Law Society of Singapore v Uthayasurian Sidambaram
[2009] SGHC 184

Case Number : OS 155/2009

Decision Date : 13 August 2009

Tribunal/Court : High Court

Coram : Chao Hick Tin JA; Andrew Phang Boon Leong JA; V K Rajah JA

Counsel Name(s) : Denis Tan and George John (Toh Tan LLP) for the applicant; Narayanan Sreenivasan and Heng Wangxing (Straits Law Practice LLC) for the respondent

Parties : Law Society of Singapore — Uthayasurian Sidambaram

Administrative Law – Disciplinary proceedings – Concurrent civil or criminal and disciplinary proceedings – Circumstances in which stay of one set of proceedings would be granted

Legal Profession – Duties – Client – Failure to advise – Lawyer advocate and solicitor taking instructions from agent – Whether lawyer advised complainant on consequences of imbuing agent with blanket authority – Lack of delivery of bill of costs to client – Rule 7(1)(a)(iv) Legal Profession (Solicitors' Accounts) Rules (Cap 161, R 8, 1999 Rev Ed)

Legal Profession – Professional conduct – Breach – Whether lawyer's conduct amounting to misconduct unbefitting advocate and solicitor – Whether lawyer guilty of improper conduct or practice – Sections 83(2)(b) and 83(2)(h) Legal Profession Act (Cap 161, 2001 Rev Ed)

Legal Profession – Professional conduct – Conflict of interest – Actual or potential conflicts of interest – Implied retainer – Lawyer advocate and solicitor acting for multiple clients – Whether lawyer preferred interests of one client over others – Lawyer's duties when acting for multiple parties where there were no common interests

Legal Profession – Show cause action – Lawyer advocate and solicitor found guilty of misconduct unbefitting advocate and solicitor – Appropriate sentence for misconduct – Section 83 Legal Profession Act (Cap 161, 2001 Rev Ed)

13 August 2009

V K Rajah JA (delivering the grounds of decision of the court):

Introduction

1 Conflict of interests issues often raise knotty overlapping problems in relation to a solicitor's duty of confidentiality, loyalty and conscientiousness. While these issues are certainly not peculiar to the legal profession, the problems they engender are nowadays among the most common ethical challenges faced by all solicitors on a daily basis. Solicitors have to always bear in mind that they are in a fiduciary relationship with their clients and reliance is being placed on them for their expertise, integrity, fairness and judgment. If they have not been careful in making a decision to represent multiple clients, not only can they be disqualified from acting any further for all of the clients in the same matter, an error could also expose them to disciplinary action. The present matter is a timely reminder to the legal profession of the possible pitfalls faced by solicitors when they act for multiple clients with conflicting interests in the same transaction.

2 The Law Society of Singapore ("the Law Society") applied, pursuant to s 94(1) read with s 98 of the Legal Profession Act (Cap 161, 2001 Rev Ed) ("the Act") (the latest edition being the 2009 Rev Ed, but the applicable version in the present case is the 2001 Rev Ed), for an order calling upon Uthayasurian Sidambaram ("the respondent") to show cause as to why he should not be dealt with under ss 83(2)(*b*) and 83(2)(*h*) of the Act. The respondent is an advocate and solicitor of some 18

years' standing. After we heard the submissions of the respective parties, we granted the application and ordered the respondent to be suspended from practice for a period of one year. We now set out our reasons for our decision.

The factual background

3 Mr Satinder Singh Garcha ("the complainant") engaged the respondent to act for him in the proposed joint development of the land at No 7 Tanglin Hill, Singapore ("the Property") with the owner of the Property, the Royal Brunei Government ("RBG").

4 The complainant is a boutique property developer who has been involved in developing properties in prime locations in Singapore through his company, Elevation Developments Pte Ltd. He is a self-styled "private investor … a high net worth individual" who "develop[s] real estate [and] invest[s] in companies"[note: 1]. It is common ground that he is a savvy businessman.

5 In 2001, the respondent was introduced to Louis Ang Pau Chuang ("Ang") by a client of his firm[note: 2]. While they did not have any dealings, the respondent was aware that Ang was a bankrupt[note: 3]. They lost contact in 2002[note: 4]. Some three years later, Ang approached the respondent in August 2005 and asked him to handle legal work in respect of several development projects in Singapore and Malaysia.[note: 5] Ang claimed to be a close business associate of Pengiran Setia Negara, Pengiran Haji Mohammad PSN bin Pengiran Haji Abudul Rahim ("PSN"), who represented RBG's interests in Singapore. Ang told the respondent that he handled all of PSN's affairs in Singapore and that RBG was keen to work with an investor who could build good-class bungalows on the Property. The bungalows would then be sold, with the fruits of the joint development to be divided among the parties, in accordance with an agreed ratio ("the Project").

6 Ang further informed the respondent that PSN would be receiving a mandate from RBG to deal with the development of the Property. Ang also claimed that he had a power of attorney from PSN to manage all his affairs in respect of the Property. The respondent, not surprisingly, was keen to accommodate Ang.

7 In September 2005, Ang discussed the Project with the respondent and introduced the respondent to PSN over the phone. According to the respondent, PSN confirmed in the course of the telephone conversation that:

(a) he would not have any difficulty in obtaining a mandate from RBG for the development of the Property but wanted Ang to ensure that the potential parties who wanted to be involved in the Project had the financial means[note: 6];

(b) the respondent be his legal advisor in respect of the Project; and

(c) the respondent could take instructions from Ang and his son, Pengiran Haji Yura Atamaya PSN ("Atamaya") and liaise with them regarding the payment of his legal fees.

The respondent agreed to act for them. Ang and the respondent agreed that his legal fees would be in the range of $200,000 to $250,000, including disbursements with a retainer fee of $100,000. Pertinently, the respondent did not subsequently receive the retainer from either Ang or Atamaya.

8 Following this, the respondent met Ang on several occasions to discuss the appointment of architects and consultants for the Project. During one such meeting, the respondent was introduced

to Lim Peng Lee ("Lim") who had incorporated a British Virgin Islands company, Langston Key Investments Limited ("LKIL"). Lim represented that he had PSN's consent to negotiate with potential developers of the Project. LKIL would enter into a joint development agreement with RBG. The approved developer would, in turn, enter into a joint venture with LKIL or would be a subsidiary of LKIL.

9 In or about April 2006, the respondent was informed by Ang and Lim that they had finally found a potential joint developer. Lim gave instructions to the respondent to prepare a pre-contract agreement for the joint development of the Property ("the Pre-Contract Agreement") between LKIL and Langston Key Investments Pte Ltd ("LKIPL"). Chin Bay Ching ("Chin") was a director cum shareholder of LKIPL. The process leading to the finalisation of the Pre-Contract Agreement was fairly protracted but on 25 April 2006, all parties signed the agreement. Under the terms of the Pre-Contract Agreement, Chin was to pay Atamaya a sum of $300,000 as earnest monies towards the joint development of the Property. This sum was intended to be held by stakeholders until in-principle approval was obtained from RBG[note: 7].This condition was eventually waived and the sum was released to Atamaya, in exchange for his agreement under an Indemnity and Guarantee dated 28 April 2006[note: 8], in favour of Chin, to return the sum in the event the joint development project did not materialise. The respondent subsequently sent this document to Chin's solicitors, M/s Derrick Wong & Partners.

10 However, matters took a different turn when the respondent was subsequently informed by Ang that Chin was not a suitable joint developer. Ang indicated that he, together with one, Frank Kuhn Swi Hwa ("Kuhn"), were actively searching for *alternative* investors. The respondent pressed Ang about the payment of his legal fees for services rendered until then. Ang replied that he would be paid once a suitable joint developer was found. Atamaya also confirmed that the respondent would be paid soon.

11 The complainant only entered the picture at this point in time. He quickly expressed interest in *purchasing* the Property. The respondent informed the complainant by way of a letter dated 10 April 2006[note: 9] that his clients were not considering a sale of the Property but were considering a joint development of the Property. Not long after this, the complainant met Ang for the very first time. Ang tried to convince him to invest in the Project rather than purchase the Property. The complainant testified in the course of the disciplinary proceedings that he was initially not keen to be an investor.

12 On 19 May 2006, Ang and Kuhn met the complainant to persuade him to invest in the Project. At this meeting, the complainant expressed reservations about the Project as well as his concerns as to how his investment would be protected. Ang informed the complainant that the respondent acted for PSN and that he would introduce the respondent to him to address his concerns. According to the complainant, at this meeting, both Ang and the respondent were candid[note: 10] in responding to his concerns. The complainant was concerned about two aspects of the Project: whether his investment could be protected via a caveat or a charge over the Property[note: 11] and the implications of the Project being based upon a power of attorney[note: 12].

13 Several further meetings took place between Ang and the complainant in the absence of the respondent. These meetings were held at various locations such as the Marina Mandarin Hotel, Four Seasons Hotel as well as the complainant's home[note: 13]. The complainant eventually agreed to become involved in the Project and invest $1m in the Project as well as buy out Chin's interests. He also agreed to appoint the respondent to act for him in the Project. On 23 May 2006, the complainant attended at the respondent's office at 133 New Bridge Road, #25-02, Chinatown Point,

Singapore 059413 with Ang. He deposited the sum of $1m into the respondent's client account by way of two cheques of $500,000. The complainant alleged that the sum was to be divided in the following manner:

(a) $300,000 would be paid to Chin to buy out Chin's interests; and

(b) $700,000 was to be used as paid-up capital for a company to be incorporated for the purposes of the Project.

The complainant also signed a warrant to act, appointing the respondent to act for him in the Project[note: 14].

14 While there is a minor controversy as to what transpired at a meeting on 24 May 2006, as well as the precise details leading up to the execution of a letter of authority given to Ang, it is common ground that Ang and the complainant met at the complainant's home and that the issue of the disbursement of $1m was discussed. The complainant alleged that he had called the respondent, who advised him to execute a letter of authority stating that the complainant "authorise[d] [Ang] to disburse funds as he deeme[d] fit on [his] behalf"[note: 15]. He further alleged that it was the respondent who dictated the exact content of the letter of authority and he merely copied it verbatim on a piece of paper and then faxed this over to the respondent. However, the respondent denied dictating the letter of authority to the complainant, and stated that after receiving a faxed copy of the letter from the complainant, he called the complainant to confirm if he had sent the fax and if the letter reflected his instructions (see [51] below).

15 On the very same day, Ang gave written instructions to the respondent to release the following sums from the $1m deposited in the client account[note: 16]:

(a) $300,000 to Chin's solicitors, M/s Derrick Wong & Partners, to discharge all his obligations in respect of the Project; and

(b) $250,000 to one Lim Beng Huat, Ang's driver, to discharge all obligations of LKIL in relation to the Project.

