

Law Society of Singapore v Chiong Chin May Selena
[2013] SGHC 5

Case Number : Originating Summons No 16 of 2012
Decision Date : 15 January 2013
Tribunal/Court : High Court
Coram : Chao Hick Tin JA; Andrew Phang Boon Leong JA; Andrew Ang J
Counsel Name(s) : Mimi Oh (RHTLaw Taylor Wessing LLP) for the applicant; The respondent in person.
Parties : Law Society of Singapore — Chiong Chin May Selena

Legal profession – disciplinary procedures

Legal profession – duties – client

Legal profession – professional conduct – grossly improper conduct

Legal profession – show cause action

15 January 2013

Judgment reserved.

Chao Hick Tin JA (delivering the judgment of the court):

Introduction

1 This proceeding, Originating Summons No 16 of 2012, is commenced by the Law Society of Singapore (“the Law Society”) against the respondent, Chiong Chin May Selena (“Chiong” or “the Respondent”), pursuant to s 98 of the Legal Profession Act (Cap 161, 2009 Rev Ed) (“the LPA”) requiring Chiong to show cause why she should not be dealt with under s 83(1) of the LPA, following complaints made by Chiong’s client, Heng Siew Lee (Wang XiuLi) (“Heng” or “the Complainant”).

Background facts

2 Chiong is an advocate and solicitor of some 17 years’ standing, having been admitted as such on 29 April 1995. In September 2009, Chiong was engaged by Heng to handle her proposed divorce proceeding. Sometime in March 2010, Heng lodged a formal complaint with the Council of the Law Society under s 85(1) of the LPA. The essence of the complaint [\[note: 1\]](#) was that Chiong had not diligently handled the matter relating to Heng’s proposed divorce from her husband.

3 The nub of the complaint made by Heng against Chiong was summarised in a statement prepared by the Law Society (“the Statement”) as follows: [\[note: 2\]](#)

7. The Complainant claimed that the Respondent failed/ did not keep her:–

(a) duly informed/updated on the progress of the Complainant’s divorce matter in the Family Court (“**No updates**”);

- (b) [to] duly [explain] to the Complainant, all letters or notices received from the HDB, Family Court and/or the solicitor acting for the Complainant's husband or otherwise ("**No explanations**");
- (c) ... to use all reasonable available legal means consistent with the retainer for the matrimonial matter to advance the interests of the Complainant ("**Inappropriate advice/s** [sic]");
- (d) when the Complainant revoked her instructions on 15th March 2010 for the Respondent to [act] for her in the divorce matter, the Respondent continued on and even thereafter issued a reply to the solicitor acting for the Complainant's husband without any authority or approval of the said reply ("**No authority to act**").

[emphasis in bold in original]

4 The Statement then went on to detail the facts and events upon which the allegations were based. In the result, the Law Society framed four main charges and four alternative charges against Chiong. The four main charges, which were all brought under s 83(2)(b) of the LPA, were as follows:

[\[note: 3\]](#)

1a) FIRST CHARGE

That you, **CHIONG CHIN MAY, SELENA**, an Advocate and Solicitor, are guilty of a breach of Rule 12 of the Legal Profession (Professional Conduct) Rules, Legal Profession Act (Chapter 161) ("**the Rules**"), in that you failed to use all reasonably available legal means consistent with your retainer whilst [practising] under DSCT Law Corporation ("**DSCT**") and then subsequently with Edmond Peireira [sic] & Partners ("**EPP**") to advance the interests of the Complainant, Madam Heng Siew Lee (Wang XiuLi) ("**the Complainant**") in the matter entrusted to you by her, i.e. to represent her in her divorce proceedings and such breach of the Rules amounts to grossly improper conduct in the discharge of your professional duty within the meaning of Section 83(2)(b) of the Legal Profession Act (Cap 161).

...

2a) SECOND CHARGE

That you, **CHIONG CHIN MAY, SELENA**, an Advocate and Solicitor, are guilty of a breach of Rule 17 of the Legal Profession (Professional Conduct) Rules, Legal Profession Act (Chapter 161) ("**the Rules**"), in that you failed to keep the Complainant, Madam Heng Siew Lee (Wang XiuLi) ("**the Complainant**") reasonably informed of/updated on the progress of the divorce matter entrusted to you [while practising] with DSCT Law Corporation ("**DSCT**") and then subsequently with Edmond Peireira [sic] & Partners ("**EPP**") by her and such breach of the Rules amounts to grossly improper conduct in the discharge of your professional duty within the meaning of Section 83(2)(b) of the Legal Profession Act (Cap 161).

...

3a) THIRD CHARGE

That you, **CHIONG CHIN MAY, SELENA**, an Advocate and Solicitor, are guilty of a breach of Rule 21 of the Legal Profession (Professional Conduct) Rules, Legal Profession Act (Chapter 161)

("the Rules"), in that you failed to explain to the Complainant, Madam Heng Siew Lee (Wang XiuLi) **("the Complainant")**, the letters or notices received by you [while practising] with DSCT Law Corporation **("DSCT")** and then subsequently with Edmond Peireira [*sic*] & Partners **("EPP")**, from HDB dated 26th October 2009, the Family Court and/or the solicitors acting for the husband of the Complainant, which affected the Complainant and such breach of the Rules amounts to grossly improper conduct in the discharge of your professional duty within the meaning of Section 83(2)(b) of the Legal Profession Act (Cap 161).

