the dishonesty, and whether the dishonesty caused actual harm or had the potential to cause harm that the errant solicitor ought to have or in fact recognised. It is to this issue that we now turn.

Analysis of what the appropriate sanction should be

45 First, while the Respondent's defects in attitude and character do not rise to the level warranting a presumptive striking off order, they certainly weigh against him in so far as they point towards a much stricter sanction in the context of the present proceedings.

46 Next, in so far as the issue of harm is concerned, the Law Society concedes that no actual harm was caused because the fraud perpetrated by Naseeruddin on Maybank had no connection with the Respondent's false attestation on the Mortgage Instrument. However, the Law Society argues that

there is potential for significant harm where a solicitor uncritically affixes his signature to a Certificate of Correctness without checking its accuracy, and a member of the public subsequently acts on the information in the conveyancing documents. Reliance is placed on the decision in *Anwar Patrick Adrian and another v Ng Chong & Hue LLC and another* [2014] 3 SLR 761 (“*Anwar Patrick Adrian*”) at [57], where the Court of Appeal held that “an accurate certificate of correctness for registration is of paramount importance because the Registrar of Titles and the public place enormous faith on it – especially when it emanates from an advocate and solicitor”. The Law Society argues that being an experienced conveyancing practitioner, the Respondent ought to have known or did in fact know that his false attestation had the potential to cause actual harm.

47 On the other hand, the Respondent claims that there is no “possibility of potential harm” because it is “difficult ... to conceive why a member of the public will access the Land Register to ascertain the information contained in the mortgage or how a member of the public will act on the information contained in it”. According to the Respondent, a mortgage’s “singular purpose [is] to bind only the parties involved in the mortgage” and “the only reason that the Instruments are required to be lodged is to inform the Singapore Land Registry who the Property belongs to and whether his title is encumbered”.

48 The Respondent’s submissions fail to appreciate the mirror principle (“the register is everything” principle or the “what you see is what you get” principle) underpinning the Torrens System of land registration, which seeks to enure *to the benefit of the public at large* a readily accessible Register evidencing ownership and encumbrances on land (see the Court of Appeal decision in *Wong Kok Chin v Mah Ten Kui Joseph* [1992] 1 SLR(R) 894 at [7] and Colony of Singapore, *Legislative Assembly Debates, Official Report*

(24 August 1955), vol 1 at col 570 (Inche Abdul Hamid Bin Haji Jumat, Minister for Local Government, Lands and Housing)). Indeed, it is a common practice for parties, before entering into transactions involving a property, to conduct due diligence checks on whether that property concerned is encumbered. In doing so, they act on the faith of what is stated on the face of the registered instrument.

49 In order for the mirror principle to hold true, instruments publicly lodged in the land register must be accurately and validly created. This is where the Certificate of Correctness plays a pivotal role in verifying that the matters set forth in the instruments are substantially correct and that the instruments have been validly executed by a person who is of full age and legal capacity.

50 Where a solicitor is employed by a party to the instrument, the Certificate of Correctness must be issued by that solicitor (s 59(3)(a) LTA) and naturally, the duty to verify the aforementioned matters falls on him or her. The practical value of having a solicitor conduct the verification exercise is explained by John Baalman, *The Singapore Torrens System: Being a Commentary on the Land Titles Ordinance, 1956 of the State of Singapore* (The Government of the State of Singapore, 1961) at p 117:

Most (if not all) of the original Torrens statutes required instruments to be certified by the parties claiming under them. In some of the statutes the solicitor for a party is empowered to certify on his behalf where his signature cannot be obtained “without difficulty and delay”. *This section recognises the fact that the certification of a solicitor is of more practical value than that of a party who, in the majority of cases, would simply be told to sign “on the dotted line” without being made fully aware of the significance of the certification. Even if made aware of it, he would still lack the competence of his legal adviser.*

[emphasis added in italics]

Evidently, the legislative intent behind s 59(3)(a) of the LTA works on the premise that a solicitor would *more adequately and competently* carry out due diligence checks in relation to the instrument sought to be lodged in the land register, as opposed to a layperson. This coheres with the Court of Appeal’s observation in *Anwar Patrick Adrian* at [57], viz, the Registrar of Titles and the public place “enormous faith” on the Certificate of Correctness especially when it originates from an advocate and solicitor. Having the solicitor issue the Certificate of Correctness is thus an additional safeguard that ensures that the mirror principle holds true. This in turn ensures that the public can safely rely on what they see on the face of the register.

