IN THE COURT OF THREE JUDGES OF THE REPUBLIC OF SINGAPORE

[2020] SGHC 166

Court of Three Judges/ Originating Summons No 1 of 2020

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

And

In the matter of Tan Chun Chuen Malcolm, an Advocate and Solicitor of the Supreme Court of the Republic of Singapore

Between

The Law Society of Singapore

… *Applicant*

And

Tan Chun Chuen Malcolm

… *Respondent*

GROUNDS OF DECISION

[Legal Profession] — [Conflict of interest]
[Legal Profession] — [Professional conduct] — [Breach]
[Legal Profession] — [Show cause action] — [Sanction]
[Legal Profession] — [Solicitor-client relationship]

Law Society of Singapore
v
Tan Chun Chuen Malcolm

[2020] SGHC 166

Court of Three Judges — Originating Summons No 1 of 2020
Sundaresh Menon CJ, Andrew Phang Boon Leong JA and Quentin Loh J
6 July 2020

7 August 2020

Sundaresh Menon CJ (delivering the grounds of decision of the court):

Overview

1 This was an application by the Law Society of Singapore ("the Law Society") for sanctions to be imposed on the respondent, Mr Tan Chun Chuen Malcolm ("Mr Tan"), under s 83(1) of the Legal Profession Act (Cap 161, 2009 Rev Ed) ("LPA").

2 Mr Tan was admitted as an advocate and solicitor of the Supreme Court of Singapore on 8 June 2000. At all material times, he practised with Keystone Law Corporation ("Keystone"), and was also the sole shareholder and director of Bluesky Group Pte Ltd ("Bluesky"), a company that provided business management consultancy and real estate agency services.

3 The Law Society brought seven charges against Mr Tan, all of which essentially arose from the intended engagement of Keystone's services by the

complainant, Mr Kuek Yan Yeon ("Mr Kuek"). Mr Kuek signed two letters of engagement with Keystone on 28 August 2017, each relating to a scheme promoted to him by Mr Tan, and which he intended to invest in. The first was a scheme which Mr Tan had referred to as the "12% guaranteed returns investment" scheme. The corresponding letter of engagement stated that Keystone had been instructed to act for Mr Kuek in connection with the "Preference shares investment and trust arrangement", and that the scope of its instructions included:

> Acting as trustee for [Mr Kuek] in the handling of [his] investment monies, overseeing [his] investment monies in the Investment Company's Managed Account with a Monetary Authority of Singapore authorised licensee, as well as in the diversified Investment Company portfolio, to ensure … [his] capital gains of 12%/annum with a lock-in period of at least 1 year, and advising [him] in relation to the above-captioned matters …

In the proceedings before the Disciplinary Tribunal ("the Tribunal"), Mr Tan took the position that the "Investment Company" referred to in this letter of engagement was Bluesky.

4 The letter of engagement indicated that Mr Kuek would pay $150,000 into Keystone's client account, which sum was referred to as "a deposit to account for payment to the Investment Company, anticipated costs and disbursements". Mr Kuek stated in his affidavit dated 12 June 2019 that Mr Tan had assured him that the 12% profits that were promised under the "12% guaranteed returns investment" scheme would be guaranteed by "his professional indemnity insurance as a lawyer". According to Mr Kuek, this was evidenced by a Whatsapp message sent to him by Mr Tan on 28 March 2017 ("the March Statement"), which read as follows:

> … 12% guaranteed profits. How to guarantee? 1. I [meaning Mr Tan] am a practising lawyer with up to [S]$20m professional

> indemnity insurance. Any problems, my insurers will pay. 2. We are also coming under a Monetary Authority of Singapore cms [Capital Markets Services] licence very soon, as we are now negotiating with some external asset management companies and will be fully mas [Monetary Authority of Singapore] licensed.

Mr Kuek stated in his affidavit that Mr Tan had also orally told him that his professional indemnity insurance "could guarantee investment returns" and "pay [him] for [his] losses". The thrust of these representations was therefore that if the guaranteed investment returns were not paid as Mr Tan promised, then the insurers would be liable for any such failure. In this regard, we note that Mr Kuek referred interchangeably in his affidavit to "[Mr Tan's] professional indemnity insurance as a lawyer" and "his law firm's [meaning Keystone's] professional indemnity insurance". In comparison, the first charge brought by the Law Society (see [15(b)] below) indicated that the relevant insurance was taken out by Mr Tan, rather than by Keystone. This was consistent with the plain language of the March Statement, and we will therefore refer to the relevant insurance as Mr Tan's professional indemnity insurance in these written grounds.

5 The second scheme that was promoted to Mr Kuek was referred to by Mr Tan as a "[f]ull sum non guaranteed" investment scheme. The letter of engagement for this scheme was materially similar to that for the "12% guaranteed returns investment" scheme, except that it provided that the monies would be invested in "the quant managed account with Pilgrim Partners Asia for a period of at least 1 year (with 2% management fee and 20% performance fee)". This scheme was for a sum of $100,000 and did not guarantee capital gains. As with the other letter of engagement, it was envisaged that Mr Kuek would pay the sum in question into Keystone's client account.

6 Apart from signing the above two letters of engagement on 28 August 2017, Mr Kuek also signed Warrants to Act in favour of Keystone. However, he issued a cheque for the sum of $250,000 ("the investment sum"), which was the aggregate amount earmarked for investment in the two investment schemes promoted by Mr Tan, to Bluesky. This was despite the fact that, on the face of the letters of engagement, the monies were to be paid to Keystone, which had undertaken, among other duties, to act as Mr Kuek's trustee in respect of the investment sum. According to Mr Kuek, he had been told by Mr Tan that the payment of the investment sum to Bluesky was "for ease of transaction and it would be the same as issuing the cheque to [Keystone]". The letters of engagement and the Warrants to Act were re-executed subsequently to include details such as Mr Kuek's mailing address.

7 Of the seven charges brought by the Law Society, the Tribunal held that the first five charges had been established, and that there was cause of sufficient gravity in relation to these charges for the purposes of s 93(1)(*c*) of the LPA: see *The Law Society of Singapore v Tan Chun Chuen, Malcolm* [2020] SGDT 5 ("the Decision") at [92]. These five charges alleged that:

(a) Mr Tan made false and fraudulent representations to Mr Kuek for the purpose of soliciting the latter's engagement of his and/or Keystone's services in respect of the investment sum ("the first charge"), and due cause was shown under s 83(2)(*b*) of the LPA or, alternatively, under s 83(2)(*h*) of the LPA.

(b) Mr Tan procured Mr Kuek's execution of the two letters of engagement under improper and dishonest circumstances ("the second charge"), and due cause was shown under s 83(2)(*b*) of the LPA or, alternatively, under s 83(2)(*h*) of the LPA.

(c) While advising and/or acting on behalf of Mr Kuek pursuant to the two letters of engagement, Mr Tan failed to keep Mr Kuek reasonably informed of the progress of matters pertaining to the engagement and failed to provide satisfactory responses and/or updates despite Mr Kuek's queries ("the third charge"), and due cause was shown under s 83(2)(*h*) of the LPA.

