Public Trustee and Another v By Products Traders Pte Ltd and Others
[2005] SGHC 103

Case Number : OS 1030/2000, SIC 600797/2004

Decision Date : 26 May 2005

Tribunal/Court : High Court

Coram : V K Rajah J

Counsel Name(s) : T P B Menon (Wee Swee Teow and Co) for the Public Trustee; Roland Tong (Wong Tan and Molly Lim LLC) for the first and second respondents (the applicants herein); Mohan Das Naidu (Mohan Das Naidu and Partners) for the third respondent; Nor'ain Abu bte Bakar and Ruby Tan (Abu Bakar Tan Ibrahim and Partners) for the fourth respondent; Peter Chua (Peter Chua and Partners) for the fifth and sixth respondents; George Lim (Wee Tay and Lim) for the Estate of Shaik Ahmad bin Abdullah Wahdain Basharahil (deceased); M N Swami (Swami and Partners) for the Estate of Abdul Rahim Awad Wchdin (deceased)

Parties : Public Trustee and Another — By Products Traders Pte Ltd

Civil Procedure – Payments into and out of court – Successful application for payment out of court of moneys paid into court in separate earlier proceedings between different parties and on different issues – Whether moneys wrongly paid out of court – Whether to grant application for return of such moneys paid out of court

Legal Profession – Duties – Court – Relationship between solicitor's duty to client and duty to court – Extent of solicitorÂ's duty not to mislead court

26 May 2005

V K Rajah J:

1 Is the solicitor's obligation to exercise his best endeavours in his client's interests invariably paramount and immutable? Can and should the perceived interests of a client ever be allowed to take precedence over a solicitor's obligation of candour to the court *qua* officer of the court? What precisely does a solicitor's duty of candour to the court entail? Can a solicitor apply for payment out of court of moneys earlier paid into court in separate proceedings which include and involve different parties and issues? These are some of the issues raised in this application which involves the return of moneys paid out of court without proper notice being duly given to all the relevant parties in the original proceedings. I am compelled to state, right at the outset, that these proceedings should serve as a stark reminder of just how inextricably and inescapably dependent the court is on the integrity of solicitors appearing before it and of the critical role solicitors play in the administration of justice.

Background facts

2 Shaik Ahmad bin Abdullah Wahdain Basharahil ("Shaik Ahmad") passed away in Madura, Indonesia, on 15 July 1953. In his will, he directed that 61 properties in Singapore belonging to him be held on trust for his heirs in accordance with "Mohamedeen Intestate Law".

3 As the trustee appointed under the will did not reside in Singapore, the Public Trustee ("PT") was appointed trustee of the will by an order of court on 11 October 1976. All 61 properties were thereupon vested in the PT. Subsequently, 32 of the properties were compulsorily acquired by the State, leaving the estate of Shaik Ahmad ("the Estate") with just 29 properties to administer.

4 The terms of the will stipulated that the Estate's assets were to be distributed only 21 years

after Shaik Ahmad's death. However, for a variety of reasons (not relevant for the purposes of the present proceedings), the distribution was deferred. From time to time, unfortunately, persons masquerading as authorised representatives of all the beneficiaries under the will attempted to sell the Estate's properties. This in turn spawned a rash of litigation, the remnants of which are still coursing their way through the courts in one form or another.

The present matrix

5 I now turn to the facts which are immediately relevant to these proceedings. On 11 July 2000, the PT and Quraisj Wahidin ("Quraisj"), an attorney representing a number of the Estate's beneficiaries, initiated Originating Summons No 1030 of 2000 ("this OS") to procure an order to sell the Estate's remaining 29 properties. They named all the known claimants of the Estate's assets as respondents. The parties to this OS initially included: By Products Traders Pte Ltd ("BP"), the first respondent; David Reginald Ellis Broadley ("Broadley"), the second respondent; JAK Alhadad & Co Pte Ltd ("JAK"), the fourth respondent; Musa Said Wachdin ("Musa"), the fifth respondent; and Salim Hasan Wachdin ("Salim"), the sixth respondent. JAK claimed that Musa and Salim in their capacity as attorneys had unequivocally represented and warranted to it that they held 100% of the beneficial interest in the Estate. In 1994 and 1996, JAK purportedly entered into two sale and purchase agreements with Musa and Salim for the sale and purchase of their interest in the 29 properties for $12m. Pursuant to these two agreements, approximately $4.2m was allegedly paid by JAK to Musa and Salim. In turn, JAK sold the properties to BP and Broadley and received substantial consideration for that sub-sale.