...

4a) **FOURTH CHARGE**

That you, **CHIONG CHIN MAY, SELENA**, an Advocate and Solicitor, did on or about 19th March 2010 without first seeking the approval of the Complainant, Madam Heng Siew Lee (Wang XiuLi) **("the Complainant")**, sen[d] a letter back-dated to 16th March 2010 **("the backdated letter")** to M/s A Alagappan & Co [the law firm acting for the Complainant's husband], purportedly on behalf of and representing the Complainant in the divorce matter entrusted to you then [practising] with Edmond Peireira [*sic*] & Partners **("EPP")**, when you ha[d] no instructions/authority from the Complainant to do so at that point in time, as the Complainant had on the 15th March 2010, revoked her instructions to you to act any further for her and such acts amount to grossly improper conduct in the discharge of your professional duty within the meaning of Section 83(2)(b) of the Legal Profession Act (Cap 161).

...

[emphasis in bold in original; italics in original omitted]

5 The wording of the four alternative charges was the same as that of the corresponding main charges, save that the alternative charges were brought under s 83(2)(h) of the LPA. In the alternative charges, the phrase "grossly improper conduct in the discharge of your professional duty within the meaning of Section 83(2)(b) of the Legal Profession Act (Cap 161)" [\[note: 4\]](#) *[italics in original omitted]* in the main charges was substituted with the phrase "misconduct unbefitting an advocate and solicitor as an officer of the Supreme Court or as a member of an honourable profession within the meaning of Section 83(2)(h) of the Legal Profession Act (Cap 161)" [\[note: 5\]](#) *[italics in original omitted]*. Unless otherwise indicated, all references hereafter to the charges against Chiong should be read as references to the main charges and the corresponding alternative charges collectively.

6 On 23 March 2011, Chan Sek Keong CJ, in exercise of his power under s 90(1) of the LPA, appointed Chan Leng Sun SC as President and Cheo Chai Beng Johnny as member of a Disciplinary Tribunal ("the DT") to hear and investigate the charges framed against Chiong.

7 The first hearing date of the DT was fixed for 15 June 2011. However, Chiong arrived late for the hearing and did not even file any defence or affidavit in reply. [\[note: 6\]](#) The Law Society did not object to giving Chiong time to file her defence and affidavit, and the hearing was adjourned to 2 August 2011. At the second hearing on 2 August 2011, Heng appeared as witness for the Law Society and Chiong represented herself.

8 The Law Society filed its closing submissions on 2 September 2011. Chiong was granted an

extension of time and only filed her closing submissions on 29 September 2011. Leave was granted by the DT to the Law Society to file reply submissions on 18 November 2011. The DT also gave Chiong an opportunity to respond to the Law Society's closing submissions, which she did not avail herself of.

The first, second and third charges

9 In its report dated 9 December 2011 ("the Report"), the DT made the following findings based on the evidence adduced before it (see [36] and [38] of the Report):

36. The particular instances relied on by the Law Society for these Charges are:

(a) The Respondent's inappropriate advice that the Complainant will get whatever she wanted when the Complainant asked about the impact of her husband's intention to go overseas.

(b) The Respondent's failure to explain and advise that there are obstacles and processes that the Complainant has to overcome even if the husband has gone overseas and does not contest the divorce. A simple divorce would take at least seven months from filing to the final judgment. One with ancillaries to be dealt with, such as the Complainant's case, would take more than seven months, perhaps a year, to complete. The husband being overseas could occasion further steps to be taken, in serving notice and in relation to enforcement of any maintenance order.

(c) In November 2009, the Respondent misled the Complainant that she could not initiate divorce proceedings because HDB had not replied, when HDB had replied on 29 October 2009.

(d) The Respondent misled the Complainant that she had filed the divorce proceedings in December 2009 when she only filed it on 20 January 2010.

(e) There was unreasonable delay in filing the divorce papers. It was up to the Complainant to constantly ask for updates and information.

(f) The Respondent left DSCT [Law Corporation] at the end of January 2010 without informing the Complainant, and subsequently misled the Complainant into following her to [Edmond Pereira & Partners].

(g) The Respondent was late [in attending] the mentions for the variation application on 11 February 2010 and 24 February 2010.

(h) The Respondent failed to advise the Complainant to attempt mediation and of the costs consequences of not doing so.

(i) The Respondent asked the Complainant to sign an affidavit that the Complainant had no prior opportunity to examine, which contained many mistakes. It was up to the Complainant to revise and prepare another affidavit with the help of a secretary from DSCT [Law Corporation].

(j) The Respondent refused to give a written fee cap/quotation to the Complainant despite the latter's request.

(k) The Respondent did not provide the Complainant with any documents in the divorce matter or update her of developments.

(l) The Respondent did not return the Complainant's documents promptly on termination of her services.

(m) The Respondent did not inform the Complainant of her husband's proposal to mediate and instead made things worse by writing the letter dated 16 March 2010 to Alagappan [the husband's solicitor] demanding filing of the husband's Defence.

...