16 These payments were made by cheques that were not crossed[note: 17]. A number of further payments from the sum of $1m were made over the following next two days. On 25 May 2006, Ang authorised the respondent to issue $100,000 to his firm, M/s Surian & Partners. Promptly, the respondent drew up an interim bill stating that this payment was for[note: 18]:

> ADVIS[ING] ON [THE] JOINT DEVELOPMENT OF [THE PROPERTY] … including for all work done and services rendered from September 2005 to LKIL, [Lim], [Ang], PSN & Atamaya in respect of the … matter until 23rd May 2006.

He addressed this bill to the complainant and sent a copy of it to him on the same day.

17 On 26 May 2006, Ang directed the respondent to issue another cheque amounting to $300,000 to his driver, Lim Beng Huat. This cheque was again not crossed and no receipt was obtained from the latter for the payment. Over the following next two days, the respondent and the complainant met PSN, Atamaya and Ang. *The respondent, however, did not inform the complainant of the payments*. On 29 May 2006, the respondent prepared the incorporation papers for the company that was to be called Tanglin Hill Development Pte Ltd ("the Company"). The Company was to be incorporated with a

paid-up capital of $1m and the directors of the Company were PSN, Atamaya and the complainant. The only shareholder was the complainant who held all the shares in the Company.

18 The complainant subsequently learnt from Kuhn that he had not received any payments in respect of the Project. It was then that the complainant became concerned. On 1 June 2006, he approached the respondent for an account of the money that he had deposited with him. The respondent informed him of the payments made and revealed that only $50,000 remained. The complainant immediately revoked the letter of authority and terminated the appointment of the respondent as his solicitor.

19 On 2 June 2006, the complainant met with Ang and confronted him about the purpose of the monies disbursed. Ang suggested that they rescind the deal via mutual agreement, promising that the $1m would be returned shortly. The respondent later arrived at the meeting and the complainant informed him of the agreement reached, *ie*, Ang would return his $1m and the deal would be rescinded with a mutual release of all the parties concerned. The complainant's new solicitors, M/s Wong Partnership, were also present at the meeting. It was agreed at the meeting that[note: 19]:

(a) M/s Wong Partnership would take over the conduct of the matter from M/s Surian & Partners in relation to the complainant with immediate effect;

(b) Ang would deposit the sum of $1m with M/s Surian & Partners and by 5 June 2006, would either provide the respondent with a cheque for $1m or provide the complainant with an indication of when and how the money would be deposited with M/s Surian & Partners; and

(c) the sum of $1m would be transferred to the complainant's client account with M/s Wong Partnership and the matter would be mutually resolved.

20 However, by September 2006, the complainant still had not received his $1m. He then proceeded to lodge a complaint with the Law Society in a letter dated 25 September 2006.

The disciplinary committee hearing and findings

21 Following an inquiry committee's finding that a formal investigation ought to be initiated, a disciplinary committee of the Law Society ("DC") was appointed pursuant to s 90 of the Act to hear and investigate the complaint against the respondent.

22 At the DC hearing, the Law Society preferred four charges and two alternative charges against the respondent pursuant to ss 83(2)(*b*) and 83(2)(*h*) of the Act. The charges, as formulated by the Law Society, were as follows:

First charge

That you, Uthayasurian Sidambaram, an advocate and solicitor, during the period sometime i September 2005 to 2nd June 2006, acted for [the complainant], [PSN], [Atamaya], [Ang], [Lin and [LKIPL], in a commercial transaction namely the joint development of [the Property] where diversity of interests existed between parties and, when accepting instructions, failed to advise an represent the [complainant] of the potential conflict of interests that may arise against the othe mentioned clients which is a breach of Rule 28 of Legal Profession (Professional Conduct) Rules an you have thereby breached a rule of conduct made by the Council under the provisions of the [Act as amounts to improper conduct or practice as an advocate and solicitor under section 83(2)(b) o

the Act.

Alternative First charge

That you, Uthayasurian Sidambaram, an advocate and solicitor, during the period sometime i September 2005 to 2nd June 2006, acted for [the complainant], [PSN], [Atamaya], [Ang], [Lim and [LKIPL] in a commercial transaction namely the joint development of [the Property] where diversity of interests existed between parties and failed, when accepting instructions, to advise an represent the [complainant] of the potential conflict of interest that may arise against the othe mentioned clients and you are thereby guilty of misconduct unbefitting an advocate and solicitor c the Supreme Court under section 83(2)(h) of the Act.

Second charge

That you, Uthayasurian Sidambaram, an advocate and solicitor, during the period from 23rd Ma 2006 to 2nd June 2006, while acting for [the complainant] failed to advance and protect you client's interests, to wit, you failed to advise the [complainant] that [Ang] was an undischarge bankrupt who would be subject to disabilities in law and accordingly there could be potential risks a regards granting the said [Ang] unfettered authority to receive and distribute moneys a sum c Singapore 1 million dollars held in the client account of the [complainant] in the law firm Surian Partners and you are thereby guilty of grossly improper conduct in the discharge of you professional duty within the meaning of section 83(2)(b) of the Act.

Alternative Second charge

That you, Uthayasurian Sidambaram, an advocate and solicitor, during the period from 23rd Ma 2006 to 2nd June 2006, while acting for [the complainant] failed to advance and protect you client's interests, to wit, you failed to advise the [complainant] that [Ang] was an undischarge bankrupt who would be subject to disabilities in law and accordingly there could be potential risks a regards granting [Ang] unfettered authority to receive and distribute moneys a sum of Singapore million dollars held in the client account of the [complainant] in the law firm Surian & Partners an you are thereby guilty of misconduct unbefitting an advocate and solicitor of the Supreme Cou under section 83(2)(h) of the Act.

Third charge

That you, Uthayasurian Sidambaram, an advocate and solicitor, during the period from 23rd Ma 2006 to 2nd June 2006, while acting for [the complainant] failed to advance your client's interest unaffected by your own interest and that of any other person, to wit, by acting in and preferrin the interests of [Ang] and yourself by distributing client account moneys held by your firm for th [complainant] by issuing 3 client account cheques, on 24 May 2006 to one Lim Beng Huat for a su of S$250,000, on 26 May 2006 to one Lim Beng Huat for a sum of $300,000 and on 25 May 2006 t the firm of Surian & Partners for a sum of $100,000 as legal fees for work done and service rendered to PSN, [Lim], [LKIPL], [Atamaya] and [Ang] and you are thereby guilty of gross improper conduct in the discharge of your professional duty within the meaning of section 83(2)(b of the Act.

Fourth
charge

That you, Uthayasurian Sidambaram, an advocate and solicitor, on 25th May 2006, acted in breac of rule 7(1)(a)(iv) of the Legal Profession (Solicitors' Accounts) Rules, to wit, by transferring clier account moneys of [the complainant] held by your firm, Surian & Partners to the office account c your firm via a client account cheque dated 25 May 2006 in payment of your legal costs c $100,000 when no bill of costs or other written intimation of the amount of costs incurred had bee delivered to the [complainant] and the [complainant] had not been notified that the client accour moneys would be applied towards or in satisfaction of such costs, and you have thereby breache of [*sic*] a rule of conduct made by the Council under the provisions of the [Act] as amounts t improper conduct or practice as an advocate and solicitor under section 83(2)(b) of the Act.

23 We should clarify at the outset, that only two witnesses testified at the DC hearing – the complainant (on behalf of the Law Society) and the respondent. Ang, was *not* called as a witness by either side. That being the case, the references to actions or statements purportedly made by the alleged RBG's representatives *cannot* be verified by us as they have not given their version of the events to the DC. We have referred to them in recounting the factual matrix (at [3]–[20] above) and the context of the proceedings as neither party has sought to challenge these facts. *We wish to emphasise that our references to the alleged role played by these representatives should not be taken as evidence that the assertions of the parties on the alleged involvement of these representatives are correct or that the sequences of events and facts as recounted by them are necessarily true*.

24 After evaluating the evidence as it stood, the DC found the respondent guilty on all the charges. With respect to the first charge and the alternative first charge, the DC found the respondent acted not only for the complainant, but also on behalf of PSN, Atamaya, Ang, Lim and LKIL. Second, the respondent did not deny that he did not advise the complainant of the actual or potential conflict of interests that could arise from multiple representations of the parties. Third, the DC was of the view that even if the complainant knew that Ang was an undischarged bankrupt, the respondent had failed to advise him of the risks of giving unfettered authority to Ang to "disburse funds as he deeme[d] fit on [his] behalf" (see [14] above).

25 Turning to the second charge and the alternative second charge, the DC found that the respondent had neglected to protect and advance the interests of the complainant by failing to inform the complainant of Ang's status as an undischarged bankrupt.

26 With respect to the third charge, the DC was of the view that the respondent had failed to make reasonable inquiries when he was instructed by Ang to make payments from the sum of $1m, failed to notify the complainant prior to making the payments and failed to check with the complainant whether the transfer of $100,000 to his firm's office account was authorised before doing so. The DC held that the respondent had preferred his own interests at the expense of the complainant's.

27 With regard to the fourth charge, the DC found that the respondent had breached r 7(1)(*a*)(iv) of the Legal Profession (Solicitors' Accounts) Rules (Cap 161, R 8, 1999 Rev Ed) ("LP(SA)R"). That rule states that an advocate and solicitor must send his client his bill of costs or issue a written notice stating the amount he proposes to bill for work done before transferring the sum from the client account.

28 In the circumstances, the DC found that cause of sufficient gravity existed for disciplinary

action to be taken against the respondent in relation to all the charges.

The show cause proceedings

29 The show-cause proceedings before us were predicated upon ss 93(1) and 94(1), read with ss 83(1) and 83(2) of the Act. The relevant portions of s 83 of the Act read as follows:

> **83.** —(1) All advocates and solicitors shall be subject to the control of the Supreme Court and shall be liable on due cause shown —
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> (*a*) to be struck off the roll;
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> (*b*) to be suspended from practice for a period not exceeding 5 years;
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> (*c*) to pay a penalty of not more than $100,000;
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> (*d*) to be censured; or
>
> (*e*) to suffer the punishment referred to in paragraph (*c*) in addition to the punishment referred to in paragraph (*b*) or (*d*).
>
> (2) Such due cause may be shown by proof that an advocate and solicitor —
>
> …
>
> (*b*) has been guilty of fraudulent or grossly improper conduct in the discharge of his professional duty or guilty of such a breach of any usage or rule of conduct made by the Council under the provisions of this Act as amounts to improper conduct or practice as an advocate and solicitor;
>
> …
>
> (*h*) has been guilty of such misconduct unbefitting an advocate and solicitor as an officer of the Supreme Court or as a member of an honourable profession …

30 Counsel for the Law Society, Mr Denis Tan ("Mr Tan"), contended that that there was a diversity of interests between the complainant and PSN, Atamaya, Lim and Ang that led to actual or potential conflict of interests which the respondent ought to have disclosed to the complainant. He emphasised that the complainant was an investor who had put in money and wanted to ensure that his investment was protected whereas the other parties were looking to benefit from the investment without incurring any liability whatsoever. Mr Tan further contended that the respondent failed to protect the complainant's interest by failing to reveal Ang's status as a bankrupt and the risks involved in giving the latter unfettered authority to receive and distribute a sum of $1m. In particular, Mr Tan pointed out that the respondent ought to have documented each stage of the transaction as he was duty bound to advise the complainant even if the latter was aware of Ang's status as a bankrupt. By failing to do so, the respondent had in effect abdicated his advisory role entirely. Mr Tan argued that the respondent should not have disbursed funds from the client account and had failed to properly tender a bill of costs or notify the complainant of the payments.