(d) Mr Tan failed to keep proper contemporaneous records of all instructions received from and all advice rendered to Mr Kuek ("the fourth charge"), and due cause was shown under s 83(2)(*h*) of the LPA.

(e) Mr Tan placed himself in a position in which his duty to serve Mr Kuek's best interests conflicted with his own interests when he procured and/or instructed Mr Kuek to pay the investment sum to Bluesky, and he failed to take the necessary steps to obviate the conflict ("the fifth charge"). Due cause was shown under s 83(2)(*b*) of the LPA or, alternatively, under s 83(2)(*h*) of the LPA.

8 At the end of the oral hearing, we were satisfied that due cause had been shown in respect of the first, second and fifth charges. However, we found that the third and fourth charges were inconsistent with the real gravamen of the other three charges. We therefore set aside the Tribunal's decision in respect of the third and fourth charges. In respect of the first, second and fifth charges, we were satisfied that the appropriate sanction was to strike Mr Tan off the roll of advocates and solicitors under s 83(1)(*a*) of the LPA. We now explain the reasons for our decision.

The solicitor-client relationship between Mr Tan and Mr Kuek

9 Mr Tan contested the charges before the Tribunal, and he continued to do so before us. It should be noted, however, that Mr Tan chose not to give evidence before the Tribunal. Accordingly, on the factual points, no evidence was adduced in support of Mr Tan's arguments. Notwithstanding this, Mr Tan contended that he had never consummated a solicitor-client relationship with Mr Kuek. The essence of Mr Tan's contention was that Mr Kuek had set out to engage, or knew that he had in fact engaged, Mr Tan *not* as a solicitor but purely as a business advisor. As a result, it was suggested, Mr Tan never came under the duties and obligations of an advocate and solicitor that he might otherwise have been subject to. This contention was central to various aspects of the charges against Mr Tan, and we therefore deal with it before we turn to consider the individual charges. The Tribunal rejected this contention, and we too were satisfied that it was wholly without merit.

10 Mr Tan's assertion that there had been no solicitor-client relationship was plainly contradicted by the express terms of the letters of engagement signed by Mr Kuek and Keystone. These letters not only referred to the "legal professional relationship" and the "solicitor-client relationship" between Mr Kuek and Keystone, but also expressly stated that Keystone was being instructed to act for Mr Kuek in connection with the "Preference shares investment and trust arrangement" and that Mr Tan would be "[t]he lawyer in charge of this matter". It was also specified that the scope of Keystone's instructions included "[a]cting as trustee for [Mr Kuek] in the handling of [his] investment monies" and overseeing their investment. The letters of engagement thus left no room for any doubt that Mr Kuek was engaging Keystone *as a law firm* to act for him in connection with the two investment schemes promoted to him by Mr Tan. This conclusion was fortified by the fact that Mr Tan had

previously represented to Mr Kuek that the profits under the "12% guaranteed returns investment" scheme would be guaranteed by the professional indemnity insurance that he held as a practising lawyer (see [4] above). It was in this context that the letters of engagement and the Warrants to Act had been signed.

11 In support of his contention that there had been no solicitor-client relationship, Mr Tan relied on the fact that Mr Kuek had agreed, under cross-examination during the proceedings before the Tribunal, that: (a) Mr Tan had been acting as an "[i]nvestor, adviser" rather than as a lawyer; (b) Mr Tan had only given him "business and commercial advice"; and (c) there "wasn't really an advocate and solicitor relationship between [them]". We first observe that Mr Kuek's subjective understanding of their relationship would not have been determinative (see, by analogy, *BOM v BOK and another appeal* [2019] 1 SLR 349 at [109] on implied retainers). But beyond this, in our view, Mr Tan's contentions, which stemmed from points that were put to Mr Kuek under cross-examination, seemed to have been directed at whether Mr Tan had *in fact* provided any legal services. While it appeared on the evidence that he had not done so, the real question was whether Mr Kuek had been left with the impression that in investing in the two investment schemes promoted by Mr Tan, his interests would be protected by Mr Tan as his solicitor pursuant to the terms of the letters of engagement. We were amply satisfied that this was the case and, further, that Mr Tan had *intended* this end. Seen in this light, Mr Tan's failure to carry out the engagement that he had undertaken was irrelevant to whether he had in fact undertaken an obligation to act as Mr Kuek's solicitor. In relation to the latter, it was entirely clear on the evidence that he had. We elaborate on this evidence in the paragraphs that follow.

12 Faced with the fact that Mr Kuek did sign the letters of engagement, which, on their plain terms, pointed to the existence of a solicitor-client

relationship, Mr Tan contended that these letters were subsequently superseded by a revised and final agreement reached on 21 September 2017. In our judgment, this contention lacked any evidential basis. Specifically, Mr Tan claimed that the terms of the alleged final agreement were reflected in an undated term sheet ("the Term Sheet") that he produced for the first time when he was cross-examining Mr Kuek during the proceedings before the Tribunal. As against this, Mr Kuek's evidence was that he had never seen the Term Sheet before. Since Mr Tan did not give evidence, there was nothing to contradict Mr Kuek's unequivocal statement. Significantly, the Term Sheet had been signed only by Mr Tan, but not by Mr Kuek. Moreover, *if* the terms of the parties' alleged final agreement had indeed been recorded in the Term Sheet, we would have expected some mention of this at an earlier stage. Taken together, these facts – specifically: (a) that the Term Sheet had not been signed by Mr Kuek and was produced for the first time only late in the day when Mr Tan was cross-examining Mr Kuek; (b) Mr Kuek's clear evidence that he had never seen the Term Sheet before; and (c) the fact that Mr Tan never gave evidence at all, much less on this specific point and so was not cross-examined on it – left us in no doubt that we had to reject Mr Tan's bare assertion that the letters of engagement had been superseded by some other agreement, whether in the form of the Term Sheet or otherwise.

13 We noted that, consistent with this, Mr Eugene Thuraisingam ("Mr Thuraisingam"), who represented Mr Tan at various stages of the proceedings before the Tribunal, *conceded* before the Tribunal that Mr Kuek would not have invested his monies in the two investment schemes promoted by Mr Tan without the assurance that a firm of lawyers, specifically Keystone, would supervise his investments. Mr Thuraisingam went so far as to accept that there was an obligation on Keystone to perform the terms of the engagement,

although he submitted that its failure to do so was a separate matter altogether. In view of the evidence we have referred to above, these concessions were rightly made. It was on the basis of the assurance that Keystone would safeguard his interests that Mr Kuek went ahead and invested in the two investment schemes. We were therefore satisfied that Mr Tan was at all times subject to the duties incumbent upon him as a solicitor in a solicitor-client relationship with Mr Kuek.