38. We find that the matters complained of in paragraph 36 have been established. *Some matters are relatively mild in themselves*, for example, being late a couple of times in Court (even if this is not acceptable etiquette). *Others are more serious*, for example, acting without authority and misleading the [Complainant] as to the reason why the divorce proceedings could not commence. *Cumulatively, there was a pattern of chronic irresponsibility and very poor handling of the [Complainant]'s matter, compounded by the Respondent's own testimony which painted herself as someone who thought that the Complainant did not deserve the usual attention and care because she was being charged a charitably low fee.* It may be that some of the Respondent's failings were unintentional, as there was mention of her bipolar disorder. Nonetheless, it was not suggested to us that this justified her continuing to act in a poor manner and thereby harm her clients. *Furthermore, it is apparent to us that this was not a case of a solicitor trying her best but falling short due to illness. There was a problem of attitude, which is apparent from the reaction of the Respondent to the Complaint, the blistering tone of her Affidavit, which carried over in her aggressive cross-examination of the Complainant and her dogged but confused attempts on the stand to justify her actions.*

[emphasis added]

10 The above findings were made based on the evidence set out at [8]–[31] of the Report. Accordingly, the DT concluded at [40] of the Report that Chiong had breached rr 12, 17 and 21(1) of the Legal Profession (Professional Conduct) Rules (Cap 161, R 1, 2010 Rev Ed) ("the LP(PC)R"), which read:

RELATIONSHIP AND DEALINGS WITH CLIENTS

Diligence and competence

12. An advocate and solicitor shall use all reasonably available legal means consistent with the agreement pursuant to which he is retained to advance his client's interest.

...

Keeping client informed

17. An advocate and solicitor shall keep the client reasonably informed of the progress of the client's matter.

...

Explanation to client

21.—(1) An advocate and solicitor shall explain in a clear manner, proposals of settlement, other offers or positions taken by other parties which affect the client.

...

11 For the first, second and third main charges and the alternative first, second and third charges, the Law Society took a “global” approach, and did not specifically link each of the instances described at [36] of the Report to a particular charge. Instead, the Law Society submitted that the facts alleged were to be taken cumulatively, and that there was significant overlap between each charge. The DT agreed with the Law Society, and determined at [40] of the Report that the allegations made in the first three main charges and their alternatives had been proved (*ie*, Chiong had breached rr 12, 17 and 21(1) of the LP(PC)R).

12 The DT further determined at [41] of the Report that these breaches amounted to grossly improper conduct in the discharge of Chiong’s professional duty within the meaning of s 83(2)(b) of the LPA, and, in the alternative, to misconduct unbefitting an advocate and solicitor as an officer of the Supreme Court or as a member of an honourable profession within the meaning of s 83(2)(h) of the LPA. The DT thus opined that taken as a whole, there was cause of sufficient gravity for disciplinary action under s 83(2)(b) of the LPA, and, alternatively, under s 83(2)(h) of the LPA.

The fourth charge

13 As for the fourth main charge and the alternative fourth charge, the DT found that:

44. *The Respondent admitted in her testimony that she knew on 15 March 2010 that the Complainant had terminated her services. Yet she still sent a letter after that to Alagappan [the solicitor acting for the Complainant’s husband] purportedly on behalf of the Complainant, demanding that the husband file his Defence within seven days. The letter was dated 16 March 2010 but received by Alagappan on 19 March 2010. The evidence is inconclusive on whether it was actually written on 19 March 2010 and backdated by the Respondent. Even if it was not backdated, the Respondent had no authority to write such a letter on 16 March 2010.*

45. We determine that the Respondent’s behaviour amounted to grossly improper conduct in the discharge of the Respondent’s professional duty within the meaning of Section 83(2)(b) of the LPA. In the alternative, we determine that the Respondent’s behaviour amounted to misconduct unbefitting an advocate and solicitor as an officer of the Supreme Court or as a member of an honourable profession within the meaning of Section 83(2)(h) of the LPA.

[emphasis added]

14 In the light of the above findings, the DT determined that the fourth main charge and the alternative fourth charge were made out, and that there was cause of sufficient gravity for disciplinary action under s 83(2)(b) of the LPA (and, alternatively, under s 83(2)(h) of the LPA).

The parties’ submissions

The Law Society’s submissions

15 In considering the charges preferred against Chiong, the Law Society submitted [\[note: 71\]](#) that the starting point was the case of *Law Society of Singapore v Ng Chee Sing* [2000] 1 SLR(R) 466 (“*Ng Chee Sing*”), where the Court of Three Judges held at [45] that gross or excessive delay in attending to a client’s matter could be serious enough to constitute unbefitting conduct:

45 ... Delay in responding to clients is a common failing among solicitors given the pressures of

time they face. It was stated in *Re C, a solicitor* (*Law Society's Journal* Vol 1 No 1, May 1984) that delay in an isolated ordinary case may not necessarily constitute professional misconduct and may not warrant disciplinary action. However, *gross or excessive delay in both contentious and non-contentious work is serious enough to constitute conduct unbefitting an advocate and solicitor*. [emphasis added]

16 The Law Society further argued [\[note: 8\]](#) that the absence of dishonesty did not necessarily mean that there was no professional misconduct, and drew an analogy between the facts of *Ng Chee Sing* and the facts of the present case. The Law Society highlighted [\[note: 9\]](#) the fact that Chiong had left Heng in the dark about the status of her divorce matter. Besides having to actively enquire about the status of her divorce proceeding, Heng was misled by Chiong into believing that it was the Housing and Development Board ("HDB") that had delayed her matter, and that no replies had been forthcoming from HDB despite enquiries.