31 Counsel for the respondent, Mr N Sreenivasan ("Mr Sreenivasan"), on the other hand contended that the show-cause action should be discharged. First, he argued that the complainant only became

a client of the respondent on 23 May 2006 and that the complainant knew Ang prior to entering into the Project. He therefore submitted that the complainant entered into the Project knowing full well who the parties were and that there was no duty to advise. He further emphasised that there were common interests between the parties. Mr Sreenivasan contended that the complainant was well aware of Ang's status as a bankrupt and *even if* he did not know, the giving of authority to Ang was a commercial decision to be made by the complainant who was by all accounts a seasoned businessman used to assessing commercial risks. Such a breach could not amount to professional misconduct. He further argued that in making the payments, the respondent merely acted on the instructions of Ang who was authorised by the complainant. Finally, he submitted that the transfer of $100,000 by the respondent was authorised as Ang was the complainant's authorised agent and had given written approval for the payment.

The issues

32 Two broad issues arose for our determination, namely:

(a) whether the charges had been established ("the merits issue"); and

(b) assuming that the DC had rightly found the respondent liable under the charges, the appropriate penalty that should be imposed on the respondent ("the appropriate penalty").

33 We now turn to consider each of these issues *in seriatim*.

The merits issue

Representation of multiple clients

34 As a matter of general practice, a solicitor may accept instructions to act for more than one client in the same commercial transaction. Indeed, this is common particularly in conveyancing transactions where it may be said to be a practical measure to lower transactional costs. As observed in *Lie Hendri Rusli v Wong Tan & Molly Lim* [2004] 4 SLR 594 ("*Lie Hendri Rusli*"), there may also exist a "communality of interests in completing the transaction" (at [51]). Moreover, the scope of duties owed by a solicitor to his clients may be confined to simply "ministerial duties which do not inherently give rise to situations involving a conflict of interests" (*Law Society of Singapore v Tan Phuay Khiang* [2007] 3 SLR 477 ("*Tan Phuay Khiang*") at [93]), making it feasible for clients to retain the same solicitor. Conversely, where a *diversity* of interests between the clients exists (or indeed, where on first blush, it appears that there might be common interests between the clients but this subsequently turns out not to be the case), the onus falls on the solicitor to take a step back from the transaction and advise each client of the *actual* or *potential* conflict of interests while exercising caution not to prefer the interests of one client over the other. Rule 28 of the Legal Profession (Professional Conduct) Rules (Cap 161, R 1, 2000 Rev Ed) ("Professional Conduct Rules") provides for this:

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

The position is further encapsulated in rr 25(*a*) and (*b*) of the Professional Conduct Rules: during the course of the retainer, an advocate and solicitor shall advance the client's interest unaffected by his own interest, as well as any other person. When a solicitor cannot act for one client *without*

compromising the interests of the other clients, he ought to act prudently and inform the clients of his difficulties in objectively discharging his responsibilities. He ought to either obtain their fully informed agreement or discharge himself from further involvement in the subject matter. Where a solicitor has an interest in any matter entrusted to him by a client, r 26(*a*) of the Professional Conduct Rules further provides that he ought to make a full and frank disclosure of such interest to his client. *He must never advance the interests of one client or himself over another client simply in order to complete the transaction*.

35 Acting for several clients often creates an intractable catch–22 conundrum for a solicitor – while a solicitor may act for several clients, he must draw this to the attention of each client and yet render no preferential advice to any single client. At the same time, he must tread the floorboards carefully by continuing to observe the duties of confidentiality owed to each client. This conundrum was alluded to in *Lie Hendri Rusli* (at [48] and [50]):

> 48 … At times, it may be difficult to precisely define the standard [of skill and care expected of a solicitor acting for multiple parties], particularly if the interests of the clients collide. The solicitor's duty certainly extends to drawing attention to and, where appropriate, advising on the legal ramifications of a particular transaction. If the solicitor comes across a potential trap of unusual incident, he ought to draw this to the client's attention notwithstanding any concern that it might incur the displeasure of the other clients. Solicitors must at all times appreciate that they owe clients in any transaction a duty of candour free from any inhibition. …
>
> …
>
> 50 There is often an inherent risk in proceeding with cases of *actual* conflict because of the varying levels of disclosure of *confidential information* that might be dictated by the circumstances. In practice this often creates a serious conundrum when there are multiple representations by the same solicitor or firm. There will be tension between the conflicting requirements of confidentiality and disclosure owed concurrently to the multiple clients: What to disclose? When to disclose? Whom to disclose to? How to disclose? What to confirm? How to confirm? What to advise? When to advise? Quite aside from the contractual duties imposed and/or presumed by the retainer, a solicitor also has a fiduciary duty to maintain confidentiality. …
>
> [emphasis in original]

Although the facts in *Lie Hendri Rusli* do not sit squarely on all fours with the present case, many of the issues and the observations made in that case nevertheless hold true here.

36 It is perhaps not surprising then that often solicitors acting for multiple parties have found themselves caught between the devil and the deep blue sea, unable to navigate their way out of a predicament they have themselves created. One such conflict situation that commonly occurs is in sale and purchase transactions where an advocate and solicitor acts for *both* the buyer and seller in the sale and purchase of a property, such as in *Law Society of Singapore v Subbiah Pillai* [2004] 2 SLR 447 ("*Subbiah Pillai*"). In the course of the transaction, the solicitor in that matter *never a*dvised the sellers to seek independent legal advice or emphasised that there was a conflict of interest in him acting for them as well as for his sister who was the buyer of the property. Commenting on the competing tension solicitors must resolve, Yong Pung How CJ observed thus (at [15]):

There is no absolute bar on a solicitor acting for both parties to the same transaction. Nevertheless, the courts have often warned of the risks involved where a solicitor acts for both parties in a conveyancing transaction. In *Moody v Cox and Hatt* [1917] 2 Ch 71 at 81, Lord Cozens-Hardy MR said:

> A solicitor may have a duty on one side and a duty on the other, namely, a duty to his client as solicitor on the one side and a duty to his beneficiaries on the other; … The answer is that if a solicitor involves himself in that dilemma it is his own fault. *He ought before putting himself in that position to inform the client of his conflicting duties, and either obtain from that client an agreement that he should not perform his full duties of disclosure or say – which would be much better – "I cannot accept this business."*

[emphasis added]

37 Where a solicitor accepts instructions to act for more than one client and there is a conflict of interests, he must go *further* to obtain the *informed consent* of all clients that is (*Clarke Boyce v Mouat* [1994] 1 AC 428 at 435 (cited in *Subbiah Pillai* at [16])):

> … consent given in the knowledge that there is a conflict between the parties and that as a result the solicitor may be disabled from disclosing to each [client] the full knowledge which he possesses as to the transaction or may be disabled from giving advice to one [client] which conflicts with the interests of the other.

38 The rationale behind this was explained in *Lie Hendri Rusli* ([34] *supra*) and bears mentioning (at [59]–[60]):

> 59 In cases of multiple representations, solicitors ought to candidly disclose at the outset to all their clients precisely whom they are acting for. There at least a few reasons for this. First, it is implicit in every retainer that there is a duty to act in the client's best interests and to disclose all material facts … The act of multiple representations is a material fact and should therefore be duly disclosed. Secondly, the client's knowledge and agreement to the multiple representations will amount to implied, if not express, consent to the arrangement. This could debilitate subsequent claims of conflict of interests. Thirdly, in instances where issues of confidentiality of information may be relevant, the solicitor has a concurrent fiduciary duty to place on the table all material facts.
>
> 60 The omission to disclose the fact of multiple representations could result in a spectrum of diverse consequences. It could be characterised as a breach of fiduciary duty and/or negligence or a mere oversight that has no legal significance. The factual matrix will be decisive. The reason for the solicitor's omission will also be relevant in each case. An intentional omission is hardly ever likely to be viewed charitably.

39 Mr Sreenivasan's first line of defence was that the respondent did not act for all the parties. In our view, this sidestepped the crux of the issue by playing on semantics – while the other parties may not have been termed expressly as "clients", the relationship between the respondent and the parties bore all the hallmarks of a solicitor-client relationship. We note that the respondent implausibly testified that the *only* reason for the inclusion of Ang's name on the interim bill was a mistake by his secretary[note: 20]:

Q So now you're saying the bill is an error that you put it there as [Ang]?

A Yes, because---yes, because, er, when I ask my secretary to prepare the---the bill for all the people I acted, she thought [Ang] was my client.

Q I see.

A He was never my client.

Q Yes, but [Ang] to all intents and purpose, had a financial interest in this matter---

A I suppose so.

Q ---right? Except that how he was to be rewarded you don't know.

A Yes.

Q Likewise with Atamaya and---and---and PSN.

A Yes.

40 Notwithstanding this, Prof Jeffrey Pinsler ("Prof Pinsler") in his seminal book, *Ethics and Professional Responsibility: A Code for the Advocate and Solicitor* (Academy Publishing, 2007) ("*Ethics and Professional Responsibility*") states at para 11-011 that a "client" can also be "a person who acts in a representative capacity" such as a "duly authorised agent or trustee or personal representative". Ang was supposedly authorised by PSN to give instructions to the respondent and acted for PSN as a representative. Moreover, Mr Sreenivasan further acknowledged, when queried by us, that Ang wore *two* hats: he was *also* the agent of the complainant. The respondent never pointed out this actual (and not just potential) conflict of interest to the complainant and was in fact, quite happy to go along with Ang's instructions and then rely on his authority to exonerate himself from further blame.