6 Musa and Salim objected to this joint application for the sale of the properties. To prosecute their own claim, Musa and Salim filed Originating Summons No 600626 of 2001 ("the opposing OS") as plaintiffs and named the PT and Quraisj as defendants. On 5 July 2002, Lee Seiu Kin JC (as he then was) decided in this OS and the opposing OS, both of which had been consolidated, that Musa and Salim were not acting for all the beneficiaries of the Estate. As a result they did not have, at the material time, the capacity to transfer to JAK what they had purportedly contracted to sell. On 30 July 2002, Lee JC further determined that there were only 14 beneficiaries entitled to the assets of the Estate and that the six beneficiaries purportedly represented by Musa and Salim were entitled to only 43.7% of the Estate's assets: see *Re Will of Shaik Ahmad bin Abdullah Wahdain Basharahil* [2003] 1 SLR 433. He also granted an order immediately empowering the PT to sell the Estate's remaining 29 properties. The directions included a stipulation that the PT should not make any payment to any of the beneficiaries without leave of court. The properties were subsequently sold and the sale proceeds paid into court.

7 Following Lee JC's ruling, various agreements relating to several purported sales and sub-sales of the 29 properties were unravelled.

8 On 13 December 2002, JAK initiated Suit No 1497 of 2002 ("the JAK Suit") against Musa and Salim for the purported breach of an agreement to sell the 29 properties to it. As Salim did not enter an appearance after service of process, JAK obtained judgment in default of appearance in the sum of $4,270,096 against Salim on 14 January 2003. The writ was never served on Musa and JAK discontinued the action against him on 10 March 2003.

9 On 7 May 2003, BP and Broadley commenced Suit No 453 of 2003 against JAK for the refund of the deposits they had earlier paid pursuant to the back-to-back agreement to buy the 29 properties from JAK. A year and a half later, on 26 November 2004, Tan Lee Meng J ruled in BP's and Broadley's favour, adjudging that the sum of $3,425,000 was due to them from JAK: see *By Products Traders Pte Ltd v JAK Alhadad and Co Pte Ltd* [2004] SGHC 265.

10 In the meantime, in October 2003, JAK filed Summons in Chambers No 6556 of 2003 in the JAK Suit, whereby it sought to garnish part of the sales proceeds received by the PT pursuant to the ruling in this OS that Musa and Salim were entitled to 43.7% of the Estate. As the PT had now sold the 29 properties for $12m and Musa and Salim's purported share of the sale proceeds was held by the PT, JAK claimed to be immediately entitled to the sale proceeds representing such a share on behalf of the six beneficiaries it represented.

11 The PT opposed the application, on the basis, *inter alia*, that since the judgment against Salim was in his personal capacity *qua* trustee, JAK did not have a valid claim against the Estate.

12 Assistant Registrar Amy Tung ("AR Tung") agreed with the PT and dismissed JAK's application on 12 December 2003. Although JAK appealed against AR Tung's decision, the matter was resolved in April 2004 with JAK agreeing to withdraw the appeal and the PT agreeing to apply by summons in chambers in this OS to pay into court the amount of sale proceeds commensurate with the shares belonging to the six beneficiaries. It bears mention that in withdrawing the appeal, JAK's solicitors expressly sought the PT's confirmation that their client:

> … will then be free to make the appropriate application to the Court asking for the money that has been paid into Court to be paid to [their] client. *The Public Trustee will not address the Court on the merits of such application except to confirm that he has no objection to it*. [emphasis added]

The PT pointedly and repeatedly refused to give any such assurance. Indeed, on 19 May 2004, Mr T P B Menon, on behalf of the PT, wrote to JAK's solicitors emphasising:

> *Your clients had not established any claim to the estate* and there is no guarantee that they will succeed in their claim to the moneys that are to be paid into Court. [emphasis added]

13 Prior to AR Tung's determination, by way of Summons in Chambers No 600283 of 2003 filed on 6 May 2003, BP and Broadley sought in this OS a court order that the PT pay a sum of $3,622,000 to them out of the portion of proceeds due to Musa and Salim. This application was served on the PT, JAK, Musa and Salim. Indeed, JAK filed an affidavit opposing the application. It appears from the minutes that counsel for the PT informed the court that:

> We do not want to pay until we are sure we are paying the right people. Procedure under the Trustees Act to advertise for claimants before paying out. No intention of paying anyone at this stage.

Judith Prakash J, on 26 August 2003, made no order on the application and instead directed the PT to notify BP and Broadley of any future application made to the court for approval of payment out of any part of the sale proceeds. It is plain that Prakash J and the relevant parties envisaged that any future application apropos the moneys would have to be served on the PT and/or made by him. It is also axiomatic that the respective solicitors were fully aware of this both at that point and at all material times thereafter.