14 We turn, in that light, to the substantive charges against Mr Tan.

The first charge

15 The first charge alleged that Mr Tan sought to solicit Mr Kuek's engagement of his and/or Keystone's services in respect of the investment sum by falsely and fraudulently representing to Mr Kuek that:

(a) he was qualified and able to promote investment products and provide investment advice in his capacity as an advocate and solicitor with Keystone; and

(b) his professional indemnity insurance as an advocate and solicitor practising with Keystone would assure or guarantee the promised returns in respect of the "12% guaranteed returns investment" scheme promoted to Mr Kuek.

16 The Tribunal held that the representation at [15(b)] above but not that at [15(a)] above had been proved: see the Decision at [74] and [75]. Before us, the Law Society argued that the evidence showed that both representations had been made by Mr Tan, who must also have known that they were untrue. It submitted that these representations resulted in Mr Kuek entering into the letters of

engagement with Keystone. On the other hand, Mr Tan claimed that it had not been shown that the March Statement was made fraudulently, or that it had induced Mr Kuek to invest his monies in the two investment schemes promoted to him.

Our decision

17 We address the two representations in turn. We agreed with the Tribunal's finding that the representation at [15(b)] above relating to Mr Tan's professional indemnity insurance had been proved beyond reasonable doubt. It was undisputed that when Mr Tan met Mr Kuek in March 2017, Mr Tan had been introduced to Mr Kuek as a lawyer. Mr Tan subsequently told Mr Kuek about an investment product with 12% guaranteed returns, and on 28 March 2017, sent Mr Kuek the March Statement (see [4] above).

18 Mr Tan accepted that, "at first blush", the March Statement "look[ed] like a guarantee of returns". However, he contended that, read in context, it was in fact an attempt to show Mr Kuek that he would be investing his monies with legitimate entities because Mr Tan was a lawyer. He pointed to the second half of the March Statement, which made the point that Mr Tan's business entities "[would] be fully [Monetary Authority of Singapore] licensed" and would therefore be legitimate. We did not accept this submission. First, the plain language of the March Statement was clear and unambiguous. The reference to Mr Tan's professional indemnity insurance was made in answer to the question (which was set out within the March Statement itself) of *how the profits under the "12% guaranteed returns investment" scheme could be guaranteed*. Notably, on 18 July 2017, when Mr Kuek asked for Mr Tan's comments on a separate investment scheme, Mr Tan had responded by saying, amongst other things, that Mr Kuek should "ask them how they 'guarantee' [his] investment".

This appeared to be an attempt by Mr Tan to demonstrate that investing in the "12% guaranteed returns investment" scheme promoted by him would be preferable because this scheme carried the additional assurance provided by his professional indemnity insurance as a lawyer. Second, Mr Kuek stated in his affidavit that Mr Tan had also orally told him that his professional indemnity insurance "could guarantee investment returns" and would also cover any losses that might materialise (see [4] above). This affirmed the plain reading of the March Statement, and as Mr Tan did not give evidence, it was not contradicted.

19 It is pertinent to note that Mr Tan did not dispute the fact that the March Statement, as understood above, was untrue. It was simply *inconceivable* that Mr Tan could have honestly believed that the promised 12% investment returns could in any way be guaranteed by his professional indemnity insurance. Faced with this, Mr Tan contended that the March Statement had been made not fraudulently, but rather, "carelessly and imprudently" as "an overzealous sale[s] pitch". These euphemistic expressions in no way altered the substance of what had transpired, namely, that Mr Tan had lied to Mr Kuek in order to persuade him to do something that was ultimately in Mr Tan's interests. The reference to an "overzealous sale[s] pitch" made it plain that Mr Tan had been trying to impress Mr Kuek by suggesting that the risk of investing with him was low, and that the promised high investment returns were guaranteed because he was a lawyer who was covered by professional indemnity insurance. It was also evident that the "sale[s] pitch" was made in order to induce Mr Kuek to invest in the "12% guaranteed returns investment" scheme. As we have noted above, Mr Kuek's evidence was that Mr Tan had orally repeated the representation pertaining to his professional indemnity insurance as well. Given the blatantly false nature of this representation and the fact that it had been repeated, we had

no hesitation in concluding that it had been *fraudulently* made in an effort to procure Mr Kuek's engagement of Keystone in order to secure his investment.

20 In our judgment, this was sufficient to establish the first charge, which was made out on the basis of this representation alone. To be clear, while Mr Tan suggested in his submissions that the Law Society also had to show that this representation *in fact* induced Mr Kuek to invest his monies with him, this was erroneous and not an element of the first charge. This charge was directed at Mr Tan's conduct in making the false and fraudulent representation, and the nature of that conduct did not depend on establishing the effect of the representation on Mr Kuek.

21 Separately, we were also satisfied that Mr Tan had falsely and fraudulently represented that he was qualified and able to promote investment products and provide investment advice in his capacity as an advocate and solicitor with Keystone, which is the representation set out at [15(a)] above. In this regard, we respectfully disagreed with the Tribunal's finding that this representation had not been proved beyond reasonable doubt. In our judgment, the question was not whether Mr Tan was or was not *in fact* in a position to promote investment products and provide investment advice as an advocate and solicitor; rather, as we have explained in the previous paragraph, the critical issue was what Mr Tan had told Mr Kuek and why. The March Statement specifically referred to Mr Tan's standing as a "practising lawyer" and drew a clear link between this fact and the purported guarantee that his professional indemnity insurance would provide. Further, Mr Kuek testified that Mr Tan had told him that "if anything … [went] wrong, the insurance [would] help to cover the lawyers' mistake". Read together with Mr Tan's assurance that his professional indemnity insurance would guarantee the promised investment returns, the implication was that Mr Tan, as an advocate and solicitor, could

provide the relevant services that would ensure that the investment returns that had been promised to Mr Kuek would be forthcoming. This was the only way to make sense of Mr Tan's unequivocal representation, both in the March Statement and orally, that his professional indemnity insurance as a lawyer could be invoked to guarantee the payment of the promised investment returns. We did not understand Mr Tan to be contending that this representation was true, and we were satisfied that it had been made fraudulently for largely the same reasons as those set out at [19] above.

22 We were therefore satisfied that the first charge was made out not only by Mr Tan's false and fraudulent representation concerning his professional indemnity insurance, but *also* by his false and fraudulent representation that he was qualified and able to provide the relevant services, including investment advice, in his capacity as an advocate and solicitor with Keystone.

23 We had no difficulty in concluding that due cause had been shown in respect of this charge. Mr Tan had used his standing as an advocate and solicitor to make false representations in order to encourage Mr Kuek to invest money with his company and to enter into an engagement with his law firm. The dishonesty was both flagrant and an abuse of the trust Mr Kuek had placed in him specifically as an advocate and solicitor. This was fraudulent and grossly improper conduct under s 83(2)(*b*) of the LPA.