41 Second, we note that Mr Sreenivasan did not make *any* substantive submission as to whether the respondent indeed acted for Atamaya, PSN, Lim and LKIL. It is our view that an *implied* retainer had clearly arisen between the parties and the respondent. In *Law Society of Singapore v Ahmad Khalis bin Abdul Ghani* [2006] 4 SLR 308 ("*Ahmad Khalis*"), this court considered whether an advocate and solicitor who represented the administrator of an estate also acted for the beneficiaries of the estate by implication and emphasised that the existence of an implied retainer depends "very much on the precise factual matrix concerned" (at [64]). Pointing to clear evidence of an implied retainer arising between the beneficiaries and the solicitor, such as the solicitor rendering advice on a renunciation document to the beneficiaries, informing them of the costs and the delay in having a co-administrator, this court concluded that the solicitor must have been acting for both the administrator as well as the beneficiaries (at [67]). As noted by Prof Pinsler in *Ethics and Professional Responsibility* at para 14-005, this must be considered in an *objective* context – it would not do well for an advocate and solicitor to argue, for instance, that he believed that such a relationship of solicitor-client did not come into existence if such a belief were found to be unreasonable (*Dean v Allin & Watts* [2001] 2 Lloyd's Rep 249, cited in *Ahmad Khalis* at [66]). Prof Pinsler also states in *Ethics and Professional Responsibility* at para 14-005 that "[i]t is essential to take into account the person's perspective: did this person reasonably believe that such a relationship had arisen?" We also note the incisive observations by Frederic T Horne in *Cordery's Law relating to Solicitor*s (Butterworths, 8th Ed, 1988) of instances where a retainer may be implied (at p 51):

A retainer may be implied where:

i) the client acquiesces in and adopts the proceedings;

ii) the client is estopped by his conduct from denying the right of the solicitors to act… , or from denying the existence of the retainer… ;

iii) the client has by conduct performed part of the contract of employment… ;

iv) the client has consented to a consolidation order. …

42 More particularly, in *Cordery on Solicitors* (Anthony Holland gen ed) (LexisNexis UK, 9th Ed, 1995, 2004 Release) at para E 425 (and cited by Prof Pinsler in *Ethics and Professional Responsibility* at para 14-006), it has been emphatically stated as follows:

> A retainer may be implied where, on an objective consideration of all the circumstances, an intention to enter into such a contractual relationship ought fairly and properly to be imputed to all the parties. The implication would have to be so clear that the solicitor ought to have appreciated it. *Circumstances to be taken into account might include, where appropriate, who is paying the [solicitor's] fees, who is providing instructions and whether a contractual relationship has existed between the parties in the past*.[emphasis added]

43 It is our view that the course of the conduct between the respondent and the parties suggested that the respondent acted *for* all of them; though, as mentioned, the respondent acted *only on* the instructions of Ang in relation to the disbursement of funds – he took instructions from Ang for the making of each payment, including the payment of his fees of $100,000. *In the interim bill tendered, the respondent expressly recorded that the payment of the $100,000 fees was for the work done and services rendered to not just the complainant, but for all the parties* (see [16] above). Both PSN and Atamaya gave instructions to the respondent via their conduit, Ang. The respondent was also responsible for preparing the Pre-Contract Agreement[note: 21] under which Lim and LKIL initially both agreed to jointly develop the Property subject to LKIL securing the mandate from RBG. In fact, under cross-examination, the respondent testified that he was "acting for PSN"[note: 22] as well as for LKIL and Lim[note: 23]. On any objective analysis of the facts, what in effect happened was that at any one time, the respondent acted not *just* for the complainant (*ie*, client by express retainer as evidenced by the warrant to act signed by the complainant (see [13] above)) but also PSN, Atamaya, Ang, Lim and LKIL (*ie*, clients by implied retainer).

44 To recapitulate, solicitors should be guided by not just the rules of professional conduct but also by their intuitive common sense and considerations of practicality in prudently navigating situations of multiple representations of clients. In acting for more than one client, a solicitor must not lose sight of the wood for the trees and always maintain a sense of perspective. This is often easier said than done – but one that a reasonably competent solicitor must necessarily undertake to do, in ensuring that his paramount duty of loyalty to his client is never compromised. A risk avoidance approach is to be preferred. The rule of thumb for a prudent solicitor is this – "*when in doubt, don't*".

Actual or potential conflict of interests

45 An advocate and solicitor's core duty is to act in the best interests of his client and he should also avoid any influence which could potentially interfere with his unflinching loyalty to his client

(rr 2(2)(*c*) and 25(*b*) of the Professional Conduct Rules). Having found that the respondent acted for multiple clients, this naturally leads to the next inquiry: did the clients have conflicting interests? And, if so, how did the respondent deal with the conflicting interests?

46 Here, far from having common interests, the parties while all participating in the *same* transaction had in reality plainly diverse (indeed conflicting) interests and objectives. This was by no means an ordinary conveyancing transaction – the complainant was an investor in a joint-development project and wanted ironclad security for his investment but PSN, Atamaya, Lim and LKIL had an apparently conflicting interest (assuming the transaction was indeed genuine) in obtaining quick returns for their efforts without giving the complainant any security. In fact, the respondent reluctantly admitted that the common objective of Lim, Atamaya, Ang and PSN was in only making money; finding a joint investor to jointly develop the Property was their means to achieve that objective[note: 24].

47 In *Tan Phuay Khiang* ([34] *supra*), it was established that *even* where a solicitor does not act for multiple clients in the *same* transaction, but for other clients with whom he had previous dealings and his current clients in the sale of their flat, he could still be in breach of his professional obligations. This is rooted in the "fiduciary nature of the solicitor-client relationship, which requires a solicitor to place his client's interests above those of his own as well as those of third parties" (at [62]) and a solicitor's duty of unflinching loyalty. Rule 30 of the Professional Conduct Rules further states that a solicitor should *decline* to advise a potential client whose interests are opposed to that of a client he is representing on any matter and he should inform such a potential client to obtain independent legal advice. In the event the potential client does not obtain such independent legal advice, the solicitor still bears a duty to ensure that the potential client is not under the impression that his interests are uncompromisingly protected by the advocate and solicitor. As Prof Pinsler succinctly put it (*Ethics and Professional Responsibility* at para 16-007):

> The words in r 30(1) [of the Professional Conduct Rules] –"…whose interests are opposed to that of a client he is representing on any matter…" – indicate that any interest which would prevent the advocate and solicitor from acting in the best interests of any client would be sufficient to bar the advocate and solicitor from acting for multiple clients. Put simply, the advocate and solicitor is barred if the efficacy of his representation of any one of his clients would be compromised (in any way and to whatever extent) by acting for another or other client(s).

In our view, the respondent had improperly compromised the interests of the complainant, by acting for multiple clients in the subject transaction even though there was patent conflict of interests. He *never* paused to advise the complainant what they were and to seek independent legal advice. As observed in *Lie Hendri Rusli* ([34] *supra*) at [47]:

> Solicitors should not act in a matter where there is or will be a real risk of potential conflict of interests or actual conflict between different clients in a transaction. *In the final analysis, it is the integrity and common sense of the solicitor that will provide the answer as to whether to proceed in any proposed transaction – a balance between principle and expediency must be struck*. [emphasis added]

48 Certain aspects of the respondent's conduct warrant greater scrutiny. Firstly, after the complainant asked if his investment could be protected via a caveat or a charge over the Property, the respondent informed him that this would not be possible on the basis that PSN and Atamaya had informed him that the caveat could not be lodged[note: 25]. He did not explain why a caveat or a

charge could not be lodged and failed to suggest to the complainant any alternatives to protect his investment nor explain the true risks inherent in his investment[note: 26]. *By doing so, the respondent clearly preferred the interests of PSN, Atamaya and Ang in ensuring that the money was invested in the Project without any security rights over the interests of the complainant*. Plainly, this aspect of his conduct fell far short of the professional standards expected of a reasonably competent solicitor. In this regard, reference can be made to the case of *Law Society of Singapore v Vardan Vasantha Lakshmi* [2007] 1 SLR 240 ("*Vardan Vasantha Lakshmi*") where a solicitor acted for the complainants, the sellers, as well as the housing agent of the property. The solicitor had been involved in 27 earlier transactions where the housing agent had made loans to persons for whom she acted as a housing agent. This court found that the solicitor had placed herself in a position of conflict of interests, and it was evident from the manner in which the documents were prepared that she had preferred her own interests as well as those of the housing agent over the interests of the complainants (at [31]). Further, the steps she had taken to explain the nature of the documents to the complainants, before they appended their respective signatures, were "woefully inadequate" (at [35]), and thus this court concluded that she had failed to take "appropriate steps to extricate herself from such an invidious situation" (at [38]).

49 Secondly, the respondent knew that Ang was an undischarged bankrupt as of 2001 (see [5] above) but did not think it was necessary to draw this to the attention of the complainant. In our view, this was an inexplicable oversight. We will say more of this later (see [54]–[61] below), but it suffices for us to say here that had he been acting in the interests of the complainant, the respondent ought to have drawn *all* material facts to his attention knowing full well that this would lead to a potential conflict of interests. Had the respondent properly disclosed Ang's status as a bankrupt, we cannot for one moment imagine that the complainant would, with alacrity, then have given him the authority to disburse the $1m as he saw fit.

50 Thirdly, it is pertinent to note that the way the respondent had chosen to run his case suggested that he did not even go so far as to acknowledge that his duty to advise his client had not been adequately discharged – the respondent admitted openly that he did not *at any time* advise each client of the potential conflict of interests that could arise as he felt that he did not have a duty to do so. The scope of the respondent's duties was also not confined to simply ministerial duties – he was involved in sourcing for architects and consultants. Just like the solicitor in *Tan Phuay Khiang* ([34] *supra*) (see [95]), the respondent's role in the Project went beyond the essentially perfunctory role of preparing a document and witnessing its execution. As Prof Pinsler quite rightly postulates (*Ethics and Professional Responsibility* at para 14-023):

> It follows that an advocate and solicitor has a primary obligation to fully justify his client's trust and reliance on him. It is not simply a matter of "telling the client the law". He *must go further and ensure that the client is completely comfortable in his understanding of the circumstances and issues, the options open to him and the nature of the legal representation which he is to be provided* (*ie*, what the advocate and solicitor is to do for him). [emphasis added]

51 Instead, the respondent's consistent pattern of disbursing the monies under the instructions of Ang, without any concern as to whether he should notify or confirm with the complainant, revealed a troubling lack of judgment. The only inevitable conclusion to be drawn was that he unduly relied on the letter of authority given by the complainant. The origin of this letter of authority was the subject of considerable controversy between the parties. The respondent submitted that after receiving the letter of authority from the complainant, he called the complainant to check if the letter of authority were indeed his instructions. The complainant submitted however, that the respondent had *dictated*

the letter of authority over the phone and told him to send it via e-mail or fax. He merely reproduced it *verbatim* and after the respondent sent him a short message service ("SMS") stating that he had not received the fax, the complainant then resent it. The complainant explained that he did not put any limitations on the authority given to Ang as he felt that the respondent would "vet every payment that [went] out"[note: 27]. He also felt that the authority given to Ang was not meant to be a "never-ending, forever authority"[note: 28]. While the DC found that it was of no necessity to make any finding on the dispute over the letter of authority[note: 29] (see [54] below), we found that what was important was the glaring omission of the respondent: *even if* we accept that he did not dictate the letter of authority and may have checked with the complainant whether the letter set out his instructions, *he stopped short of advising him of the attendant risks and consequences in giving Ang such a blanket authority*. We find, therefore, that the respondent had placed himself in a situation of conflict of interests, where he had plainly preferred both his own interests as well as those of the other clients *over* the interests of the complainant.