14 On 26 May 2004, the parties appeared before Tan Lee Meng J and reported that the PT could not finalise the accounts because of pending litigation against the Estate by JAK. Counsel for JAK informed the court that they would withdraw the litigation. Tan J then adjourned the matter for six weeks. Thereafter, there was no action on the file until September 2004, although certain correspondence in the court files points to the emergence of a minor contretemps as to whether the PT was obliged to settle the accounts within six weeks.

15 Meanwhile in Summons in Chambers No 600406 of 2004 filed in this OS, on 12 July 2004, the PT sought a court order sanctioning an interim distribution of the net proceeds of sale of the 29 properties amongst the 14 beneficiaries, as determined by Lee JC. This was inspired by the obvious motive of ensuring further and proper court scrutiny over each and every disputed claim, as well as any competing third party claims. On 23 July 2004, Judith Prakash J ordered that the distributive shares of the six beneficiaries, purportedly represented by Musa and Salim, be paid into court whilst the remaining distributive shares of the other beneficiaries be paid out directly to their acknowledged representatives. The sum paid into court amounted to $4,595,350.38. One reason for the payment of the money into court appears to be on account of BP's and Broadley's competing claims to the money *vis-à-vis* the six beneficiaries purportedly represented by Musa and Salim. It is also noteworthy that of the six beneficiaries purportedly represented by Musa and Salim, the estates of two of them also subsequently applied to court to be made parties to this OS and for payment to be made directly to them in place of JAK, Musa or Salim.

16 On 1 September 2004, Nuh bin Salleh bin Umar bin Achmad Wachdin Basyarahil ("Nuh") filed an application by way of Summons in Chambers No 600547 of 2004 to be joined as a party to this OS and for payment to be made to her of the sale proceeds representing the share of Umar bin Achmad bin Abdul Wachdin Basyarahil (deceased) ("the UAAWB Estate"). It is crucial to note that the UAAWB Estate is one of the six beneficiaries purportedly represented by Musa and Salim. This application was served on JAK's solicitors. On 27 October 2004, Mr Peter Chua ("Mr Chua"), counsel for Musa and Salim, appeared before me and requested that the matter be adjourned on the ground that the application had not been served on him and he would "like to respond". Furthermore, he needed to take instructions from his clients who lived "in a remote part of Indonesia". I acceded to this. On 29 November 2004, Ms Nor'ain Abu Bakar ("Ms Norain"), appearing on behalf of JAK, opposed the application by Nuh to be joined in this OS. She could not credibly dispute that Nuh represented a legitimate beneficiary but nevertheless tenuously claimed that the beneficiary continued to be represented by Musa and Salim and had consequently no right to be separately and independently heard. This and some other equally inane points were rehashed by JAK in an opposing affidavit filed on 13 September 2004. (This is a highly significant date which I will advert to later (see [41] below).) Given that the objections raised by Ms Norain were patently without substance, I allowed Nuh's application and made an order directing payment of $765,891.73 from the sale proceeds earlier paid into court to the UAAWB Estate. There has been no appeal against this order. I should also mention that Mr Chua played no further part in this application other than seeking an earlier adjournment "to respond".

17 The second case involved an application made on 27 September 2004 by way of Summons in Chambers No 600606 of 2004, by M/s Swami & Partners, on behalf of the Estate of Abdul Rahim Awad Wchdin (deceased) ("the ARAW Estate") for payment of the appropriate share of the sale proceeds to their clients directly. This was yet another of the six beneficiaries purportedly represented by Musa and Salim. On 2 December 2004, Ms Norain, appearing for JAK, strenuously opposed this application as well on various specious grounds. Needless to say, these objections were dismissed and this application was also granted. A sum of $765,891.73 was directed to be paid to the ARAW Estate out of the moneys earlier paid into court.

18 On 1 December 2004, BP and Broadley, after succeeding in their claim against JAK (see [9] above), applied by way of Summons in Chambers No 600732 of 2004 in this OS for an order, *inter alia*, that the sum of $3,744,666.67 adjudged by Tan J to be due to them from JAK be immediately released to them. The application was first fixed before me on 2 December 2004. The application was adjourned to allow the other parties to file further affidavits as the application had been served late in the day.