The second charge

24 The second charge preferred by the Law Society alleged that Mr Tan had procured Mr Kuek's execution of the two letters of engagement under improper and dishonest circumstances, in that Mr Tan:

(a) did not in fact provide the legal services stipulated in the letters of engagement;

(b) instead provided investment services under the false pretence reflected by the letters of engagement;

(c) procured Mr Kuek to pay the investment sum into Bluesky's account notwithstanding the fact that the letters of engagement provided that it was to be paid into Keystone's client account; and

(d) represented to Mr Kuek and/or led him to believe that the investment services provided to him and the payment of the investment sum to Bluesky were in accordance with the terms of the letters of engagement.

25 In essence, the allegation in the second charge was that Mr Tan had led Mr Kuek to understand that Keystone was being engaged to act as trustee of the investment sum and to supervise Mr Kuek's investments, despite the fact that he never intended to provide any such services. This, as we understood it, was the "false pretence" referred to in the second charge (see [24(b)] above). In this regard, the Tribunal, despite holding that the second charge had been proved beyond reasonable doubt, also found that "[the] specific allegation that [Mr Tan] provided investment services to [Mr Kuek] under the false pretence of the letters of engagement" was not made out because Mr Kuek knew that Keystone was not providing investment services, and that Mr Tan was likewise not providing such services through Keystone (see the Decision at [79]). With respect, the Tribunal was mistaken in so finding. First, this ruling was premised on a misreading of the second charge. Second, it was predicated on a view of the facts taken by the Tribunal which we have overturned for the reasons set out at [21] above. The central issue in this context was not whether Mr Kuek had a

precise understanding or belief as to the sort of *investment services* Keystone would or would not provide. Instead, the real question was what Mr Tan had represented to Mr Kuek. As we have explained at [21] above, this was to the effect that Mr Tan, as an advocate and solicitor acting through Keystone, could and would provide the relevant services to ensure that the investment returns that had been promised to Mr Kuek would be forthcoming. This was precisely the false pretence that was encompassed in the elaborate hoax constituted by the letters of engagement and the Warrants to Act.

26 The Law Society emphasised Mr Kuek's evidence that he would not have invested in the two investment schemes promoted to him by Mr Tan if he had known that his monies could and would be used by Mr Tan without any supervision by a law firm, namely, Keystone. It argued that this was why Mr Tan had framed the terms of agreement between Mr Kuek and Keystone as standard engagement letters. Having gained Mr Kuek's trust in the arrangement, Mr Tan then procured him to pay the investment sum to Bluesky, contrary to what was provided for in the letters of engagement. In contrast, Mr Tan argued that the letters of engagement were not signed under false pretences since Mr Kuek had known that he was making an investment directly with Bluesky, which had issued him a payment voucher. The addition of Keystone, Mr Tan submitted, "added nothing", and Mr Kuek had known that his investments would be subject to the normal attendant risks of investing. Mr Tan also asserted that deliberate deceit had not been proved.

Our decision

27 We were satisfied that the second charge was amply made out. The terms of the letters of engagement clearly indicated that Keystone was being engaged to supervise Mr Kuek's investments, among other duties. Indeed, this was

Mr Kuek's understanding, as he testified that he would not have invested his monies in the two investment schemes promoted by Mr Tan if he had known that the monies could and would be used without any supervision by a law firm. As we have already noted above (at [13]), Mr Tan's previous counsel, Mr Thuraisingam, also conceded as much, and, as we have observed, we thought this concession was rightly made. This was the very reason the letters of engagement were signed. And, for the reasons explained at [12] above, we rejected Mr Tan's submission that the letters of engagement had been superseded by the Term Sheet. It followed from this that Keystone had a professional and fiduciary duty to act in Mr Kuek's interests, including to ensure that his investments were subject to the protections Keystone had been engaged to provide.

28 It was common ground that, in spite of this, the legal services stipulated in the letters of engagement were not provided. In fact, the evidence showed that Mr Tan had never intended to provide those services. For instance, the letters of engagement provided that the investment sum was to be paid into Keystone's client account and that Keystone would act as trustee of the monies invested by Mr Kuek. Despite these clear provisions, Mr Tan instead procured the payment of the investment sum to *Bluesky* on 28 August 2017, which was the *same* day on which the letters of engagement were signed. Further, while the letters of engagement provided that Mr Tan, on behalf of Keystone, was to supervise Mr Kuek's investments, it was unclear how Mr Tan could seriously have intended to supervise investments made by his client in his own private company. Indeed, it was plain on the evidence that Mr Tan never intended to comply with the terms of the letters of engagement from the outset.

29 This, in fact, was in line with Mr Tan's *own* position, which was that the letters of engagement had been superseded by the Term Sheet (which argument

we rejected at [12] above), and, further, that these letters had been signed despite the fact that the parties had at that time already begun to discuss alternative modes of investing Mr Kuek's monies. He asserted that it was Mr Kuek who had nevertheless insisted on signing the letters of engagement as they were "at the time, the only legal documents which had been prepared". This submission suggested that, even as at 28 August 2017, Mr Tan did not intend to carry out or act in accordance with the terms of the letters of engagement. We also found it significant that these letters stated that while Mr Tan would normally charge an hourly rate for his services, no time-based costs would be charged in this instance because the "Investment Company" (meaning, according to Mr Tan, Bluesky) would cover his fees. This again suggested that the letters of engagement served no real purpose, at least from Mr Tan's perspective, other than to convince Mr Kuek that his investments would be supervised by a law firm and that the profits promised under the "12% guaranteed returns investment" scheme would be protected by Mr Tan's professional indemnity insurance as a lawyer, when Mr Tan knew this was all untrue. In short, as we have noted at [25] above, this was all part of an elaborate hoax to convince Mr Kuek that he was protected by the device of having engaged Keystone to supervise his investments, which Mr Tan knew not to be the case at all.

30 Mr Tan made much of the fact that Mr Kuek had issued the cheque for the investment sum to Bluesky. The suggestion was that there had been no dishonesty since this showed that Mr Kuek *knew* that he was investing that sum directly with Bluesky and that Keystone would not be acting as trustee of that sum. This, with respect, was misguided. While Mr Kuek had issued the cheque for the investment sum to Bluesky, he had done so after being assured by Mr Tan that this would be "the same" as issuing the cheque to Keystone (see [6] above). In addition, Mr Kuek's knowledge that the investment sum was

being paid to Bluesky directly had to be seen in the light of the fact that what was material to him was his belief that Keystone would be supervising his investments. However, Keystone's supervision, or rather, the lack thereof, was also the key fact as to which he was being deceived by Mr Tan. In this regard, we reiterate Mr Kuek's evidence that he would not have invested his monies in the two investment schemes promoted by Mr Tan at all, and, by extension, would not have made any payment to Bluesky, but for the assurance of Keystone's supervision of his investments. We also reiterate Mr Thuraisingam's acceptance of this fact.