Solicitors' duty in cases of multiple representations where there are no common interests between the parties

52 The facts of this case exemplify the difficulties that solicitors might face in situations of multiple representations where the clients do not share common interests. It might be helpful if we set out some general guidelines to assist solicitors (this is, by no means, exhaustive):

(a) A solicitor should ordinarily not agree to act for multiple clients in a transaction where their interests and objectives are clearly not identical. The obligation of loyalty to a particular client will not infrequently be detrimental to the interests of other clients in the same transaction and if this is so in a particular matter, it requires the rejection of the other clients. If the solicitor does act for more than one client in the same transaction, he ought to seriously consider taking some of the precautions mentioned below.

(b) He should advise the clients of the risks and consequences involved in having him act for multiple clients with diverse interests and objectives as well as draw their attention to the *actual* or *potential* conflict of interests that could arise (*ie*, issues of confidentiality and attendant lack of full disclosure).The solicitor should weigh the potential harm to the client against the benefits of common employment. Where the informed consent of the clients to act is sought, the disclosure and advice of potential risks must be conscientious, comprehensive and made with complete candour. After that, the solicitor should also advise that the clients seek independent legal advice.

(c) A solicitor cannot prefer the interests of one client over the others. His duty extends to drawing attention to, and where appropriate, advising on the legal ramifications of a particular transaction. He should err on the side of prudence and diligence. If he comes across a potential pitfall, he ought to immediately draw it to the attention of his client, notwithstanding any concern that it might incur the displeasure of the other clients: *Lie Hendri Rusli* ([34] *supra*) at [48].

(d) Where a solicitor has a personal interest in the outcome of the matter adverse to that of any client, he should immediately withdraw and advise his client to seek independent legal advice: r 27 of the Professional Conduct Rules and *Ho Kon Kim v Betsy Lim Gek Kim* [2001] SGCA 64 at [63].

(e) *Even if* a solicitor has no interests adverse to the client's interests in the matter at hand,

he should document each stage of the transaction diligently and follow up with correspondence to document any significant advice rendered to the client (this would include taking attendance notes meticulously and faithfully throughout the course of his retainer as these aid in corroborating a solicitor's testimony in the event of a dispute: *Lie Hendri Rusli* at [63]). As observed in *Lie Hendri Rusli* at [71], while the Act and the Professional Conduct Rules do not expressly require solicitors to maintain contemporaneous notes of their dealings with clients, observing such practices, even for routine matters, would be an exercise in precaution and prudence.

(f) This case, just like *Lie Hendri Rusli*, should serve as both an invaluable and a practical reminder to the legal profession to:

(i) document the nature and scope of retainers with clients;

(ii) maintain reliable minutes of discussions with clients; and

(iii) carefully consider whether to document through correspondence significant advice rendered.

(g) A solicitor should not regard himself as merely a *conduit, post-box or puppet* through which information and correspondence is unthinkingly communicated between the various clients or who blindly executes the instructions of every client. He has responsibilities as an advisor throughout the duration of the retainer. He must remain steadfast in upholding the integrity of the legal profession, as he is first and foremost an officer of the court.

5 3 *Most importantly, a solicitor must remember that his paramount duty is to conscientiously, unwaveringly and faithfully advance the interests of his clients and avoid all actual and/or potential conflict of interests*. Documenting the advice given to each client at each step of the transaction will not only aid in corroborating a solicitor's testimony and clarifying matters in the event of a dispute over what has transpired (*Lie Hendri Rusli* ([34] *supra*) at [63]; see also [52(e)] above); it will also offer clients the opportunity to reflect and reconsider the advice that has been rendered by that solicitor. The respondent testified that he did not keep attendance notes at all[note: 30].The failure to maintain attendance notes may not *per se* render a solicitor in breach of his professional duties (*Lie Hendri Rusli* at [36]) but "the absence of credible contemporaneous written records provides the context in which [a court may come] to the view that an adverse inference could be safely drawn against" a solicitor: *Tan Phuay Khiang* (at [82]). At the end of the day, in the absence of applicable rules or precedent, a solicitor should use his common sense and moral compass to guide him in discharging his responsibilities competently and diligently.

Omission of critical information and failure to advise: Ang's status as an undischarged bankrupt

54 Turning to the second charge, the DC did not make an express finding as to whether the letter of authority signed by the complainant was written under the advice of the respondent or of his own volition. The DC's explained at [54] of its Report dated 22 January 2009[note: 31]:

We note that there is a dispute as to whether or not the letter of 24 May 2006 giving Ang unconditional and unfettered authority to disburse from the sum of $1 million was dictated by the Respondent to the Complainant or was simply sent to the Respondent. *We are of the view that there is no necessity for our purposes to make any finding on this dispute. The fact is that the contents of the letter are not in dispute and it is irrelevant for our purposes as regards how it came about*. [emphasis added]

55 The respondent's argument in response to this charge was two-fold: while he did not deny that he knew that Ang was a bankrupt since 2001[note: 32] (see [5] above), he averred that the complainant *must* have known that Ang was a bankrupt on the basis of the hours he had spent with him. The respondent testified that the complainant and Ang were acquainted with one another and Ang had, on occasion, "proudly announc[ed] he was a bankrupt"[note: 33] as it was "not a hidden secret which he was trying to hide"[note: 34]. The complainant, on the other hand, insisted that he *only* found out that Ang was a bankrupt on 1 June 2006, after the new solicitors came on board and ran bankruptcy searches on Ang[note: 35]. What is of crucial importance is that labouring under this "misapprehension", the respondent appeared to be quite content with taking a back seat and taking a minimalist view of his professional obligations. The DC pursued this point extensively[note: 36]:

Chairperson: Didn't you---you know [Ang]---you know [Ang] to be a bankrupt, right?

[The respondent]: Yes, your Honour.

Chairperson: Didn't it occur to you why should the PSN appoint a bankrupt to be the attorney?

[The respondent]: Didn't occur to me, your Honour. [Ang] was well connected. In fact, he was involved in various deals, including certain listed companies where he actually got Brunei royalty to be directors on the board. I was told this and I confirmed that, your Honour, I did the searches of the companies. But that's why I say, your Honour, he's well connected, your Honour. I don't know why being a bankrupt he had such connections. But he did have these connections and he was given the power of attorney, your Honour. I do not know why PSN gave him the authority, I really do not know.

Chairperson: Do you know why was he made a bankrupt, do you know?

[The Respondent]: I think it was regarding some suits, Sir. I didn't actually ask him why he was made a bankrupt. He said he was a property developer before and he lost money and he was made a bankrupt. I didn't actually go into details, your Honour. All I knew he was a bankrupt. I didn't ask him why. He told me he was a big-time property developer before and he had lost money and that's why he was made a bankrupt.

…

Q *Now, the fact that [Ang] was a bankrupt, did it concern you in agreeing to pursue this matter further. The fact that [Ang] is a bankrupt, this is a $70 million property. Did it raise concern in your mind as a lawyer, and more so that a Brunei Government officer, in your mind at that time, had also given this power of attorney as Mr Chairman had asked, given the power of attorney to a bankrupt. Did it not concern you?*

A Your Honour, *as far as I was concerned at that time, [Ang] was the agent of PSN. So PSN would have known that [Ang] is a bankrupt and if he trusted him and gave him the authority to negotiate deals, then I didn't think it was a problem at that time, because there was no money which was supposed to be transacted at that time*.

[emphasis added]

56 Assuming the complainant was aware of Ang's status as a bankrupt, the respondent's second limb of defence was that he was under *no* duty to warn the complainant of the consequences of dealing with an undischarged bankrupt given that the complainant was not a proverbial layman but a seasoned businessman able and willing to take risks[note: 37]:

A Your Honour, he was a businessman, he wanted this deal. And he knew that [Ang] was the person who could conclude the deal.

Q Mr Surian, that answer is not going to assist you, I'm afraid. Because we deal with many clients in our work and many clients come and tells [*sic*] us what they want. And if we think that it cannot be done, we would advise them accordingly.

A *I did not advise him*.

Q So it's your answer---your answer would be "You did not advise him" am I correct?

A *Yes, your Honour, I did not advise him*.

Q Rather than trying to give an explanation.

A Sure. I did not advise him.

Q You did not advise him---

A Yes.

Q *All right, Now, Mr Surian, this is a blanket authority. Is it not dangerous for [the complainant] to have given you such an authority, to such a person, bearing in mind that [Ang] is a bankrupt?*

A Your Honour, as far as I was aware, the complainant was fully aware that [Ang] was a bankrupt. In fact---

Q Okay. Even if he---let's take it---

A And---

Q ---even if he was aware, we accept that. Even assuming he's aware for one moment.

A And he knew that [Ang] was the one with the contacts in the Brunei Government with PSN and Maya, and that he could conclude the deal. It was a business decision. Probably he wanted this deal badly, so he gave full authority to [Ang].

Q It may well be. It may well be, Mr Surian. But I'm asking you this. Did you advise [the complainant] of the danger of having given such an authority to a bankrupt?

A I did not, your Honour. I thought he was making a---

Q Mr Surian, were you or are you aware in law, that assuming [Ang] had misapplied his authority, misused his authority, Mr Surian---[the complainant] would be left with no recourse against him? Are you aware of that in law?

A I'm fully aware.

Q Yes. And you did not think that this was something which [the complainant] should be advised of?

A Your Honour, as far as I'm aware, [the complainant] knew that [Ang] was a bankrupt.

Q Yes---

A *He, being a seasoned businessman, ought to know*.

Q So---

A *I did not tell him, your Honour, because at that point in time, it was a business decision by [the complainant]. If I didn't follow the instructions and they believe, if he doesn't get the deal, I'll be sitting here, saying that I did not follow instructions*.

[emphasis added]

57 The scope of the advice to be rendered to the proverbial layman is not necessarily the same as that rendered to a sophisticated businessman. This is not surprising as the latter would be steeped in the ways of the commercial world and may have some knowledge of legal consequences. This is not to say, however, that a solicitor advising a savvy, commercially-minded client should *immediately* wash his hands clean from advising him of the potential ramifications of any decision, when it is potentially detrimental to his interests. Rather, the solicitor ought to tailor his advice to suit the needs of his client and not be afraid to ask probing questions. As observed in *Lie Hendri Rusli* ([34] *supra*) at [55]:

> There is obviously an appreciable difference between the level of explanation and circumspection required in dealing with a sophisticated or shrewd businessman as compared with the proverbial layman. It might be said that an impoverished explanation to a client with an impoverished knowledge about worldly matters may in itself be evidence of negligence. This is to be contrasted with the situation of the sophisticated or shrewd businessman who can usually be assumed to have a measure of knowledge pertaining to the purpose and purport of legal documentation coupled with an innate ability to quickly size up and grasp the gist of his responsibilities.