17 Alternatively, the Law Society submitted [\[note: 10\]](#) that Chiong's conduct in the handling of Heng's divorce matter was negligent to the extent that it was "'inexcusable', and 'such as to be regarded as deplorable by [her] professional colleagues'" [\[note: 11\]](#) [emphasis in original omitted], making Chiong unfit to remain as a member of an honourable profession under s 83(2)(h) of the LPA. Although there were various "degrees of negligence" (see *Re Lim Kiap Khee; Law Society of Singapore v Lim Kiap Khee* [2001] 2 SLR(R) 398 ("*Lim Kiap Khee*") at [19]), "the gravity of a negligent act must be viewed in the context of the matter, taking into account all the circumstances of the case": see *Lim Kiap Khee* at [19]–[20].

18 The Law Society contended [\[note: 12\]](#) that Chiong's conduct satisfied the threshold of negligence which amounted to professional misconduct because an essential duty of an advocate and solicitor was to advance and protect the interests of the client, and if, through neglect or omission, the advocate and solicitor failed to do so, it must follow that the neglect or omission would constitute professional misconduct. In the present case, Chiong was clearly in dereliction of that duty. For example, Chiong failed to inform Heng of the letters from her husband's solicitor suggesting the resolution of the divorce proceeding by way of mediation so as to save costs and speed up the divorce process. [\[note: 13\]](#)

19 Finally, the Law Society submitted that there was also an issue of an apparent character defect or deficiency as regards Chiong, and urged this court to mete out a sentence that would reflect not just the seriousness of Chiong's breaches, but also the importance of observing the LP(PC)R. [\[note: 14\]](#)

Chiong's submissions

20 Consistent with the dilatory stance which she had demonstrated in the handling of Heng's matter, Chiong did not file any written submissions for the first hearing before this court on 2 July 2012. Instead Chiong appeared in person at the hearing and orally requested for an adjournment to file her written submissions. We granted her an adjournment to 17 July 2012 and directed her to file her written submissions by 12 July 2012.

21 At the second hearing before us on 17 July 2012, Chiong submitted that the first three main charges and the first three alternative charges were not made out. Chiong based her case principally on the written submissions that she filed on 12 July 2012, which we set out below: [\[note: 15\]](#)

There is nothing new for me to say except that there were inconsistencies in the Complainant's oral testimony during the [DT] hearing which were not addressed by the [DT] in [its] report. Apart from that, *I repeat my defence filed on 28 June 2011 for the [DT] hearing and I also say again, that not only did I not cheat the Complainant, I tried my best to help her. So I am puzzled and saddened as to her totally unjustifiable and unexpected vicious attack.* Also, she did not say what loss she had suffered due to my alleged misconduct; instead I had spent hours talking to her and working on her case. ...

I hope this Court will scrutinize her actions and allegations before finding me guilty of professional misconduct. In a solicitor's line of work the clients, especially in divorce cases, *sometimes become too attached to us as their solicitors* (sometimes confiding in us and even treating us as a 'shoulder to cry on') *and the more sensitive and neurotic ones may become disproportionately angered by ordinary statements which they might perceive in negative ways.*

I have done nothing to justify the Complainant's wrath and her vicious complaint. I therefore hope you will dismiss her complaint which I think is motivated by personal animosity.

[emphasis added]

22 During oral arguments, Chiong also submitted that the fourth main charge and the alternative fourth charge were not made out. Chiong relied on the documentary evidence before the court and submitted that at the material time, it was not clear to her that Heng had on 15 March 2010 unequivocally withdrawn her authority to act for Heng. Thus, Chiong contended that she could not be faulted for purporting to act for Heng on 16 March 2010 despite having had notice of Heng's intention to terminate her services.

Our determination

23 Since liability on all four main charges and the corresponding alternative charges is disputed by Chiong, we shall address that issue first. The question of the appropriate sanction will only arise for consideration if we find Chiong guilty of any of the charges preferred against her.

The first three charges

24 After carefully reviewing the evidence, we are satisfied that on the basis of the incontrovertible documentary evidence before us, the DT was justified in concluding that the matters complained of at [36] of the Report (except in relation to the allegation at para 36(1) concerning the failure to promptly return Heng's documents following the termination of Chiong's services: see [40] below) were established. It will be noted that in her written submissions (see [21] above), Chiong did not really answer the first three main charges (or the alternative first three charges). She said that she did not cheat Heng. But, that is not the substance of the first three charges, which concern her neglect in handling the divorce matter entrusted by Heng to her. We agree with the DT that while some of the matters complained of were relatively mild in themselves, "[c]umulatively, there was a pattern of chronic irresponsibility and very poor handling of [Heng]'s matter" (see the Report at [38]) on Chiong's part. She took a rather lackadaisical attitude to her responsibility as a solicitor, even to the extent of creating a false excuse for her inaction (*ie*, alleging that she was waiting for HDB's response when HDB had already responded).