31 Further, there were other falsehoods operating at the material time. For instance, the evidence suggested that Mr Tan had *also* represented to Mr Kuek that the investment company, Bluesky, would soon be licensed by the Monetary Authority of Singapore ("MAS"). As mentioned at [4] above, he had said in the March Statement that:

> … We are also coming under a Monetary Authority of Singapore cms [Capital Markets Services] licence very soon, as we are now negotiating with some external asset management companies and will be fully mas [Monetary Authority of Singapore] licensed.

The parties appeared to agree that this was a representation that Mr Tan's business entities would soon qualify for a licence issued by the MAS. It seemed to us that the relevant business entity must have been Bluesky, since there was no other entity Mr Tan could have been referring to. However, there was no evidence that Bluesky was at any time licensed, or going to be licensed, by the MAS, and Mr Tan did not contend otherwise. This was something that Mr Tan must have known at the time the letters of engagement were signed. Yet, there was no evidence that this had been disclosed to Mr Kuek. Moreover, while Mr Tan asserted that Pilgrim Partners Asia ("Pilgrim"), the entity involved in

the "[f]ull sum non guaranteed" investment scheme (see [5] above), had been licensed by the MAS, he did not dispute the fact that no investments were ever made with Pilgrim, contrary to the terms of the letter of engagement pertaining to that scheme. Instead, he suggested in his cross-examination of Mr Kuek that Mr Kuek had been told "in the course of signing the [letters of engagement]" that the investment product with Pilgrim had not yet been confirmed, and that the sum earmarked for investment with Pilgrim would instead be going into Bluesky. Even if this were true, it would not be material unless it was brought home to Mr Kuek that: (a) his money was not going to be invested in an entity licensed by the MAS; and (b) his investments would not be supervised by a law firm. It was clear that this had not been done. In addition, this also underscored Mr Tan's lack of intention to comply with the terms of the letters of engagement.

32 In sum, the evidence showed that Mr Tan had procured Mr Kuek to sign the letters of engagement on the false pretext that Keystone would supervise his investments. This was dishonest and improper since Mr Tan had never intended for there to have been any such supervision. In line with this, Mr Tan had asked Mr Kuek to pay the investment sum directly to Bluesky, contrary to the terms of the letters of engagement, and had falsely assured him that this was in effect the same as paying the money to Keystone. This was aggravated by the fact that Mr Tan did not inform Mr Kuek that, contrary to his earlier representations, Bluesky was not licensed by the MAS, and there was no way for Keystone to guarantee the promised 12% profits or make good any losses resulting from the investments. We therefore concluded that the second charge was made out as well. It was evident that Mr Tan's conduct amply met the threshold for fraudulent and grossly improper conduct under s 83(2)(*b*) of the LPA because his dishonesty was *targeted* at obtaining Mr Kuek's engagement of Keystone so

as to give him the false assurance that his investments would thereby be protected.

The fifth charge

33 The fifth charge alleged that Mr Tan, in procuring and/or instructing Mr Kuek to pay the investment sum to Bluesky, had placed himself in a position where his duty to serve Mr Kuek's best interests was in conflict with his own interests. This charge further alleged that notwithstanding the conflict, Mr Tan: (a) failed to make full and frank disclosure of his interest in the matter to Mr Kuek; (b) failed to advise Mr Kuek to obtain independent legal advice or, alternatively, to ensure that Mr Kuek was not under the impression that he was protecting Mr Kuek's best interests; and, finally, (c) failed to obtain Mr Kuek's informed consent in writing for him to continue acting as Mr Kuek's solicitor despite the conflict.

34 The Tribunal found that Mr Tan's conflict of interest in acting for Mr Kuek and his failure to advise the latter to obtain independent legal advice were clearly established by the evidence: see the Decision at [83] and [85]. This was despite its finding that Mr Tan had *not* failed to make full and frank disclosure of his interest in the matter. On this particular point, the Tribunal reasoned that because Mr Kuek had been aware that Bluesky was Mr Tan's company, it was not clear what other disclosure was required: see the Decision at [84].

35 The Law Society submitted that while Mr Kuek might have known of Mr Tan's interest in Bluesky, Mr Tan had not fully explained to him the extent and implications of the conflict of interest, or that Mr Tan was effectively being engaged to supervise investments managed by his own company. Rather than

advising Mr Kuek to seek independent legal advice, Mr Tan had instead assured him that he could safely invest in the two investment schemes promoted to him because "if anything … [went] wrong, the insurance [would] help to cover the lawyers' mistake" (see [21] above). There was therefore no informed consent by Mr Kuek to Mr Tan's continuing to act as his solicitor.

36 In rebuttal, Mr Tan made two submissions. The first was that it was necessary to establish with precision the relationships which were said to have given rise to the conflict of interest, although he stopped short of submitting that there was no situation of conflict in the present case. Second, he observed that since Mr Kuek had been advised by another solicitor in respect of the letters of engagement, any breach would have been limited to his failure to obtain Mr Kuek's written consent for him to continue acting for Mr Kuek.

Our decision

37 In *Law Society of Singapore v Ezekiel Peter Latimer* [2019] 4 SLR 1427 ("*Ezekiel Peter Latimer*") at [60] and [63], we held that cases involving a solicitor who preferred his own interests over those of his client would presumptively involve more serious misconduct, since a solicitor who prefers his own interests inevitably abuses the trust and confidence reposed in him. We further noted in *Ezekiel Peter Latimer* that an abuse of trust may occur where a solicitor enters into a transaction with his client on terms that may be more favourable to the solicitor's own interests (at [63]). This aptly described the present case.

38 The conflict of interest in the present case can be readily perceived from the facts we have already outlined above. Indeed, Mr Thio Shen Yi SC, who appeared on behalf of Mr Tan in the proceedings before us, accepted at the oral

hearing that once the first two charges were made out, it followed that the fifth charge would also necessarily be made out. Mr Tan's interest lay in procuring Mr Kuek to invest his monies with Bluesky, which he achieved by making a number of false and fraudulent representations, most significantly, that Keystone would supervise Mr Kuek's investments, and that if anything went wrong, Mr Tan, the designated solicitor in charge under the two letters of engagement, could be sued under the cover of his professional indemnity insurance. This was therefore a case in which Mr Tan convinced Mr Kuek, his client, to enter into a transaction which furthered Mr Tan's own interests under false pretences. In doing so, Mr Tan preferred his own interest, which was ultimately to procure Mr Kuek to invest his monies with Bluesky through the false assurances made in connection with the role and involvement of Keystone, over that of Mr Kuek, which was to have his investments safeguarded in accordance with the assurances that had been given to him. Consistent with our observations in *Ezekiel Peter Latimer*, we were satisfied that the present case involved a very serious conflict of interest and an abuse of trust.