58 A cursory check on Ang's background would have immediately revealed that a number of bankruptcy petitions had been brought against him. The respondent can be said, at the very least, to have seriously fallen short of the standards expected of any conscientious solicitor in failing to draw the attention of the complainant to the disabilities of an undischarged bankrupt. An undischarged bankrupt comes under certain disabilities under the Bankruptcy Act (Cap 20, 2000 Rev Ed) as well as the Companies Act (Cap 50, 2006 Rev Ed). He cannot, *inter alia*, leave Singapore without the permission of the Official Assignee (s 131(1)(*b*) of the Bankruptcy Act) and he cannot be a director of, or partake in the management of, any company except with the leave of the Court or the written permission of the Official Assignee (s 148(1) of the Companies Act). Further, unless otherwise provided by the Bankruptcy Act, no creditor to whom the bankrupt is indebted shall have any remedy against the bankrupt in respect of the debt (s 76(1)(*c*)(i) of the Bankruptcy Act) and no action or proceedings can be commenced against the bankrupt in respect of that debt (s 76(1)(*c*)(ii) of the Bankruptcy Act). In the event of an abuse of authority by Ang, the complainant would have been left in the unenviable position of having no meaningful recourse against Ang and no effective legal protection for his investment. This is precisely what has happened.

59 Mr Tan submitted, quite correctly in our view, that what was particularly troubling was that the respondent glaringly failed to recognise that he had a duty to advise the complainant of the consequences of dealing with an undischarged bankrupt – his justification was that the complainant had simply "[given] an authority to [Ang] on his own and [he] followed instructions from the man [the complainant had] given authority to"[note: 38]. The principle of executing duties faithfully, diligently and competently to one's knowledge is best encapsulated in r 12 of the Professional Conduct Rules. *A solicitor should be diligent in the course of his retainer and raise any matter of significance to his client but this does not mean that a solicitor should blindly execute the instructions of the client*. What exacerbated the situation here (and unfortunately for the respondent) was that the complainant went on to execute a handwritten note giving Ang the authority to disburse funds as he saw fit[note: 39]. As alluded to previously (at [51] above), the handwritten note was the subject of some controversy. We find that it was probably true that the respondent was only notified later that a handwritten note had been executed by the complainant as the evidence adduced in the form of a SMS received by the respondent from the complainant corroborated his testimony that he was *not* privy to the execution of the handwritten note and only came to know about the note from Ang, *after* it had been written. The SMS sent by the respondent stated that[note: 40]:

> I understand from [Ang] that u have sent a fax 2 me with instructions. I have not received the same. Pls resend.

6 0 *Even so*, we find it discomforting to note that the respondent was quite content to simply follow the letter of the handwritten note. Such blanket authority given to neither kith nor kin ought to have struck the respondent as extraordinary. Yet, he conveniently shut his eyes to this issue and did not, on *any* occasion, advise the complainant of the ramifications of imbuing an undischarged

bankrupt with such a blanket authority. Solicitors, it must be said, cannot be content with simply following the instructions of their clients blindly, whether it is for fear of reproach or rebuke, but must exercise practical wisdom in advising their clients. This proposition was well illustrated in *Tan Phuay Khiang* ([34] *supra*) where a solicitor acted for the complainants, homeowners in a transaction, for the sale of their flat pursuant to a referral made by a moneylender. He failed to neither advise the complainants *why* they were executing a power of attorney that was completely superfluous nor advise them of another equally secure cost-saving method of handling the sale transaction. Just like the respondent, the solicitor had been utterly *indifferent* to the complainants' interests. The court noted emphatically at [95]–[96] that:

> 95 … [T]he respondent erred in taking the view that it was not incumbent on him to query and advise the complainants on why they were executing a power of attorney. This is clearly not a situation where the respondent's duties were wholly ministerial in nature. *The respondent's duties in this case went beyond the essentially perfunctory role of preparing a power of attorney and witnessing its execution. The respondent was obliged to take reasonable care to advise and ensure that the complainants understood the implications of executing a power of attorney in the prevailing circumstances. The respondent ought to have asked the complainants for their reasons in executing a power of attorney given that the usual reasons for executing a power of attorney were absent on the facts* … More significantly, the proposed attorney (Cheung) appeared to be a complete stranger to the complainants. *The power of attorney prepared by the respondent was extremely broad and far-reaching both in its scope and application. It endowed Cheung with an almost unfettered discretion and power to dispose of the Flat as he saw fit, at any price and to any party*. This effectively exposed the complainants to the risk that Cheung could sell the Flat at an undervalue to a related party, and potentially leave the complainants without any form of meaningful recourse.
>
> 96 Notwithstanding all this, *the respondent had not seen it fit to adequately highlight the grave risks that the complainants took in executing the power of attorney*. This was despite the patent fact that the complainants were far from being sophisticated consumers and in all probability lacked an adequate understanding about the nature of the power of attorney as well as its attendant risks.
>
> [emphasis added]

61 We are therefore of the view that, in so far as the second charge is concerned, the respondent is guilty of grossly improper conduct within the meaning of ss 83(2)(*b*) and 83(2)(*h*) of the Act.

Payments made from client account

62 The proper administration of accounts, especially clients' monies, is integral to every law practice as the client places his trust in the solicitor. As noted by this court in *Law Society of Singapore v Rasif David* [2008] 2 SLR 955 ("*Rasif David*") (at [39]):

With regard to the *management of client accounts*, it was observed by Thomson CJ in the Malaysian High Court decision of *In re A Solicitor* (1962) 3 MC 323 at 323 that:

> The legal profession enjoys very great privileges. In return for these privileges they owe the public a duty and that duty involves not only an extremely high standard of probity but a way of conducting business, and particularly business in relation to financial matters, which is beyond suspicion. In particular it is required, and it is part of the price the profession must pay for its privileges, that separate accounts of solicitors' money and clients' money should be kept.

[emphasis in original]

63 The procedures for drawing monies from client accounts are governed by specific provisions, *inter alia*, under rr 7 and 8 of the LP(SA)R:

Moneys which may be drawn from client account

7. —(1) There may be drawn from a client account —

(*a*) in the case of client's money —

(i) money properly required for a payment to or on behalf of the client;

(ii) money properly required in full or partial reimbursement of money expended by the solicitor on behalf of the client;

(iii) money drawn on the client's authority;

(iv) money properly required for or towards payment of the solicitor's costs where a bill of costs or other written intimation of the amount of the costs incurred has been delivered to the client and the client has been notified that money held for him will be applied towards or in satisfaction of such costs; and

(v) money to be transferred to another client account;

…

(2) In the case of client's money and trust money referred to in paragraph (1) (*a*) and (*b*), the money so drawn shall not exceed the total of the money held for the time being in the client account on account of the client or trust.

Money from client account — how drawn

8. —(1) Except as provided under rule 7, no money shall be drawn from a client account unless the Council upon an application made to it by the solicitor specifically authorises in writing such withdrawal.

(2) No money shall be drawn from a client account under rule 7 (1) (*a*) (ii) or (iv), (*c*) or (*d*) except by —

(*a*) a cheque drawn in favour of the solicitor; or

(*b*) a transfer to a bank account in the name of the solicitor not being a client account.

(3) No money shall be drawn from a client account under rule 7 (1) (*c*) or (*d*) by a cash cheque or a bearer cheque.

…

64 Mr Tan submitted that the respondent failed to advance the complainant's interest and disbursed funds from the sum of $1m deposited in the client account by issuing three cheques:

(a) on 24 May 2006, to Lim Beng Huat for a sum of $250,000;

(b) on 25 May 2006, to the respondent's firm for a sum of $100,000; and

(c) on 26 May 2006, to Lim Beng Huat for a sum of $300,000.

65 The respondent's sole defence was that the complainant had authorised Ang to disburse his $1m as he saw fit and the respondent merely executed the instructions of Ang. This was improper reliance on a legal fig leaf. Firstly, the respondent failed to notify the complainant *before* each payment was made nor did he obtain any written authority from the complainant. He testified that he did not offer any advice to the complainant at all[note: 41] and was unforgivably lax in permitting the withdrawal of $650,000 of the complainant's money. The respondent testified[note: 42]:

Q All right. Because he has given written instructions and therefore, you did not find it necessary to reconfirm with [the complainant]?

A Because if he wanted that, he would not [have] given written instructions to [Ang].

[Q] Yes, but that is putting it your way. But it was because of the written instructions, you felt it unnecessary to have contacted him or that did not cross your mind at all?

A *No, because he had given authority to [Ang]---*

Q Right.

A ---means he has given him authority.

Q *So it did not cross your mind---because of that authority, it didn't cross your mind that it was necessary to confer with him?*

A *Yes, because if not, he would not [have] given authority. He would have given authority for each payment*.

Q Right, so if therefore---okay, if therefore [Ang] had come and say "Pay the $300,000 to 'I don't know' to buy a house in my name", you would have---you would have okayed it? I mean let's take an extreme. [Ang] wanted to buy a house or whatever it is or he wanted to pay the money to some---something more---more ridiculous, you would have accepted it without question?

A Your Honour---your Honour, *as far as I was concerned, all these discussions about the disbursements of money was between [the complainant] and [Ang]. [The complainant] had given a written instruction, your Honour. If he wanted me to inform him, he would not have given the discretion to [Ang]*. As far as I was concerned, he wanted the project. [Ang] was the man who could deliver the project. He gave him authority.

[emphasis added]

66 In effect, the respondent's only excuse was that by executing the letter of authority, the complainant had given him *carte blanche* to make payments out of the sum of $1m so long as Ang gave instructions[note: 43]:

[The respondent]: As far as I was concerned, these payments he had given written authority to [Ang] whom he knows that could actually deal with PSN to secure this project, your Honour. So as far as I was concerned, he has given him full authority to disburse the money according to, er, his discretion to secure the [Project]. That---that was the primary concern I was having because if he did not want the---er, [Ang] to have the authority, then he would have given individual authority for each payment. *He gave him blanket authority because he wanted this project, your Honour*. He---he gave [Ang] full discretion because he knew that [Ang] was the only person who could secure this project for him. And based on that written authority, I followed, your Honour. Because I did not think---[the complainant] had my phone number at all times. *Because he has given a writ---er, authority, I thought he was busy or he had given him full discretion. I did not even think of calling him, your Honour. Honestly, that---that is the truth of the matter*.

