Anthony Wee Soon Kim v The Law Society of Singapore
[2006] SGHC 219

Case Number : OS 192/2006

Decision Date : 27 November 2006

Tribunal/Court : High Court

Coram : Judith Prakash J

Counsel Name(s) : The plaintiff in person; Jimmy Yim, SC, Abraham Vergis, Daniel Chia (Drew & Napier) for the defendant

Parties : Anthony Wee Soon Kim — The Law Society of Singapore

27 November 2006 *Judgment reserved.*

Judith Prakash J

Background

1 This is another application by Anthony Wee Soon Kim ("Mr Wee") against The Law Society of Singapore ("the Law Society") for an order under s 96 of the Legal Profession Act (Cap 161, 2000 Ed) ("the Act") arising out of complaints made to the Law Society against an advocate and solicitor.

2 By letters dated 17 May and 20 July 2005, Mr Wee made complaints to the Law Society against two advocates and solicitors, namely, Mr Lim Chor Pee ("LCP") who had represented Mr Wee in a legal action against UBS Bank AG and Mr Andre Arul ("AA") who had represented LCP in certain actions against Mr Wee. Only the complaints against AA are relevant to the present proceedings.

3 The Law Society duly constituted an inquiry committee ("the IC") to inquire into the four complaints that Mr Wee had made against AA. These were that:

(a) AA had abetted and conspired with LCP to commit perjury by drafting an allegedly false affidavit that LCP affirmed on 13 April 2005 in OSB 5 of 2005;

(b) AA had breached r 56 of the Legal Profession (Professional Conduct) Rules (Cap 161, R1, 2000 Rev Ed) ("the Rules") by misleading Lai Kew Chai J when he made his submissions on behalf of LCP in SIC 2701/05 and SIC 2554/05;

(c) AA had acted in concert with LCP to disclose privileged documents in taxation proceedings against Mr Wee with regard to the solicitor and client bill of costs presented by LCP's firm Chor Pee & Partners ("the firm"); and

(d) AA had ignored Mr Wee's request for a copy of LCP's application to the CPF Board to be appointed to its panel of lawyers.

4 The IC issued its report on 20 December 2005 and recommended that all four complaints against AA be dismissed. On 6 January 2006, the Council of the Law Society ("the Council") deliberated on the report and decided to accept and adopt its findings and recommendations.

5 On 26 January 2006, Mr Wee filed the present application. By it, he seeks the following orders:

(a) a declaration that the decision of the Council dated 20 December 2005 was wrong in law and in fact when it purported to adopt the findings of the IC to dismiss the offences in respect of:

(i) the breach of r 56 of the Rules; and

(ii) the breach of s 86(7) of the Act.

(b) that AA be ordered to show cause before a court of three judges.

When the application came up for hearing, Mr Wee applied for, and was granted, leave to amend prayer (a)(ii) to read "perjury by Andre Arul". It can be seen from the foregoing that Mr Wee is now only pursuing the first two complaints that he made to the Law Society. He has accepted the decision of the IC and the Council in respect of his third and fourth complaints. I will consider the complaints in turn.

Breach of r 56

6 Rule 56 of the Rules reads:

Not to mislead or deceive Court

56. An advocate and solicitor shall not knowingly deceive or mislead the Court, any other advocate and solicitor, witness, Court officer, or other person or body involved in or associated with Court proceedings.

7 The facts leading to this complaint are not in dispute. In 2003, Mr Wee made personal loans to LCP and the firm. On 3 January 2005, Mr Wee served LCP with two statutory demands in respect of the loans owed by LCP personally and as a partner of the firm. He also served a statutory demand on LCP's son, Marc Lim, as a partner of the firm. On 13 January 2005, the firm issued four bills to Mr Wee as legal fees for work done on his behalf. A fifth bill was issued in February 2005.

8 LCP then instructed AA to act for him to set aside Mr Wee's statutory demands. On 14 January 2005, AA filed OSB 3 of 2005, OSB 4 of 2005 and OSB 5 of 2005 ("OSB 3/05, OSB 4/05 and OSB 5/05" respectively and collectively "the bankruptcy summonses") on behalf of LCP and Marc Lim to set aside the statutory demands on the grounds that there was a valid counterclaim, set off or cross demand against the amount claimed by Mr Wee and that the firm being a sole proprietorship, Marc Lim was not responsible for repaying the loans to the firm.

9 The assistant registrar set aside the statutory demands on 16 February 2005 and ordered costs to be paid by Mr Wee. Mr Wee then appealed vide Registrar's Appeal Nos. 32/2005, 36/2005 and 37/2005. These appeals were heard before Lai Kew Chai J on 31 March 2005. Lai J dismissed the appeals. On 28 April 2005, after hearing further arguments at Mr Wee's request, Lai J affirmed the original decision.