39 It was incumbent on Mr Tan to take steps to obviate the conflict, if that could even be done in this situation. Rule 22(3) of the Legal Profession (Professional Conduct) Rules 2015 (S 706/2015) ("PCR") provides that:

> Where a legal practitioner, any immediate family member of the legal practitioner, or the law practice in which the legal practitioner practises has an interest in any matter entrusted to the legal practitioner by a client of the legal practitioner —
>
> > (*a*) in any case where the interest is adverse to the client's interests, the legal practitioner must withdraw from representing the client, unless —
> >
> > > (i) the legal practitioner makes a full and frank disclosure of the adverse interest to the client;
> > >
> > > (ii) the legal practitioner advises the client to obtain independent legal advice;

> (iii) if the client does not obtain independent legal advice, the legal practitioner ensures that the client is not under an impression that the legal practitioner is protecting the client's interests; and
>
> (iv) despite sub-paragraphs (i) and (ii), the client gives the client's informed consent in writing to the legal practitioner acting, or continuing to act, on the client's behalf …
>
> …

40 The requirement of full and frank disclosure seeks to ensure that: (a) the client is apprised of the nature, extent and implications of the conflict of interest such that a decision as to whether or not to obtain independent legal advice can be made; and (b) if such legal advice is not sought, the client is *not* under the impression that the legal practitioner is protecting the client's interests. In this connection, we emphasise also that whether independent legal advice has been sought cannot be viewed in a technical manner – instead, the crux of the matter is whether the client has been placed in a position to assess whether he should allow the conflicted solicitor to continue acting for him. In this regard, Mr Tan placed emphasis on the fact that Mr Kuek had given the letters of engagement to a "lawyer friend" over a meal and had been told that they were "common and general terms of engagement". With respect, this struck us as woefully inadequate, and we were dismayed by Mr Tan's submission that this could in any way constitute adequate independent legal advice. In truth, this in no way addressed Mr Tan's conflicted position.

41 Mr Tan was squarely under an obligation to ensure that Mr Kuek was not under the impression that his interests were being protected by Mr Tan. That impression had been intentionally created by Mr Tan, and it was simply untrue, as he well knew. Yet, he wholly failed to apprise Mr Kuek of this fact, precisely because he was placed in a position of acute conflict between his own interest,

which was to get Mr Kuek to invest his monies with Bluesky and which, in turn, depended on Mr Kuek believing the false assurances he had been given, and his duty to safeguard Mr Kuek's interests. The mere fact that Mr Kuek knew that Bluesky was Mr Tan's company was beside the point. Rather, it was critical for Mr Tan to disclose the fact that Keystone would not supervise Mr Kuek's investments since this was the matter of central importance to Mr Kuek. As we have repeatedly emphasised above, this was the basis on which Mr Kuek had agreed to invest his money in the two investment schemes promoted by Mr Tan. The false expectation of Keystone's supervision also lay at the heart of the conflict of interest in the present case since this was the means by which Mr Tan convinced Mr Kuek to invest his money in those two investment schemes (see [38] above). Where the very premise on which Mr Kuek had agreed to invest in those two investment schemes was false and not corrected, there could be no conceivable argument that Mr Tan had adequately disclosed his conflict of interest to Mr Kuek. We therefore disagreed with the Tribunal's conclusion to the contrary: see the Decision at [84]. With respect, this conflict was so fundamental that we found it difficult to see how it could have been resolved at all.

42 It was clear beyond peradventure that due cause was made out in respect of the fifth charge. We held in *Ezekiel Peter Latimer* ([37] *supra*) at [48] that misconduct arising from a conflict of interest is reprehensible because it entails "a grievous violation of a lawyer's duty of unflinching and undivided loyalty to a client". We also held that striking off is the presumptive penalty in cases where a solicitor personally transacts with a client to his own advantage, or in any manner places himself in a situation where his personal interest conflicts with that of a client, unless truly exceptional circumstances exist which render striking off disproportionate (at [67]). An example where a solicitor was struck

off for misconduct involving a conflict of interest is *Law Society of Singapore v Khushvinder Singh Chopra* [1998] 3 SLR(R) 490 ("*Khushvinder Singh Chopra*"). There, the respondent solicitor had been engaged to act for the vendors in an unsuccessful re-mortgage and aborted sale of their property. The respondent subsequently negotiated and obtained an option to purchase the property from two of the vendors on terms that were less favourable to them than the option that would have been granted under the aborted sale. The vendors' new solicitors wrote to the respondent disputing the validity of the option granted and demanding that the caveat lodged by the respondent be withdrawn. A complaint was subsequently filed with the Law Society. Notwithstanding his knowledge of at least one vendor's unwillingness to proceed with the sale, the respondent persuaded the vendors to sign a statutory declaration which upheld the option he had been granted, and which purported to absolve him of all allegations of fraud and impropriety. The court there held that there was no alternative but to strike the respondent off the roll since he had knowingly placed himself in a position of "aggravated conflict of interest", "single-mindedly pursued and preferred his interest over [that] of his clients" and behaved in a "cunning and deceitful" manner. The court also observed that "considerations of public interest generally, and the interest of the administration of justice in particular" were engaged (at [67]).

43 In the present case, it was no overstatement to describe Mr Tan as having been single-minded in his pursuit of his own interests over those of Mr Kuek, or to say that he had been deceitful in doing so. He procured Mr Kuek to enter into a solicitor-client relationship with him under false pretences in order to further his own financial interests over those of Mr Kuek, without having any intention of providing the services stipulated in the letters of engagement. We noted that not only were there no exceptional circumstances in the present case,

the evidence also suggested that, upon learning of the complaint that Mr Kuek had filed against him, Mr Tan tried to make its withdrawal a condition of his repaying part of the investment sum to Mr Kuek. In this context, it was apparent that Mr Tan's conduct as set out in the fifth charge not only contravened rr 22(1) to 22(3) of the PCR and constituted improper conduct as an advocate and solicitor under s 83(2)(*b*) of the LPA, but also, on its own, merited striking off. We return to this point momentarily.

The remaining charges

44 The effect of our findings above was that Mr Tan had procured Mr Kuek's execution of the letters of engagement on the *false* pretext that Keystone would be supervising Mr Kuek's investments, which assured Mr Kuek that the promised 12% investment returns could be regarded as guaranteed since, so he had been told, Mr Tan's professional indemnity insurance would cover any failure to pay the promised returns as well as any losses that might materialise. We have found also that this was a *fraudulent* pretext, in that Mr Tan never intended to provide any of the services stipulated in the letters of engagement. This was in fact the premise of the first, second and fifth charges, as well as the Law Society's position.