51 In the light of the foregoing discussion, it is not for the Respondent to say that there is no “possibility of potential harm”. Even though the details in the Mortgage Instrument were accurate (save for the fact that the Respondent was not a witness to Naseeruddin signing the Mortgage Instrument) and the Mortgage Instrument was validly created, the Respondent’s “system” of entrusting most of the work to his staff and not meeting his clients, unless he thought it necessary, gave rise to the possibility of an inaccurate or invalid instrument making its way to the public land register. This could compromise the mirror principle undergirding the conveyancing system. This potential for harm ought to have been recognised by the Respondent, who had about nine years of experience as a conveyancing solicitor at the material time.

52 In addition, by falsely attesting to the Certificate of Correctness accompanying Naseeruddin’s Mortgage Instrument, the Respondent betrayed the public’s expectation that solicitors would treat their statutory duties seriously and act honestly in relation to the Certificate of Correctness (see above at [50]). The fact that the Respondent’s dishonest act took place in the conveyancing context, and in particular, in relation to a document wherein

significant trust is reposed on a solicitor, speaks volumes with regard to the woeful lack of responsibility and professionalism on the Respondent's part.

53 That said, in so far as the 1st Charge is concerned, we find that the Respondent has expressed some remorse and now appreciates the impropriety of his action, although this only came through clearly during the oral hearing since this point was initially obscured by Mr Pereira's misguided attempt to emphasise the Respondent's state of mind back in 2014 (see above at [37]–[38]). This works in favour of the Respondent in demonstrating that his moral compass is not beyond the pale – the Respondent is capable of acknowledging his moral failings.

54 In this regard, we do not accept the Law Society's submission that the Respondent has demonstrated a complete lack of remorse. This submission is premised, in part, on the Respondent's statements in his affidavit (extracted above at [32] and [36]), which Mr Pereira has clarified to be representing the Respondent's beliefs back in 2014 at the time of the misconduct and not his current beliefs. Another reason given by the Law Society is that the Respondent admitted that he had pleaded guilty to the LTA Charges to "get the matter over with as quickly as possible". Mr Rai described this as a "tactical" move, but as we pointed out to him during the hearing, an adverse inference cannot be drawn from this motivation since this is precisely what a plea of guilt promises, *viz*, a faster resolution of the criminal proceedings. More importantly, the Respondent accepted his guilt in relation to the First LTA Charge (*ie*, falsely representing that he had witnessed Naseeruddin's signature on the Mortgage Instrument). This militates against a finding of lack of remorse, and it also explains why the Respondent wanted to plead guilty to get on with his life. The Law Society also points to the fact that the Respondent had contested the 1st Charge, but as explained by Mr Pereira, the Respondent pleaded guilty to the Alternative

1st Charge but contested the 1st Charge to avoid a referral to the C3J. We do not think that this litigation strategy can support an inference that the Respondent was unremorseful, especially when seen in the light of his ready acceptance of the fact that he had committed an act of false attestation.

55 Drawing the various threads together, the Respondent’s shoddy attitude towards his work and his failure to discern right from wrong in the context of what would appear to be a straightforward case of dishonesty, signal that he lacked moral insight and judgment. His misconduct arose from a “system” (or, rather, “non-system”) that contained the potential for harm as it related to documents which would end up on a public register. His misconduct would also tend to undermine the confidence that the public reposes in the legal profession, especially in the conveyancing context. In our judgment, these considerations justify the imposition of a stiff penalty notwithstanding the Respondent’s remorse, the lack of actual harm caused, and the absence of personal benefit on the part of the Respondent. In particular, the fact that no actual harm was occasioned was merely fortuitous in the light of the Respondent’s practice of delegating extensive authority to his non-legally trained staff and evidence which indicates that the Respondent only met his clients *sometimes*. Such a “system” simply sets the stage for disaster. It was fortuitous that the fraud committed by Naseeruddin had no connection with the system but one can conceive of situations where deception would go unnoticed because of the implementation of such a “system” (one example being where the staff of the law firm collude with a fraudster and the lawyer attests or issues false certificates in reliance on those staff).