10 In the meantime, the firm had filed a petition of course seeking an order for taxation of its five bills of costs. This was granted and costs were ordered against Mr Wee in respect of his application to strike out the petition. Mr Wee then filed appeals to the Court of Appeal against Lai Kew Chai J's decision and also against the decision granting taxation of the bills. As Mr Wee did not pay the costs ordered by the assistant registrar in respect of the bankruptcy summonses and those

ordered by the judge who heard the petition, LCP instructed AA to file SIC 2701/05 and SIC 2551/05 to stay the two appeals to the Court of Appeal. Both stay applications were heard by Justice Lai Kew Chai on 28 June 2005. AA appeared on behalf of LCP and Mr Wee appeared in person. Both applications were dismissed.

11 The first complaint that Mr Wee made against AA was in respect of the submissions that AA had made to Lai J at the hearing of those summonses. According to the minute sheet recorded by the learned judge, AA made his submissions first and informed the judge that costs in various matters remained unpaid by Mr Wee. He said, *inter alia*, (and here I quote from the minutes):

> There are several orders outstanding: total due is about $19,000.
>
> Here it is an abuse. Mr Wee says he will suffer 'hardship' – can't really see it.
>
> …
>
> Mr Wee has not given an explanation as to why he has not paid; clearly able to pay but he WILL NOT PAY.

Mr Wee responded to AA's submissions and said, *inter alia*,:

> It is not correct that I refused to pay!
>
> The other vicious remark counsel has said is that I have 'hardship'. I lent LCP $300k and I have hardship!
>
> …
>
> I have not refused to pay; if I do my money may go up in smoke. Where is the injustice to him?

12 Mr Wee's complaint to the IC was that in making the submissions I have quoted above, AA intended to mislead Lai J into believing that Mr Wee had refused to pay the costs awarded against him on the ground of hardship, and that the refusal was an abuse of process. Mr Wee took objection to what he viewed as being a submission that he did not pay the costs due to hardship. The IC's conclusion was that this complaint was unfounded. It said:

> [AA] had clearly submitted (as recorded by Lai Kew Chai J and as set out in [AA's] written submissions) that [Mr Wee] was able to pay but was wilfully refusing to pay. This fact is sufficient answer to the complaint. The allegation that [AA] tried to mislead the learned Judge into believing that [Mr Wee] refused to pay due to hardship, is in the circumstances unsupportable.

13 Before me, Mr Wee reiterated his earlier complaint. He said that r 56 prohibits a lawyer from knowingly misleading the court. The evidence of AA's violation of r 56 was, he submitted, well documented in the minutes of Lai J which showed that AA knowingly made submissions to mislead the learned judge into believing that Mr Wee had wilfully refused to pay costs claiming "hardship" and had offered no explanation for the refusal.

14 It appears to me that Mr Wee misconstrued what AA said on the day of the hearing. Since then he has persisted in his misinterpretation of AA's language despite having heard the views of the IC and the submissions made by the Law Society. As I read the minutes, it is clear, as indeed the IC found, that the submission made by AA before Lai J was that Mr Wee was *able* to pay and that he

was merely *unwilling* to do so. Mr Wee himself confirmed to Lai J that he was not willing to pay the costs ordered in LCP's favour because he was afraid that he would not get the money back when he succeeded on his appeals. It is patent that AA did not deceive or attempt to deceive Lai J. Unfortunately, Mr Wee is not able to appreciate that. The IC was entirely justified in dismissing the complaint under r 56 and I must affirm Council's decision on this issue.

Perjury by AA?

15 The complaint in this regard related to affidavits made by LCP and filed by AA to support LCP's applications in the bankruptcy summonses for the statutory demands issued by Mr Wee to be set aside. The first affidavit was made on 14 January 2005 and was filed in OSB 3/05. The affidavit was drafted by AA acting on instructions from LCP. In the affidavit, LCP made the following statement on oath at para 4:

> I am the sole equity partner of Chor Pee & Partners. Marc Lim Hsi Wei, who is also a partner, is a profit sharing partner on a fixed drawing basis. It is not disputed that as partner, Marc Lim Hsi Wei is also liable for the debts of the firm.

The second affidavit was made on 13 April 2005 and was filed in OSB 5/05. Again it was drafted by AA acting on the instructions of LCP. In it, LCP made the following statement on oath at para 1:

> I confirm that I am the sole equity partner or sole proprietor of Messrs Chor Pee & Partners in that I own all the assets and am responsible for all the liabilities of the firm. I am absolutely entitled to all the billings of the firm.

16 Mr Wee submitted that the aforesaid affidavits established a *prima facie* offence of perjury by LCP abetted by AA in that the obvious motive for the difference in the statements was for LCP to use the firm's billings and off set them against his personal indebtedness to Mr Wee. He said that the statement in the 13 April 2005 affidavit was false in that the firm was a partnership and not a sole proprietorship. AA had, he alleged, misconducted himself by abetting and conspiring with LCP to commit the perjury.