25 In *Re Marshall David; Law Society of Singapore v Marshall David Saul* [1971–1973] SLR(R) 554, this court declared at [23] that "grossly improper conduct" was "conduct which [was] dishonourable to [the respondent solicitor] as a man and dishonourable in his profession". In *Lim Kiap Khee*, this

court held (at [19]) that an intention to deceive need not be present to constitute “grossly improper conduct” under s 83(2)(b) of the then equivalent of the LPA. In our view, there was ample evidence to support the allegations made under the first three charges. The only question on which we hesitated was whether the misconduct alleged in the first three charges necessarily constituted “grossly improper conduct”. While we have no problems in so classifying the misconduct which is the subject matter of the third charge (where there was deliberate misrepresentation *vis-à-vis* HDB’s response), we do have some difficulties in relation to the misconduct complained of in the first and second charges, which misconduct smacks more of incompetence, disorganisation or lack of care on the part of Chiong rather than any deliberate act on her part to mislead Heng or mishandle the latter’s divorce matter. The following observations of Professor Tan Yock Lin in *The Law of Advocates and Solicitors in Singapore and West Malaysia* (Butterworths Asia, 2nd Ed, 1998) at p 811 are apposite:

... [C]onduct unbefitting an advocate and solicitor differs from grossly improper conduct in two respects. First, it does not have to arise in the course of professional duty, though it may do so. Second, if that is put to one side, it differs in degree from grossly improper conduct, not in kind. So a solicitor who delays without reasonable excuse to carry out his instructions but conceals the true facts from his client may be guilty of conduct unbefitting a solicitor, although his misconduct may not be disgraceful or dishonourable. At some point, which will vary from case to case, the line between conduct which is merely discreditable and conduct which is disgraceful will be crossed. In that sense, the difference is one of degree. ...

26 In our opinion, it would be more appropriate to regard the misconduct set out in the first and second charges as “misconduct unbefitting an advocate and solicitor” within the meaning of s 83(2)(h) of the LPA. To this extent, we vary the findings of the DT. While we find Chiong guilty of the third main charge, we find her guilty only of the alternative first charge and the alternative second charge.

The fourth charge

27 The fourth charge relating to acting for the Complainant after she had withdrawn Chiong’s authority to act is a more serious charge compared to the first three charges. In our view, on this charge, the issue is whether or not the DT was correct to find that the Law Society had discharged its burden of proof for each and every element of the charge. For convenience, we shall again set out the fourth main charge: [\[note: 16\]](#)

4a) FOURTH CHARGE

That you, **CHIONG CHIN MAY, SELENA**, an Advocate and Solicitor, did on or about 19th March 2010 without first seeking the approval of the Complainant, Madam Heng Siew Lee (Wang XiuLi) (**“the Complainant”**), send a letter back-dated to 16th March 2010 (**“the backdated letter”**) to M/s A Alagappan & Co [the law firm acting for the Complainant’s husband], purportedly on behalf of and representing the Complainant in the divorce matter entrusted to you then [practising] with Edmond Peireira [*sic*] & Partners (**“EPP”**), when you had no instructions/authority from the Complainant to do so at that point in time, as the Complainant had on the 15th March 2010, revoked her instructions to you to act any further for her and such acts amount to grossly improper conduct in the discharge of your professional duty within the meaning of Section 83(2)(b) of the Legal Profession Act (Cap 161).

[emphasis in bold in original; italics in original omitted]

28 It is a trite proposition that disciplinary proceedings are quasi-criminal in nature: see *Law*

Society of Singapore v Chong Wai Yen Michael and others [2012] 2 SLR 113 at [44]. Therefore, the Law Society has the burden of proving its case beyond a reasonable doubt: see *Law Society of Singapore v Ahmad Khalis bin Abdul Ghani* [2006] 4 SLR(R) 308 at [6]. As framed, the following elements must be proved in relation to the fourth charge:

- (a) that on 15 March 2010, Heng unequivocally revoked her instructions for the firm, Edmond Pereira & Partners ("the Firm"), or Chiong specifically to act on her behalf;
- (b) that Chiong was aware of Heng's unequivocal revocation of her authority to act by 15 March 2010; and
- (c) that Chiong, despite such knowledge of the revocation of her authority to act, continued to act for Heng on 19 March 2010 by sending a letter to the solicitor acting for Heng's husband and backdating it to 16 March 2010.

The first element of the charge

29 In order to prove the first element of the fourth charge, the Law Society relied on two emails that Heng sent. The first email ("the First Email"), which was sent by Heng to the personal email address of Mr Edmond Pereira ("Mr Pereira") on 15 March 2010 at 9.54pm, was as follows: [\[note: 17\]](#)

From: angelahengsiewlee@hotmail.com

To: epereira@singnet.com.sg

Subject: Change of lawyer

Date: Mon, **15 Mar 2010 21:54:37** +0800

Dear Mr Pereira,

I wished to ceased [sic] my contract with Miss Selina Chiong for representing me on my divorce proceedings. I hoped that your firm can follow up my case by assigning another lawyer to me. Please ref to your references: SC.ar.80004.10. Kindly revert to me at [xxx].

[emphasis added in bold and in italics]

30 The second email, [\[note: 18\]](#) which had exactly the same content as the First Email, was forwarded by Heng to Mr Pereira's office email address on 16 March 2010 at 6.50pm, which was after the Firm's office operating hours.