56 The question that arises, then, is whether the stiff penalty should take the form of a striking off order or a substantial term of suspension. In this regard, we are mindful of the absence of sufficient proof of previous instances of false

attestation, or proof that the Respondent *never* met his clients for other conveyancing transactions. Indeed, had there been sufficient evidence proving these two facts, and if the LPA charges were sufficiently wide to cover the Respondent's conduct in respect of other conveyancing transactions, a much higher sanction would have been warranted as the degree of potential harm brought about by the Respondent's slipshod work attitude would have been much higher. The lack of evidence on this score, and the fact that the LPA charges were confined to one particular instance of false attestation, therefore helps the Respondent avoid a striking off order.

57 In addition, prior cases which bear some similarity to the instant facts also resulted in a term of suspension, as opposed to a striking off order. In *Law Society of Singapore v Sum Chong Mun and another* [2017] 4 SLR 707 ("*Sum Chong Mun*"), Sum Chong Mun ("Sum") was asked by a fellow professional, Kay Swee Tuan ("Kay"), to certify and witness a form which created a lasting power of attorney ("LPOA"), when the signature of the donor had already been affixed to it. Not unlike the present case, Sum's false attestation potentially adversely affected an overriding public interest. As an advocate and solicitor, he was charged with playing a vital role as the "primary bulwark against abuse of the LPOA regime" and this entailed, *inter alia*, ensuring that the LPOA was not induced by fraud (see *Sum Chong Mun* at [45]). Yet, he had failed to act to safeguard against such abuse by uncritically and falsely certifying the LPOA form. In fact, his failure to personally witness the donor's signature on the Form enabled Kay to register a LPOA which was not actually signed by the donor (see *Sum Chong Mun* at [12] and [17]). While the decision did not mention that actual harm resulted from this, the extent of potential harm was undeniable, much like the present case. Sum was similarly remorseful. With all these factors in mind, the court imposed a one-year suspension on Sum (see *Sum Chong Mun* at [52]–[53]).

58 Parallels can also be drawn with *Chia Choon Yang* and *Thirumurthy*, where suspensions of 15 months and nine months were, respectively, imposed. Both cases involved an act of false attestation on the part of the errant solicitor, who later demonstrated remorse (see *Chia Choon Yang* at [44] and *Thirumurthy* at [3] and [4(a)]). Even though the extent of harm (both actual and potential) in both cases was not apparent on the face of the judgments, save to say that the false attestations were in relation to powers of attorney, there must have been at the very least some potential for harm from their actions.

59 We cannot ignore the similarities which this case shares with these prior precedents and therefore reach the conclusion that a term of suspension, rather than a striking off order, ought to be imposed.

60 This view is reinforced by two other points. Firstly, the Law Society's alternative submission of at least 21 months' suspension suggests to us that a striking off order (the harshest penalty that could be meted out) is not *necessarily* entailed by the facts of the present case. Secondly, the recent decision of this court in *Loh Der Ming Andrew* indicates that there can be situations where the errant solicitor is lacking in moral make-up and yet his misconduct does not attract an order of striking off because that defect falls short of a more fundamental defect in character of the kind that would render a solicitor unfit to remain in the profession (see *Loh Der Ming Andrew* at [106]). We are of the view that this is similarly the case here.

61 While the last-mentioned point aids the Respondent in avoiding a striking off order, it also serves as an aggravating factor which sets this case apart from the above-mentioned trilogy of cases (relating to false attestation on the part of the lawyer concerned) and indicates that a considerably longer term of suspension is merited here. In those other cases, the errant solicitors' acts of

false attestations were found to be attributable to a lapse in judgment in their respective circumstances as opposed to a character defect, but the same cannot be said for the Respondent – although, as we have said at [43] above, the extent of the Respondent’s character defect does not warrant an order for striking off. Let us elaborate.