17 The IC noted that it was not disputed that LCP's son, Marc Lim, was a partner of the firm at the material time. Marc Lim was, however, what is known as a "salaried partner", drawing a fixed amount. It also noted that Lai Kew Chai J was of the view whether the firm was a sole proprietorship or a partnership was a "genuine triable issue". The IC's conclusion on this issue was expressed in paras 32 and 33 of its report in the following terms:

> 32. The Committee notes that in the statement in question, [LCP] claims to be "sole equity partner or sole proprietor … ***in that*** I own all the assets and *am responsible for all the liabilities of the firm. I am absolutely entitled to all the billings of the firm*" (emphasis added). Clearly, the claim was made in the context of the argument that he was entitled to set off his personal debts against debts owing to the Firm. There is no suggestion that [LCP] sought to hide the fact that his son was a salaried partner in the firm.
>
> 33. For this reason, and the fact that Lai Kew Chai J was of the view that the sole proprietorship/partnership issue was a "genuine triable issue", the Committee is of the opinion that this complaint cannot stand.

18 Before me the Law Society submitted that since the evidence adduced by Mr Wee did not show that the firm was not a sole proprietorship and did not seem to disclose any perjury on the part

of LCP in his affidavit, it was not possible to establish a case of aiding and abetting perjury on the part of AA. Further, for Mr Wee's complaint against AA to succeed, Mr Wee had to show that AA knew at the time the affidavit was prepared that the disputed sentence was, in fact, false or had reason to believe it was false. This was the proposition established by a previous complaint in which Mr Wee was the complainant, *Wee Soon Kim Anthony v Law Society* [2002] 2 SLR 455. There, Chao Hick Tin JA said (at 461):

> 23. But the question was whether a prima facie case of professional misconduct had been established against the two solicitors. For the determination of this question, the court had assumed that the disputed sentence was, in fact, wrong, because if it were not wrong, there was nothing more to be said. It was clear to us that in order to impute fault to the two solicitors, it was necessary to show that they knew at the time the affidavit was prepared for Shirreen to execute that the disputed sentence was, in fact, false or at least had reasons to believe it was so. There is no general duty on the part of a solicitor that he must verify the instructions of his client.

19 In this case, Mr Wee had adduced no evidence or grounds to suggest that AA knew or ought to have known of the falsity of the disputed statement at the time of drafting LCP's affidavit. Also, at that time, AA was not required to verify the accuracy of LCP's instructions that were embodied in the affidavit.

20 I accept the submissions made by the Law Society. I agree that there was no evidence that AA knew or ought to have known that LCP was telling a lie when he said he was the sole proprietor of the firm. The statement quoted in his affidavit gave LCP's basis for his belief that he was sole proprietor. There was an issue of law as to whether the firm could be a sole proprietorship when there was a salaried partner and this was a genuine triable issue. As LCP's solicitor, AA had to draft the affidavit in accordance with LCP's instructions to put forward the facts as LCP understood them to the court. He had then to make arguments on the basis of those facts and it would be for the court to decide what the legal and factual position was. As long as AA did not know (and there was no evidence of any such knowledge on his part) that LCP was telling a lie, he would not be helping LCP commit perjury even if LCP had been telling a lie. I agree that this complaint was baseless.

Procedure

21 I have dealt above with Mr Wee's complaints on a substantive basis. I should record, however, that there were procedural difficulties with his originating summons. First of all, Mr Wee asked for a declaration that the determination of the Council was wrong in law and in fact. Section 96 of the Act, the section under which the application was brought, does not require the court to make such a declaration before granting a complainant relief. Section 96(4) sets out the powers of judge on hearing such an application. The judge may either affirm the determination of the Council or, if the court considers that the determination was incorrect, issue an order directing the Law Society to apply to the Chief Justice for the appointment of a disciplinary committee. A declaration is unnecessary and inappropriate.

22 The second problem with Mr Wee's application was his prayer for an order that AA be ordered to show cause before a court of three judges. Such an order cannot be made by a court under s 96(4). The court simply directs the Law Society to apply to the Chief Justice for the appointment of a disciplinary committee. Thereafter, the proceedings before the disciplinary committee are conducted by the complainant (see s 95(5)) and are brought in the complainant's name. It is only if, on the conclusion of such proceedings, the disciplinary committee considers that the advocate and solicitor should show cause why he should not be dealt with under s 98 of the Act, that the advocate and

solicitor goes before the court of three judges. Mr Wee was therefore asking for the wrong remedy.

Conclusion

23 For the reasons given above, I make an order affirming the determination of the Council in relation to both complaints that were ventilated before me. Mr Wee shall pay the Law Society's costs in connection with this application.