31 In our view, it is not immediately apparent that the First Email sent by Heng on 15 March 2010 unequivocally revoked the Firm's authority to act for her. As a client, Heng was entitled to withdraw the Firm's authority to act on her behalf, and upon such an instruction being given, neither the Firm nor any member thereof would thereafter be authorised to act on her behalf. It is also not clear that Heng specifically revoked Chiong's authority to act on her behalf, while at the same time maintaining the Firm's retainer.

32 It is important to closely examine what Heng wrote. While Heng expressly stated in the First Email that she "wished to ceased [sic] [her] contract" [\[note: 19\]](#) with Chiong, she immediately went on to state that she "hoped that [the] [F]irm [could] follow up [on her] case by assigning another

lawyer to [her]”. [\[note: 20\]](#) In other words, the substance of the First Email was that Heng intended to retain the Firm to act for her, although she wanted to change the solicitor in charge of her case. In our view, the First Email was a request by Heng to the Firm to assign someone else in place of Chiong to handle her matter. It in no way revoked Heng’s instructions for the Firm to act for her. Furthermore, Heng’s intention to “ceased *[sic]* [her] contract” [\[note: 21\]](#) with Chiong was framed as a request or an expression of future intent, rather than as an instruction. Thus, it was not at all clear that Chiong no longer had authority to act on Heng’s behalf after Heng sent the First Email. This also showed a recognition by Heng that it was the prerogative of the Firm to assign a particular lawyer to handle her matter.

33 We therefore find that on 15 March 2010, Heng did not unequivocally revoke her instructions for the Firm or Chiong to act on her behalf.

The second element of the charge

34 As for the second element of the fourth charge, the DT found at [44] of the Report that Chiong “admitted in her testimony that she knew on 15 March 2010 that the Complainant had terminated her services”. This finding was presumably based on the following testimony of Chiong given under cross-examination: [\[note: 22\]](#)

Q So when were you aware of the termination of your services by Mdm Heng? When precisely?

A *Okay. I got a email from her – no actually I didn’t get an email from her. She came to the office so everybody knew.*

Q That were –

A *But what I’m saying is that I never said, okay, that I didn’t know. I knew she terminated us on the 15th. I knew.*

President: When did you know that she terminated you?

Witness: I don’t know when but I –

President: On 15th?

Witness: 15th –

President: The question is when – when did you know?

Witness: *Yes, 15th, I know.* Mr Pereira –

President: On 15th you knew?

Witness: – told me, yah. And she was shouting and yelling outside anyway, the whole building knows.

Q *So 15th of March you already knew that she terminated your services?*

A *Yes.*

[emphasis added]

35 However, and with respect to the DT, we find that Chiong might have been confused as to the exact date on which Heng withdrew her authority to the Firm to act for her. Looking at the

transcripts [\[note: 23\]](#) immediately following the "admission" above, the picture painted seemed to suggest that while Chiong knew that Heng was visibly upset when she turned up at the Firm's premises on 15 March 2010, she was *not* certain that the authority of the Firm to act for Heng was withdrawn on that date: [\[note: 24\]](#)

Q So on the 16th of March, why did you then draft a letter to be sent out to the husband's lawyer?

A Okay. On 15th of March, Mr Pereira told me, okay, that she is terminating our authority but he says that we cannot accept the termination until we have made sure that all our – whatever documents that she has, we will hold it as lien for monies that she owed to us, okay. So on the 16th – okay, on the 16th, we have to, erm – Mr Pereira say we have to hold lien. So then, er – and at the same time, she – he said, "We are in a difficult position because on the one hand he had – she has terminated us, okay. But we cannot formally release the work until we have make sure that, you know, she paid out all the money and things like that. But on the other hand, since we are still having the matter, we have to go – go ahead and do whatever we need to do."

...

Q [On] 15th of March, *you clearly knew that Mdm Heng has terminated your services through* –

A Well, I know –

Q – Edmond Pereira.

A ... *I know for sure on 16th. But on 15th, Mr Pereira told me that, er, she's been making a lot of trouble. So – but on the 16th, I've got a email. I think there was an email sent to me.*

...

Q All right. So on the 16th, you were clearly aware that your services ha[ve] been terminated?

A Er, yah, about, yah, 16th.

Q Okay. ***When your services are terminated*** –

A Mm-hm.

Q ... ***do you still go about doing client's work without their authority?***

A ***No. So I stopped.***

...

Q ... [So] you were fully aware that by the 16th of March you were already terminated by Mdm Heng. So what client's instructions are you talking about [with regard to drafting the letter to the husband's solicitor dated 16 March 2010]?

A You mean you are saying that on the 16th, she has terminate – no. ***You see, I also don't***

know what this client is trying to do. You see, she has also told us, confirmed our authority that she will file her di – she wants to go for – she wants to go for mediation or something, I don't know. **She was just giving a lot of problems. So on the 16th, okay, her instructions was still that she will – she wants to go for trial.**

Q No. Her instructions to you by the 16th is that your services are terminated –

A **Yah, but she –**

Q – Ms Chiong.

A – **[was] still calling our secretary, "Where – have you – have you sent the letter? Have you sent the letter to ask my ex-husband to file the defence?" She's still asking us to do it.**

Q Ms Chiong, once your services are terminated, what do you then do?

A **Yah, but does that – is that – an unequivocal termination because she's still calling us. She wanted us to ask the ex-husband to file the defence.**

Q Ms Chiong, you are fully aware that you were terminated at least by the 16th of March.