[emphasis added]

67 Secondly, all things considered, it is in the interests of the legal profession that an advocate and solicitor must not simply act with propriety, but he must also be seen to have done so by all. The existence of the client account acts as a safeguard against the misuse of client's monies and stipulates how a solicitor is to discharge his duty as a safe keeper of these funds. The respondent, qua complainant's solicitor, ought to have inquired further as to the *purpose* of the payments, especially since it was not immediately apparent why Ang was giving instructions to make payment to these parties. In *Law Society of Singapore v Quan Chee Seng Michael* [2003] SGHC 140, a solicitor was charged with, *inter alia*, withdrawing money from a client account in breach of rr 7(1) and 8 of the LP(SA)R. The issue that arose was whether the complainants had instructed the solicitor to pay them in cash. While they had signed an irrevocable letter of authority authorising the solicitor to act for them in the sale of their flat and to collect the proceeds on their behalf, the complainants were not given any copies of the documents signed and the court found that it was unlikely that the complainants would have requested for the proceeds in cash. Even if they had issued such instructions, the court emphasised that *a solicitor came under a duty to enquire further and to advise against such an atypical request* (at [29]). Interestingly (much like the respondent in the present case), the solicitor testified that it "never occurred to him that he should be concerned about the security of such a transaction so long as the clients had given their instructions" (*ibid*).

68 Lim Beng Huat was Ang's driver and a "runner"[note: 44] but there was no discernable linkage between the Project and him or any explanation offered by Ang as to why he should receive any money. Why was Ang, a bankrupt, authorising payment to his own driver? Any competent solicitor would have seen a red and not just an amber or green light if a similar request had been made in similar circumstances. In fact, upon questioning by the DC, the respondent admitted that he was fully cognisant of the fact that the cheque was written in Lim Beng Huat's name precisely *so as to allow Ang to receive the cash*[note: 45]:

Lee: Just one question. Mr Surian, regarding Lim Beng Huat, right, were you aware at that time that the whole purpose for writing the cheque in Lim Beng Huat's name was to allow [Ang] to receive the cash? Were you aware of that?

[The respondent]: *Insofar as the 250,000 was concerned, yes, because I called Lim up and Lim said yes, he has authorised [Ang] to receive this money on his behalf*. So that part---*but in relation to the 300,000, I do not know where the money went to, your Honour*.

[emphasis added]

69 Thirdly, both cheques given to Lim Beng Huat were uncrossed and no receipts were received. These could have fallen into unclean hands and have been used for ulterior purposes – yet the respondent failed to notify and advise the complainant that these payments were out of the ordinary. In the instant case, a solicitor of the respondent's seniority and standing should have known better than to simply release money from the complainant's investment. His conduct fell well short of the standards of integrity, probity and trustworthiness all members of the profession should strive to uphold.

Lack of delivery of bill of costs to client

70 It is evident from the wording of r 7(1)(*a*)(iv) of the LP(SA)R (see [63] above) that the obligation on the solicitor is two-fold: he must deliver a bill of costs to his client *and* also notify him that the money held for him will be applied in satisfaction of his legal fees. The premise behind such a statutory framework is to ensure that first, the risk that a solicitor may misuse and misappropriate the funds in the client account is minimised; and second, to ensure that good accounting practices are adopted by solicitors to ensure that there is accountability to the client.

71 The respondent submitted that, first, the complainant had agreed to pay the fees of the respondent for work done relating *to the Project* and not just for work done just for the complainant. As he put it, the sum was agreed initially even *prior* to the doing of any work. Second, he argued that the fees were one of the liabilities of the joint development and by paying this sum of $100,000, the interests of the complainant were being furthered. Third, he again relied on the letter of authority given by Ang as proof that the payment was duly authorised by the complainant's agent. In our view, the respondent seriously erred in taking the view that it was not incumbent on him to provide a copy of the bill of costs to the complainant. First, r 7(1)(*a*)(iv) of the LP(SA)R expressly states that a solicitor must provide the client with a bill of costs. The interim bill is noticeably brief and merely states that $100,000 be applied towards the firm's professional charges for "work done and services rendered from September 2005 to LKIL, [Lim], [Ang], PSN & Atamaya in respect of the … matter until 23rd May 2006"[note: 46] (see [16] above). Notably, while the complainant was *not* included in the bill as one of the clients to whom services were rendered, nevertheless he had to pay for the other clients. Second, the respondent did not tender a *separate* bill for the individuals concerned before adducing this interim bill of costs[note: 47]. It is unclear how the amount was arrived at as no details were provided. By placing his own interests ahead that of the complainant, the respondent further contravened r 25(*a*) of the Professional Conduct Rules. There had been a *total* lack of disclosure of such an interest. Third, r 35 of the Professional Conduct Rules further provides that a solicitor is required to inform the client of:

(*a*) the basis on which fees for professional services will be charged and the manner in which it is expected that those fees and disbursements, if any, shall be paid by the client;

(*b*) other reasonably foreseeable payments the client may have to make either to the advocate and solicitor or to a third party and the stages at which the payments are likely to be required;

(*c*) the estimates of the fees and other payments, which shall not vary substantially from the final amount, unless the client has been informed of the changed circumstances in writing;

(*d*) the fees may be subject to a limit which may be incurred without further reference and where the limit imposed on the fees is insufficient, the advocate and solicitor shall obtain the client's instructions as to whether to continue with the matter; and

(*e*) the approximate amount of the costs to date in every 6 months whether or not a limit has been set or deliver an interim bill in appropriate cases.

72 In the instant case, the respondent has not done *any* of the above. Moreover, in a circular dated 1 March 1991, the Council of the Law Society has ruled that prior to withdrawing money from a client account in satisfaction of his costs, a solicitor must allow a lapse of *two* working days after giving notification before transferring such amount for costs out of the client account. The respondent transferred the sum of $100,000 on 25 May 2006 *on the very same day* the interim bill was issued.

The appropriate penalty

73 The imposition of disciplinary action under s 83 of the Act serves several purposes, as set out by Sir Thomas Bingham MR in *Bolton v Law Society* [1994] 1 WLR 512 at 518–519 ("*Bolton*") and adopted by this court in *Law Society of Singapore v Tham Yu Xian Rick* [1999] 4 SLR 168 (at [18]), *Subbiah Pillai* ([36] *supra*) (at [23]) and *Ahmad Khalis* ([41] *supra*) (at [88]). They are as follows:

(a) punishment of the errant solicitor for his misconduct;

(b) deterrence against similar defaults by like-minded solicitors in the future; and

(c) protection of public confidence in the administration of justice.

74 The appropriate sanction *varies* depending on the factual matrix of each case – there is no single sanction cast in stone. As noted by Sir Thomas Bingham MR in *Bolton* at 518 (cited approvingly by this court in *Vardan Vasantha Lakshmi* ([48] *supra*) at [43]):

> Any solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon him … *Lapses from the required high standard may, of course, take different forms and be of varying degrees*. The most serious involves *proven dishonesty, whether or not* leading to criminal proceedings and criminal penalties. In such cases the tribunal has *almost invariably, no matter how strong the mitigation advanced for the solicitor, ordered that he be struck off the Roll of Solicitors*. Only infrequently, particularly in recent years, has it been willing to order the restoration to the Roll of a solicitor against whom *serious dishonesty* had been established, even after a passage of years, and even where the solicitor had made every effort to re-establish himself and redeem his reputation. *If a solicitor is not shown to have acted dishonestly, but is shown to have fallen below the required standards of integrity, probity and trustworthiness, his lapse is less serious but it remains very serious indeed in a member of a profession whose reputation depends upon trust. A striking off order will not necessarily follow in such a case, but it may well. The decision whether to strike off or to suspend will often involve a fine and difficult exercise of judgment, to be made by the tribunal as an informed and expert body on all the facts of the case. Only in a very unusual and venial case of this kind would the tribunal be likely to regard as appropriate any order less severe than one of suspension*. [emphasis in original]

75 Rather, the sanction must be *commensurate* with the degree of culpability of the solicitor, the breaches committed and the extent and effect to which public confidence in the administration of justice has been shaken (and consequently, must be restored through punishing the errant ways of the solicitor). As Chan Sek Keong CJ recently observed in *Law Society of Singapore v Nor'ain bte Abu Bakar* [2009] 1 SLR 753 at [92]:

> The relevant sentencing principles applicable to professional misconduct have been distilled by this court in *Law Society of Singapore* v Ng Chee Sing [2000] 2 SLR 165 at [49]–[50], as follows:
>
> > (a) Where a solicitor has acted dishonestly, the court will order that he be struck off the roll of solicitors.
> >
> > (b) If a solicitor is not shown to have acted dishonestly, but is shown to have fallen below the required standards of integrity, probity and trustworthiness, he will nonetheless be struck off the roll of solicitors, as opposed to merely being suspended, if his lapse is such as to indicate that he lacks the qualities of character and trustworthiness which are necessary attributes of a person entrusted with the responsibilities of a legal practitioner.
> >
> > (c) A further consideration to be borne in mind when deciding on the appropriate penalty is the public dimension of disciplinary sentencing, which is the equivalent of public denunciation by the court in the process of punishing an offender for the offence he has committed. This process serves to preserve public confidence in the legal profession as an integral part of the legal system.

76 In approaching the issue of the appropriate sanction which ought to be imposed on the respondent, it would not be an overstatement to say that the respondent's conduct of the matter has been lamentable and demonstrated a patent lack of the qualities of conscientiousness and uprightness expected of every solicitor. We wish to reiterate that solicitors are at all times expected

to observe the general principles encapsulated in r 2(2) of the Professional Conduct Rules:

> [A]n advocate and solicitor shall not in the conduct of his practice do any act which would compromise or hinder the following obligations:
>
> (*a*) to maintain the Rule of Law and assist in the administration of justice;
>
> (*b*) to maintain the independence and integrity of the profession;
>
> (*c*) to act in the best interests of his client and to charge fairly for work done; and
>
> (*d*) to facilitate access to justice by members of the public.

77 This was by no means, an ordinary run of the mill transaction. A reasonably competent solicitor would have recognised that this transaction was redolent of dubious and duplicitous dealings and would have resisted from acting for all the parties (and the complainant in particular) on the proposed terms. The mandate to be obtained by PSN from RBG was said to be forthcoming but this ultimately never materialised. However, having waded into such a murky legal quagmire, the respondent failed to exercise the requisite caution and diligence. Further, the respondent did not plead guilty at the first available opportunity but sought to qualify his guilt at several points during the proceedings before the DC and even before this court.

78 The first point that we noted in deciding on an appropriate sanction, was that while the respondent was professionally wanting, the adduced evidence fell *short* of proving that he was privy to any dishonesty. Indeed, before us, Mr Tan conceded that on the evidence before us, at its *highest*, this was a case of *utter incompetence* rather than a case of the respondent working in tandem with other individuals to defraud a hapless investor. However, the absence of dishonesty does not of course mean that there has been an absence of professional misconduct.