45 Having accepted these points, the Law Society could not, with respect, possibly sustain the third and fourth charges. The third and fourth charges essentially alleged that, in the course of advising and/or acting on behalf of Mr Kuek pursuant to the letters of engagement, Mr Tan: (a) failed to keep Mr Kuek reasonably informed of the progress of his matters and to provide satisfactory responses and/or updates despite his queries (the third charge); and (b) failed to keep contemporaneous records of instructions received from and advice rendered to Mr Kuek (the fourth charge). In our judgment, it was

incorrect to charge Mr Tan both for fraudulently representing that he would act as Mr Kuek's lawyer despite having no intention to do so, *and at the same time* for failing to perform the particular duties which he would have been obliged to perform in the course of the very engagement that he never intended to carry out. The fact that Mr Tan never kept contemporaneous attendance notes nor kept Mr Kuek reasonably informed of the progress of his matters was simply a *consequence* of the fact that the solicitor-client relationship had been entered into on a fraudulent basis, with Mr Tan having had no intention to act as Mr Kuek's lawyer. The latter fact is a central feature of the first, second and fifth charges. It was therefore inconsistent for the Law Society to prefer those charges *and* simultaneously bring separate charges (that is to say, the third and fourth charges) on the premise that Mr Tan was nevertheless expected to perform the duties that he would have been required to perform as Mr Kuek's lawyer. We therefore set aside Mr Tan's conviction on the third and fourth charges.

The appropriate sanction

46 We have said above (at [43]) that Mr Tan's conduct as set out in the fifth charge alone warranted striking him off the roll. We add that the first and second charges, which were closely tied to the fifth charge, also provided ample basis to conclude that striking off was the appropriate sanction.

47 In *Law Society of Singapore v Chia Choon Yang* [2018] 5 SLR 1068 ("*Chia Choon Yang*") at [39] and [40], we set out the following framework for determining the appropriate sanction in cases of misconduct involving dishonesty:

> 39 In summary, misconduct involving dishonesty will almost invariably warrant an order for striking off *where the dishonesty reveals a character defect rendering the errant*

> *solicitor unsuitable for the profession, or undermines the administration of justic*e. This would typically be the case (a) where the dishonesty is integral to the commission of a criminal offence of which the solicitor has been convicted; (b) *where the dishonesty violates the relationship of trust and confidence inherent in a solicitor-client relationship*; and (c) where the dishonesty leads to a breach of the solicitor's duty to the court or otherwise impedes the administration of justice. In such cases, striking off will be the presumptive penalty unless there are truly exceptional facts to show that a striking off would be disproportionate. As we have noted in [*Law Society of Singapore v Ong Cheong Wei* [2018] 3 SLR 937] at [7], such a case will be "extremely rare". And as [*Law Society of Singapore v Choy Chee Yea*n [2010] 3 SLR 560] shows, personal culpability (as well as mitigating factors generally) has little relevance in cases where the presumptive position of striking off applies, save that the court might entertain an application for reinstatement earlier than would otherwise be the case.
>
> 40 But for cases that do not fall into these categories, the court should examine the facts closely to determine whether striking off is warranted. In particular, it should ascertain:
>
> > (a) the real nature of the wrong and the interest that has been implicated;
> >
> > (b) the extent and nature of the deception;
> >
> > (c) the motivations and reasons behind the dishonesty and whether it indicates a fundamental lack of integrity on the one hand or a case of misjudgment on the other;
> >
> > (d) whether the errant solicitor benefited from the dishonesty; and
> >
> > (e) whether the dishonesty caused actual harm or had the potential to cause harm that the errant solicitor ought to have or in fact recognised.
>
> [emphasis added]

48 In our judgment, the present case is one in which the presumptive sanction is that of striking off. The first, second and fifth charges all involved dishonesty that violated the relationship of trust and confidence that inheres in the solicitor-client relationship: see *Chia Choon Yang* at [39]. As we have emphasised above, this was a case in which Mr Tan acted dishonestly in favouring his own interests over those of Mr Kuek. Specifically, Mr Tan

procured Mr Kuek's engagement of Keystone's services (and, in turn, his services as the designated solicitor in charge under the two letters of engagement) by making representations that created false expectations as to what assurances the solicitor-client relationship could provide, going so far as to claim that his professional indemnity insurance could guarantee Mr Kuek's investment returns as well as cover any losses that might materialise. These representations were *directly* tied to his standing as an advocate and solicitor, and his dishonesty was exacerbated by the fact that he constructed an elaborate hoax using the letters of engagement and the Warrants to Act as a pretext to secure payment of the investment sum into the account of a company that he controlled. As such, given the absence of any truly exceptional facts, the appropriate penalty was that of striking off.

49 To be clear, even if we applied the factors set out in *Chia Choon Yang* at [40], the test for striking out would still be amply met. In *Chia Choon Yang* at [31], we observed that cases such as *John Irvine Burrowes v Law Society* [2002] EWHC 2900 (Admin) and *Fraser v The Council of the Law Society of New South Wales* [1992] NSWCA 72, where the sanction of striking off was not imposed, involved dishonest acts that were done in the belief that they were what the clients wanted, and that the acts "appeared to be driven by what was thought to be a harmless pursuit of convenience". Those were not cases in which the solicitors concerned had acted in total disregard of their clients' interests or benefited from their own misconduct. Similarly, we observed that in *Law Society of Singapore v Chung Ting Fai* [2006] 4 SLR(R) 587, where the errant solicitor had been found guilty of drafting a false affidavit, the court, in ordering the solicitor to be suspended from practice for one year instead of striking him off the roll, had been satisfied that he had *not* been acting in flagrant pursuit of

his self-interest at the expense of his client, but had instead been motivated by "misplaced zealousness" (see *Chia Choon Yang* at [36]).

50 The present case was wholly distinguishable. Mr Tan had, in blatant disregard of Mr Kuek's interests, fraudulently procured Mr Kuek's engagement of Keystone in order to secure Mr Kuek's investment of his monies with Bluesky, an act which was, from start to finish, intended by Mr Tan to benefit himself. The patent falsehoods which underpinned the first, second and fifth charges clearly evinced a fundamental lack of integrity, as opposed to mere misjudgement.

51 One of the factors identified in *Chia Choon Yang* at [40] was "whether the dishonesty caused actual harm or had the potential to cause harm that the errant solicitor ought to have or in fact recognised". In this regard, we noted that Mr Tan attempted to rely on a settlement agreement reached on 7 June 2020 ("the settlement agreement"), which he argued was mitigating. Amongst other things, the settlement agreement provided that Mr Kuek would be repaid a sum of $122,000, which was the remaining portion of the investment sum after taking into account a sum of $125,000 repaid by Mr Tan on the eve of the proceedings before the Tribunal and a further $3,000 paid to Mr Kuek by one Mr Gabriel Loo, who was the person who had introduced Mr Kuek to Mr Tan. While such repayment would have reduced any harm that might have been suffered by Mr Kuek as a result of the hoax perpetrated by Mr Tan, we considered that this was *not* in fact mitigating, nor did it suggest that striking off would be disproportionate. To the contrary, we would have considered any harm that Mr Kuek in fact suffered to be *aggravating* (see *Ezekiel Peter Latimer* ([37] *supra*) at [56]; see also *Law Society of Singapore v Yap Bock Heng Christopher* [2014] 4 SLR 877 at [30] in the context of prohibited borrowing transactions). This is consistent with the fact that one of the key functions of

disciplinary sanctions under s 83 of the LPA is to uphold public confidence in the administration of justice and in the integrity of the legal profession. This was a consideration that was squarely engaged by Mr Tan's deceitful conduct, and striking off could not be said to be disproportionate by any measure.