...

A ... [T]hings are not all black and white, okay. On 15th, she came and gave a lot of trouble. Mr Pereira said better discharge ourself. 16th, okay, she ... 16th still call ... everybody she can call. ...

[emphasis added in italics and bold italics]

36 We find that Chiong's evidence, while not a model of clarity, is consistent with the documentary evidence before us, such as the First Email. Indeed, Chiong's answers, as quoted above, are quite confusing. It seemed that Heng was unhappy not with the Firm, but with Chiong because the latter had not acted expeditiously enough. Even as late as 17 March 2010, Heng was still in communication with Mr Pereira, when she sent an email to him stating: [\[note: 25\]](#)

I am glad to ha[ve] your assurance. ... To protect my own interests, I want all documents to be produce *[sic]* and show it to me. Lastly, I hope my [case] can be [resolved] without dragging further.

37 The tone of the First Email suggests that Heng wanted early action on her matter without further delay, rather than that she wanted to terminate her retainer of the Firm. To Heng's email of 17 March 2010, Mr Pereira replied on 18 March 2010 stating: [\[note: 26\]](#)

Ms Heng, I understand that [you] called my office to speak to me. I am down with a bad throat and have no voice. ...

Will speak to you [tomorrow]. Too many papers to look into in too short a time. ...

38 In our view, Mr Pereira's reply did not indicate that he thought Heng was terminating her retainer of the Firm. He was going to act on her request that her matter be looked into "without

dragging further”, [\[note: 271\]](#) and especially that someone else in the Firm be assigned to handle her matter in place of Chiong. Therefore, for the second element, we do not think the evidence supported the charge that Chiong was conscious that Heng had revoked the authority of the Firm to act for Heng by the time Chiong wrote the letter dated 16 March 2010 to the law firm acting for Heng’s husband, M/s A Alagappan & Co.

The third element of the charge

39 With regard to the third element of the fourth charge, the fact that Chiong sent a letter to M/s A Alagappan & Co dated 16 March 2010, which letter was received on 19 March 2010, and that Chiong continued to act for Heng after 15 March 2010 were both not in dispute and do not require further consideration. However, there is no evidence that Chiong wrote the letter on 19 March 2010 and backdated it to 16 March 2010. It could well be that she wrote it on 16 March 2010, but, in her disorganised way, only got it dispatched on 19 March 2010.

Conclusion for the fourth charge

40 In the light of the above, we would, with respect, differ from the DT and hold that the fourth main charge and the alternative fourth charge have not been made out against Chiong. We do not agree with the DT’s finding at [44] of the Report that Chiong “knew on 15 March 2010 that the Complainant had terminated her services” and that Chiong “had no authority to write such a letter [*ie*, the letter to M/s A Alagappan & Co dated 16 March 2010] on 16 March 2010”.

The appropriate sanction

41 We now turn to consider the appropriate sanction to be imposed on Chiong in respect of the third main charge, the alternative first charge and the alternative second charge (collectively, “the relevant charges”). Section 83(1) of the LPA sets out the scope of the power of the court to deal with an errant advocate and solicitor 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 —

- (a) to be struck off the roll;
- (b) to be suspended from practice for a period not exceeding 5 years;
- (c) to pay a penalty of not more than \$100,000;
- (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).

42 In its submissions, the Law Society relied particularly on [47] of the Report, where the DT stated:

As mentioned in paragraph 38 above, some of the facts complained of are trivial and would not have warranted disciplinary action on their own. However, others such as acting without authority and misrepresentation are serious. *Taken together, a picture emerges of a solicitor who behaved irresponsibly towards her client for the entire duration of her service.* Not only did

she not apologise for her shortcomings, she launched into insults and offensive language against the Complainant, who showed commendable self-restraint on the stand. [emphasis added]

43 The principles that apply in determining the appropriate sanction where dishonesty or deceit is not involved were recently restated in *Law Society of Singapore v Tay Choon Leng John* [2012] 3 SLR 150 ("*John Tay*") in the context of the 2008 amendment to s 83(1) of the LPA, which now provides (via s 83(1)(c)) that a monetary penalty of up to \$100,000 – a punishment which was not previously available to the court – may be imposed for misconduct. In *John Tay*, this court endorsed at [57] its previous decision in *Law Society of Singapore v Andre Ravindran Saravanapavan Arul* [2011] 4 SLR 1184, where it held (at [36]):

... This [monetary] penalty was introduced to enable the court of three judges to impose fines for disciplinary offences that are too serious to be punished with mere censures, but insufficiently serious to deserve the punishment of suspension from practice. In our view, the disciplinary offence of overcharging amounting to grossly improper conduct falls within this category of disciplinary offences, provided no deception or dishonesty is involved. *We hold that the starting point in imposing a proportionate penalty for overcharging amounting to grossly improper conduct should be a fine in the first instance, and not a suspension of the errant lawyer from practice.* A fine, especially a heavy fine, together with payment of the disciplinary tribunal's and the Law Society's costs in the proceedings, should generally be an adequate punishment for the errant solicitor. Repeat offenders will, of course, be penalised more severely. ... [emphasis added]