79 The second point that merited consideration was that the complainant is certainly not the proverbial layman but a sophisticated businessman with some measure of knowledge. As discussed previously (see [57] above), where the client is *inexperienced*, the scope of the solicitor's duty will naturally *broaden* as he will require and expect the solicitor to take a much broader perspective. The scope of the duty of the solicitor depends on the *extent* to which the client appears to need advice: *Carradine Properties Ltd v D J Freeman & Co* (1982) 126 SJ 157 ("*Carradine*") at 158. In *Carradine*, the solicitor successfully demonstrated at trial that his client did not require him to advise upon the importance of checking the scope of his insurance coverage. We agreed broadly with the proposition of the English Court of Appeal in *Carradine*, except to emphasise that solicitors should not rely on this to shirk their responsibilities even when dealing with a sophisticated client – the duty to advise the client still remains and the sole difference lies in deftly tailoring the advice to best suit the needs (and abilities) of the individual. As acknowledged in *Lie Hendri Rusli* ([34] *supra*) at [43], "[e]xpectations of the profession must be tied to reality" and there is obviously an appreciable difference between the level of explanation and circumspection required in dealing with a sophisticated businessman as compared with the proverbial layman (at [55]; see [57] above).The complainant testified that he was a savvy investor who was no stranger to the commercial world and he is certainly no babe in the woods. However, it is not an insignificant fact that he was not keen on joining the Project initially and had to be cajoled into investing. The respondent knew this.

80 Third, while the respondent made payments into his account, unlike in *Rasif David* ([62] *supra*) where a solicitor made unauthorised and improper withdrawal of large sums of money from the client account and *absconded* after misappropriating the money, the respondent relied on the instructions of

Ang to make the payments. In this regard, we should point out that the respondent agreed, before us, to return the $100,000 billed as legal fees to the complainant within a month. We considered this gesture, albeit late in the day and made only after a query from us, as deserving of some credit and took it into consideration in deciding on the appropriate sanction.

81 Fourth, we acknowledged that this is the first blemish on the respondent's record in an otherwise lengthy period of practice at the Singapore Bar. Mr Sreenivasan pleaded with the court to give weight to the respondent's years of service as a criminal and conveyancing practitioner at the Bar.

82 As we noted above (at [78]) and as Mr Sreenivasan emphasised quite correctly, *no* question of dishonesty had been raised in the present case. Rather, the respondent had demonstrated poor judgment in the matter. However, this does not in any way detract from the egregious conduct of the respondent. The respondent had shown a disturbing careless disregard in departing from the ordinary standards expected of all solicitors in Singapore. He was quite content with taking the backseat, and unthinkingly relied on the letter of authority given by the complainant. In effect, he attempted to use the authority conferred on Ang as a legal shield to protect him from his dereliction of duty. Unlike the solicitor in *Tan Phuay Khiang* ([34] *supra*) however, the respondent did not act on his own accord without any instructions from the complainant – rather, his excuse was that he simply adopted Ang's instructions literally. That said, we found that his conduct of the matter had been lamentable – having agreed to act for multiple clients, he did not think it was necessary to point out that there was an actual or potential conflict of interests between them. Even with regard to the obvious issue of Ang's status as an undischarged bankrupt and the attendant risks in imbuing him with a blanket authority, the respondent chose to take a backseat and maintain that he had *no* duty to advise the complainant on the basis that the latter was a sophisticated businessman. The respondent was certainly in breach of his professional obligations in making the payments, without bothering to notify the complainant or taking any protective measures – none of the cheques were crossed. He went so far as to make a lump sum payment to his firm. All this led inexorably to the conclusion that the respondent had clearly fallen far short of the minimum standards of professionalism that can be expected of a reasonably competent solicitor and that he had been guilty of grossly improper conduct. As such, and in light of the factors we alluded to above, we determined that a period of suspension would be the appropriate penalty in the circumstances.

Conclusion

83 Having regard to all the relevant circumstances, we ordered that the respondent be suspended from practice for one year and that he bear the costs of the proceedings.

A coda on concurrent disciplinary and civil proceedings

84 We pause here to make some observations on another point of more general import which arose as a result of the present proceedings.

85 The complainant has initiated a civil suit against the respondent and Kuhn (*viz*, Suit No 307 of 2008 ("the civil suit")) which was scheduled for trial from 8 to 15 May 2009 (*ie*, before the show-cause hearing). However, at a hearing before an Assistant Registrar on 2 March 2009, Mr Sreenivasan applied (via Summons No 728 of 2008) to vacate the trial dates on the basis that issues of law in the show cause hearing would overlap with those in the civil suit. The complainant's counsel in the civil suit consented to the vacation of trial dates and agreed that it would be preferable for the civil suit to be heard only *after* the conclusion of the disciplinary proceedings. The Assistant Registrar then granted a vacation of the trial dates.

86 In the civil suit, the complainant alleges, *inter alia*, that the respondent, Ang and Kuhn have conspired to cause him loss and made false representations to induce him to enter into the Project. The complainant further alleges that the respondent has been negligent and owed a duty of care to him in tort. While the issues in the present proceedings overlap to *some* extent with the issues in the civil suit, we would like to take this opportunity to emphasise that where there are concurrent civil or criminal and disciplinary proceedings, a stay of either proceedings should *not* be granted lightly. In this regard, some general guidelines on this issue might be useful (see generally *R v The Executive Council of the Joint Disciplinary Scheme, ex parte Hipps* (12 June 1996) (unreported) ("*Hipps*") and *R (on the application of Nicholas Charles Edward Land) v The Executive Council of the Joint Disciplinary Scheme* [2002] EWHC 2086 at [22]):

(a) Where there are concurrent proceedings before the courts, the courts *may* grant a stay of one of the concurrent proceedings where there is a *real risk of serious prejudice which may lead to injustice in either the civil or disciplinary proceedings or both* (see also *Securities and Futures Commission v Nomura International (Hong Kong) Ltd* [1998] 2 HKC 503; *Hipps* and *R v Panel on Take-overs and Mergers, ex parte Fayed* [1992] BCC 524).

(b) However, this jurisdiction to grant a stay on one of two concurrent sets of proceedings will only be exercised by the courts *sparingly and with great care*.

(c) If the court is satisfied that, absent a stay, there is a real risk of serious prejudice, then the court has to balance that risk against the *countervailing considerations* such as protecting the public interest in ensuring that the disciplinary process is not impeded.

(d) In a case where the balancing exercise is carried out, the court will give weight to the view of the person or body responsible for the decision as to the factors militating against the stay and the weight to be given to them, but the court remains the ultimate arbiter for what is fair.

(e) *Each case turns on its own facts*. Limited assistance can be derived when comparing the facts of a particular case with those of other cases where a stay was granted (see also *R v Chance ex parte Smith* [1995] BCC 1095).

87 On this note, given that the civil suit is still currently pending, we wish to emphasise that the findings here should *not* be regarded as binding or determinative of issues that will be contested in the civil suit.

[note: 1]Notes of Evidence ("NE") of hearing on 3 September 2008 at p 13, lines 15–17.

[note: 2]NE of hearing on 8 September 2008 at p 6, lines 25–30.

[note: 3]NE of hearing on 3 September 2008 at p 7, lines 1–3.

[note: 4]NE of hearing on 3 September 2008 at p 7, lines 24–25.

[note: 5]Affidavit of evidence-in-chief ("AEIC") of the respondent at para 4, Respondent's Core Bundle ("RCB") at p 59.

[note: 6]AEIC of the respondent at para 9, RCB at p 62.

[note: 7]Record of Proceedings ("RP") Vol I at p 88.

[note: 8]RP Vol I at p 77.

[note: 9]RP Vol I at p 74.

[note: 10]NE of hearing on 3 September 2008 at p 89, lines 16–26 and p 90, lines 1–7.

[note: 11]NE, of hearing on 8 September 2008 at p 78, lines 19–22.

[note: 12]NE of hearing on 4 September 2008 at p 60, lines 11–18.

[note: 13]NE of hearing on 3 September 2008 at p 27, lines 6–14.

[note: 14]RP Vol I at p 96.

[note: 15]RP Vol I at p 99.

[note: 16]RP Vol I at p 97.

[note: 17]RP Vol I at pp 100 and 104.

[note: 18]RP Vol I at p 105.

[note: 19]Details were indicated in M/s Wong Partnership's letter to the respondent dated 8 June 2006 at para 10, RP Vol I at pp 162–163.

[note: 20]NE of hearing on 8 September 2008 at p 151, lines 13–22.

[note: 21]RP Vol I at pp 88–94.

[note: 22]NE of hearing on 8 September 2008 at p 26, line 9.

[note: 23]NE of hearing on 8 September 2008 at p 55, lines 29–32.

[note: 24]NE of hearing on 8 September 2008 at p 69, lines 26–32 and p 70, lines 1–26.

[note: 25]NE of hearing on 8 September 2008 at p 80, line 13.

[note: 26]NE of hearing on 8 September 2008 at p 78, lines 17–32 and p 79, lines 1–15.

[note: 27]NE of hearing on 4 September 2008 at p 14, line 31.

[note: 28]NE of hearing on 4 September 2008 at p 21, line 4.

[note: 29]Report of Disciplinary Committee at para 54, Law Society's Core Bundle at pp 21–22.

[note: 30]NE of hearing on 8 September 2008 at p 8, lines 15–21.

[note: 31]Refer to Footnote 29.

[note: 32]NE of hearing on 8 September 2008 at p 22, lines 11–13.

[note: 33]NE of hearing on 8 September 2008 at p 24, line 6.

[note: 34]NE of hearing on 8 September 2008 at p 24, line 10.

[note: 35]NE of hearing on 3 September 2008 at p 70, lines 31–32 and p 71, lines 1–4.

[note: 36]NE of hearing on 8 September 2008 at p 22, lines 11–32, p 23, line 1 and lines 19–29.

[note: 37]NE of hearing on 8 September 2008 at p 112, lines 29–32, p 113 lines 1–32 and p 114, lines 1–10.

[note: 38]NE of hearing on 8 September 2008 at p 128, lines 22–23.

[note: 39]Refer to Footnote 15.

[note: 40]RCB at p 45.

[note: 41]NE of hearing on 8 September 2008 at p 111, lines 21–22.

[note: 42]NE of hearing on 8 September 2008 at p 142 lines 12–32, and p 143, lines 1–4.

[note: 43]NE of hearing on 8 September 2008 at p 145, lines 21–32 and p 146, lines 1–5.

[note: 44]NE of hearing on 8 September 2008 at p 121, line 6.

[note: 45]NE of hearing on 8 September 2008 at p 163, lines 25–32.

[note: 46]Refer to Footnote 18.

[note: 47]NE of hearing on 8 September 2008 at p 94, lines 8–10.