62 In *Sum Chong Mun*, Sum was motivated by the desire to assist another legal professional (see *Sum Chong Mun* at [52]). Subsequently, he indicated his remorse by taking steps which resulted in the revocation of the document he had wrongly attested. As was later observed by the court in *Chia Choon Yang* at [34], Sum’s misconduct was a case of grave misjudgment rather than one which manifested a character defect that rendered him unsuitable for the profession. As for the errant solicitor in *Chia Choon Yang* itself, the court likewise arrived at the conclusion that this was a mere lapse in judgment on his part (see *Chia Choon Yang* at [44]). Finally, in *Thirumurthy*, it was undisputed between parties that the errant solicitor’s dishonesty was a grave misjudgment as opposed to one which indicated a character defect (see *Thirumurthy* at [4(c)]). This is unsurprising since the errant solicitor there, Mr Thirumurthy, was well aware at the material time that it was wrong for him to falsely attest to the complainant’s signature. What had transpired was that the complainant had visited Mr Thirumurthy’s office while he was away and proceeded to sign the power of attorney in the presence of his secretary. When Mr Thirumurthy returned, he thought about asking the complainant to return to his office and execute the power of attorney again in his presence, but decided against it and chose to falsely attest to the complainant’s signature instead (see *Thirumurthy* at [3]). While Mr Thirumurthy eventually made the wrong call, he had correctly appreciated that he should have called the complainant back to his office to re-execute the power of attorney in his presence.

63 The same level of insight was missing in the Respondent at the material time. There was no indication in *Sum Chong Mun*, *Chia Choon Yang* or *Thirumurthy* that the errant solicitors there were similarly oblivious to how wrong their conduct was. To recapitulate, the Respondent falsely attested in the instant case because he believed that it was not wrong or dishonest of him to sign as a witness to Naseeruddin’s signature. He rationalised his actions in this manner: even though he did not actually witness that signature, there was no reason for him to doubt that it was appended by Naseeruddin himself. His disturbing inability to appreciate the impropriety of what is clearly a straightforward act of dishonesty leads us to the view that, unlike these other cases, the Respondent’s dishonest act cannot be characterised as a mere lapse in judgment (see above at [36]–[41]).

64 As we have also pointed out above, another factor contributing to the Respondent’s act of false attestation is his woeful lack of conscientiousness. That gave rise to his so-called “system”, which in turn resulted in him not meeting Naseeruddin. The errant solicitors in *Sum Chong Mun*, *Chia Choon Yang* and *Thirumurthy* were arguably slipshod in their work to some extent, in so far as they had chosen the easy way out by falsely attesting as opposed to having the relevant persons execute the documents before them. Nevertheless, in our judgment, the degree of irresponsibility and neglect displayed by those solicitors did not rise to the level of the present case.

65 These two reasons (see above at [63]–[64]) underlying the Respondent’s conduct are representative of a lack in moral insight and judgment, a feature which was absent with regard to the errant solicitors in *Sum Chong Mun*, *Chia Choon Yang* and *Thirumurthy*. Those solicitors were found to have only made a misjudgment in their respective circumstances. A substantially more severe sanction must therefore be meted out in order to punish the Respondent in the

present case whilst conveying, at the same time, a stern and clear message to deter others from wandering down the same path.

66 For the avoidance of doubt, we clarify that we took into account the Respondent’s so-called “system” in our sentencing analysis because this specific act of misconduct is a result of that “system” and because it demonstrates the extent of his slipshod attitude and lack of professionalism. That said, we are mindful that any uplift in the sanction imposed on this score will have to be measured, given that the Respondent was ultimately not charged for the systematic misconduct of his practice but a particular instance of false attestation.

Conclusion

67 Having considered all the circumstances in the round, and taking into account the Alternative 2nd Charge, we are satisfied that the appropriate sanction to be imposed on the Respondent is a three-year suspension. The Respondent may, no later than one week from the date of this Judgment, write into court on the issue of when his suspension should commence.

68 The Respondent is also to bear the costs of the Law Society, which are to be taxed if not agreed.

Andrew Phang Boon Leong
Justice of the Court of Appeal

Judith Prakash
Justice of the Court of Appeal

Steven Chong
Justice of the Court of Appeal

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