52 For completeness, we note that Mr Tan relied on the settlement agreement to argue that the complaint against him had not been made in good faith. In the alternative, he argued that his efforts in making amends to Mr Kuek and the fact that he and Mr Kuek continue to have a good relationship were at least mitigating. These efforts by Mr Tan to settle the matter with Mr Kuek and his repayment of half of the investment sum to Mr Kuek (see [51] above), which took place shortly before the relevant hearings, *might* reduce his personal culpability in any criminal proceedings that might ensue. However, as we indicated in *Chia Choon Yang* at [39], personal culpability and mitigating circumstances have little relevance in the context of disciplinary proceedings concerning dishonesty, particularly in cases where striking off is the presumptive penalty (see also *Law Society of Singapore v Ravi s/o Madasamy* [2016] 5 SLR 1141 at [54] and [67]). The need to protect the public and uphold public confidence in the legal profession were the predominant considerations in the present case, and none of the factors raised by Mr Tan in any way persuaded us that he had the requisite character and trustworthiness to remain on the roll.

Conclusion

53 For these reasons, we held that the only appropriate sanction in the present case would be for Mr Tan to be struck off the roll under s 83(1)(*a*) of the LPA, and we ordered accordingly. In addition, Mr Tan was ordered to bear

the costs of the proceedings before this court and the Tribunal, which we fixed in the aggregate amount of $25,000.

54 Given the gravity of the allegations against Mr Tan, we will also refer the matter to the Public Prosecutor to consider whether any criminal charges ought to be brought against Mr Tan.

Coda on business transactions between solicitors and their clients

55 The present case exemplifies the difficulties that are prone to arise when a solicitor transacts with a client both as a solicitor and in some other capacity. While the PCR identifies examples of conduct which would generally be incompatible with a solicitor's obligation as a fiduciary to advance his client's best interests unaffected by those of his own (for instance, prohibited borrowing transactions or the receipt of gifts from clients), these are by no means exhaustive of the sorts of conduct which solicitors should avoid engaging in with their clients. Rather, we consider that, as a general rule, it is inadvisable for solicitors to enter into business transactions with their clients since this will often have a real potential to give rise to a conflict of interest. In *Khushvinder Singh Chopra* ([42] *supra*) at [34], the High Court referred to the following observations of Street CJ in *Law Society of New South Wales v Harvey* [1976] 2 NSWLR 154 at 171B:

> A conflict of interest which is avoidable, and ought to be avoided, is that which arises from ***a deliberate proposal of the solicitor that his client deal with him***. If, for example, a client seeks aid or advice from a solicitor concerning lending or borrowing, or the acquisition or disposal or dealing with assets, ***the solicitor will disregard his primary duty as a solicitor referred to so trenchantly by Lord Westbury*** [***in*** **Timothy Tyrrell v The Bank of London and Sir J V Shelley and Others** ***(1862) 11 ER 934***], ***if he uses the occasion to become the party who deals with his client***. It can make no difference if he is not a party directly, but the transaction is with a company in which he has an interest. Even the tender of advice

> to his client to have independent legal advice, although of importance, does not really overcome the objection to the solicitor having proposed, invited or encouraged the client to deal with him or his company in the proposed transaction. … *In the absence of very special circumstances, a solicitor who promotes himself as the dealer with his client misuses his position … The price of being a member of an honourable profession, whose duty to his client ought not to be prejudiced in any degree, is that a solicitor is denied the freedom to take the benefit of any opportunity to deal with persons whom he has accepted as clients. Therefore he ought neither to promote, suggest, nor encourage a client to deal with him, but rather should take all reasonable steps positively to avoid dealing directly, or indirectly, with his client.* There are of course exceptional cases where the transaction may be in the special interest of a particular client, but such cases will be isolated and need to be dealt with conscientious regard for the procedures referred to. [High Court's emphasis in *Khushvinder Singh Chopra* in italics; emphasis added in bold italics]

56 The court then held that "in general, a solicitor ought not to put himself forward as a prospective principal to deal with his client" (see *Khushvinder Singh Chopra* at [39]). The court observed that while this was not an absolute rule, the most appropriate action for a solicitor to take if he nonetheless wished to transact with a client would be to discharge himself and advise the client to appoint new solicitors, or, *at the very least*, ensure that the client had the benefit of truly independent legal advice (likewise at [39]). While the observations we have reproduced above were made in the context of a solicitor who had procured an option from his existing clients to purchase their property (see [42] above), the same reasoning will apply where a solicitor consummates a solicitor-client relationship with an individual with whom he *intends* to transact in a different capacity. This highlights the real danger that lurks where the solicitor-client relationship is *intended* to facilitate the latter transaction, as in the present case.

57 Similar, although perhaps less culpable, circumstances featured in *Ohm Pacific Sdn Bhd v Ng Hwee Cheng Doreen* [1994] 2 SLR(R) 633. The respondent solicitor in that case was a director and shareholder of Pacific

Navigation Pte Ltd ("Pacific Navigation"), a company which provided bridging finance for the appellant's purchase and operation of a vessel. The respondent's law firm acted for both the appellant and Pacific Navigation. Two forms of conflict were identified: (a) a conflict between the respondent's duty to the appellant and *her personal interest in Pacific Navigation*; and (b) a conflict between the respondent's duty to the appellant and *her duty to Pacific Navigation*, which was also her client (at [19]). In that context, the Court of Appeal held that the mere fact that the appellant knew of the respondent's interest in Pacific Navigation and of her acting also for that company did not amount to informed consent from the appellant which was required if the respondent were to be absolved from her fiduciary duty in the circumstances. Pertinently, the court observed that "[t]he respondent *should not have accepted the* [*appellant's*] *reposal of trust in her* when she knew full well that she was not in a position wholeheartedly to protect the interests of the [appellant]" [emphasis added] (at [22]).

58 Solicitors who engage in business transactions with their clients place themselves in an invidious and difficult position where a conflict of interest will often, even if not invariably, arise. As a matter of prudence, solicitors would be well-advised to steer clear of such situations, as is evident from the precedents we have just referred to. In that light, a solicitor who invites a *prospective* client to consummate a solicitor-client relationship with him in order to then deal with that client as a principal in a separate business transaction is courting professional disaster.

59 This is even more so where the solicitor uses his professional status to give the prospective client some sort of assurance that the client's interests will thereby be safeguarded. This is what Mr Tan did in this case, and his misconduct was exacerbated because the assurances that he gave his client were made

falsely and fraudulently. We urge the profession to heed our caution against such disgraceful and appalling conduct.

Sundaresh Menon Chief Justice	Andrew Phang Boon Leong Judge of Appeal	Quentin Loh Judge

Ong Boon Hwee William and Chua Xinying (Allen & Gledhill LLP) for the applicant;
Thio Shen Yi SC and Hannah Alysha Binte Mohamed Ashiq (TSMP Law Corporation) for the respondent.