44 While this passage relates to the specific offence of overcharging amounting to grossly improper conduct, it stands for the general proposition that cases involving grossly improper conduct without dishonesty or deceit will generally attract a monetary penalty. Having said that, it does not follow that in every case involving grossly improper conduct, monetary penalties will necessarily be sufficient. Much would depend on the overall circumstances, including whether or not dishonesty or deceit is involved. As this court stated in *John Tay* at [59]:

59 It is clear, therefore, that the distinguishing factor between an offence that warrants a monetary penalty and one that warrants suspension or disbarment is the element of *dishonesty* or *deceit*. Gross negligence may or may not be sufficient; it will have to depend on the overall circumstances. Do they come close to dishonesty? Where dishonesty or deceit on the solicitor's part is not made out, the starting point should be a monetary penalty. [emphasis in original]

45 Aggravating circumstances, such as a previous disciplinary record of misconduct, may justify a departure from the aforesaid starting point, leading to the imposition of more serious sanctions, such as suspension from practice or – in more extreme cases – striking the advocate and solicitor off the roll. Here, we note that in 2005, Chiong was suspended from practice for one year for breaches of the Legal Profession (Solicitors' Accounts) Rules (Cap 161, R 8, 1999 Rev Ed) as well as s 77(2) of the Legal Profession Act (Cap 161, 2001 Rev Ed) (for permitting her husband, who was not an advocate and solicitor, to be a co-signatory of the office and client's accounts of her firm): see *Law Society of Singapore v Chiong Chin May Selena* [2005] 4 SLR(R) 320.

46 The Law Society submitted that based on the overall circumstances, Chiong's misconduct was "severe in terms of the scale and magnitude" [\[note: 28\]](#) of the way in which she intentionally misled Heng (in relation to the third charge), and that the acts complained of were not committed innocently or inadvertently. We agree. While Chiong is acquitted by us of the fourth main charge (and the alternative fourth charge) of acting without authority, the DT's finding that Chiong "behaved irresponsibly towards [Heng] for the entire duration of her service" (see the Report at [47]) remains unaffected.

47 Moreover, the lack of remorse on Chiong's part was evident in her written submissions before us, where she maintained that she had "done nothing to justify the Complainant's wrath and her vicious complaint" [\[note: 29\]](#) even in the face of incontrovertible evidence, going so far as to describe Heng's conduct as a "totally unjustifiable and unexpected vicious attack" [\[note: 30\]](#) upon her and to describe Heng as "sensitive and neurotic". [\[note: 31\]](#) We would also emphasise here that the misconduct in relation to the third charge comes close to deceit.

48 In the light of the above considerations, including Chiong's previous misconduct, we do not think that a penalty of a fine would be adequate. We thus impose a sanction of six months' suspension from practice on Chiong in respect of the relevant charges. This order of suspension shall take effect immediately unless Chiong or the Law Society shall, within ten days of the date of this judgment, write in to the court to request otherwise.

Costs

49 In view of the variations which this court has made in relation to the findings of the DT, we think it is only fair that Chiong should only have to bear half of the costs incurred before the DT and this court. We do so order accordingly.

[\[note: 1\]](#) See the Record of Proceedings ("ROP") Vol I at pp 1–6.

[\[note: 2\]](#) See ROP Vol I at p 8.

[\[note: 3\]](#) See ROP Vol I at pp 14–17.

[\[note: 4\]](#) See, eg, the first main charge at ROP Vol I, p 15.

[\[note: 5\]](#) *Ibid.*

[\[note: 6\]](#) See the DT's report dated 9 December 2011 at [5].

[\[note: 7\]](#) See the Law Society's written submissions dated 8 May 2012 ("the Law Society's Written Submissions") at para 15.

[\[note: 8\]](#) See the Law Society's Written Submissions at para 21.

[\[note: 9\]](#) See the Law Society's Written Submissions at paras 22 and 23.

[\[note: 10\]](#) See the Law Society's Written Submissions at para 24.

[\[note: 11\]](#) *Ibid.*

[\[note: 12\]](#) See the Law Society's Written Submissions at para 26.

[\[note: 13\]](#) See the Law Society's Written Submissions at para 32.

[\[note: 14\]](#) See the Law Society's Written Submissions at para 35.

[\[note: 15\]](#) See the Respondent's defence dated 12 July 2012.

[\[note: 16\]](#) See ROP Vol I at p 17.

[\[note: 17\]](#) See ROP Vol I at p 71.

[\[note: 18\]](#) *Ibid.*

[\[note: 19\]](#) *Ibid.*

[\[note: 20\]](#) *Ibid.*

[\[note: 21\]](#) *Ibid.*

[\[note: 22\]](#) See Notes of Evidence, Day 2, at p 166 (at ROP Vol III, p 186).

[\[note: 23\]](#) See Notes of Evidence, Day 2, at pp 166–169 (at ROP Vol III, pp 186–189).

[\[note: 24\]](#) *Ibid.*

[\[note: 25\]](#) See ROP Vol I at p 72.

[\[note: 26\]](#) *Ibid.*

[\[note: 27\]](#) *Ibid.*

[\[note: 28\]](#) See the Law Society's Written Submissions at para 37.

[\[note: 29\]](#) See the Respondent's defence dated 12 July 2012.

[\[note: 30\]](#) *Ibid.*

[\[note: 31\]](#) *Ibid.*