The discovery of JAK's clandestine application on 13 September 2004

19 Sometime towards the end of December 2004, BP's and Broadley's solicitors discovered, to their complete and utter consternation, that M/s Abu Bakar Tan Ibrahim & Partners ("ABTIP"), the long-time solicitors on record for JAK, had on 8 September 2004 surreptitiously filed Summons in Chambers No 5008 of 2004, in the JAK Suit, for the payment out of a sum of $4,270,000 from the moneys earlier paid in by the PT in this OS (see [15] above). It appears from the available records that on 13 September 2004, counsel for both JAK and Salim had covertly appeared before Assistant Registrar Ching Sann ("AR Ching") for an urgent hearing of that application for payment out of court.

20 Ms Ruby Tan ("Ms Tan"), a solicitor from ABTIP, had shortly before that sought from the duty registrar an urgent hearing date on the basis that the defendants in the JAK Suit (Musa and Salim) were Indonesians, that their solicitors from Indonesia were at that point in time in Singapore and that her clients and the defendants wished to expedite the hearing while the Indonesian solicitors remained in Singapore. The duty registrar acceded to this request. I must add at this juncture, that such a pretext, purporting to warrant an urgent date, appears to be contrived. Given that Musa and Salim were the defendants, and as such, were *ex facie* not entitled to any portion of the proceeds, the presence of their Indonesian solicitors (real or otherwise) appears to amount to no more than a fig leaf invoked to create the appearance of urgency. Musa and Salim after all had a Singapore lawyer on record, namely, Mr Chua. Clearly, neither Musa nor Salim nor their purported Indonesian solicitors had any interest in the moneys paid into court. Why indeed should they suddenly deign to express any interest in this matter after allowing default judgment to be entered against Salim? Why moreover the peculiar urgency? In this context, it is highly pertinent to note that on 1 September 2004, the UAAWB Estate, one of the six beneficiaries purportedly represented by Musa and Salim, had filed its application (see [16] above). In an affidavit filed in support of that application, Nuh unequivocally asserted that neither Musa nor Salim had any basis to represent the UAAWB Estate or claim its share of the sale proceeds.

21 In support of its application for payment out, JAK filed an affidavit, selectively annexing affidavits by Musa and Salim filed in this OS. Through these affidavits, JAK and its solicitors sought, *inter alia*, to show that it had paid substantial amounts to Musa and Salim as consideration for the purported purchase of the properties. Regrettably, this inappropriately selective employment of material completely failed to disclose to AR Ching that most of these moneys were actually previously received by JAK from BP and Broadley who then had a pending claim for the return of these very moneys from JAK. Neither was Nuh's application, filed just a few short days earlier, for part of these sale proceeds to be paid out to her, disclosed in the affidavit or otherwise. This failure to be candid with the court has culminated in a grievous judicial error.

22 Inexplicably, the application was not served on the solicitors for BP and Broadley or any of the other interested parties, including the PT. Mr Chua, representing Musa and Salim, conveniently informed the assistant registrar that they had no instructions to oppose JAK's application. Most unfortunately, AR Ching acceded to the payment out of court of the sum of $4,270,000. It appears that AR Ching was neither aware of the existence of competing claims nor of earlier court directions in relation to these very moneys which had, as a matter of fact, been paid into court in *this OS* and not the JAK Suit. Her attention had clearly not been drawn to material facts. The fact that a strikingly relevant garnishee application had earlier failed before AR Tung was also, most disconcertingly, withheld from her. To all intents and purposes, AR Ching treated the application as a routine matter where the only interested parties, that is, the plaintiff and the defendants, had reached a consensus of sorts that moneys paid into court should be paid out since the plaintiff's legitimate claim could not be resisted. Indeed it appears to me that Ms Norain, Ms Tan and Mr Chua fully intended to convey this and only this impression to her. The relevant minutes of the brief proceedings before AR Ching are

both pertinent and illuminating:

> Norain Abu Bakar, [Ruby] Tan for P
>
> Peter Chua for D
>
> PC: Application for the monies paid into court to be paid out to P pursuant to the judgment dated 14.1.2003. Grounds are in the affidavit.
>
> DC: Up to now, I have no instructions to oppose.
>
> PC: Should be, because from the affidavit sworn by Ds, they have confirmed that they had received the monies form [*sic*] my client, there is no dispute concerning this, *and the judgment is still valid. Judgement awarded the monies to my clients.*
>
> CT: OIT prayers 1 and 2.
>
> [emphasis added]

The attempt to recover the moneys

23 On 20 January 2005, pursuant to an application, by way of Summons in Chambers No 600797 of 2004, made by the solicitors for BP and Broadway, the relevant parties once again appeared before me. I then learnt that the earlier orders for payment out that I had made in favour of the UAAWB Estate and the ARAW Estate were wholly ineffectual given that ABTIP's clients, JAK, had already on 13 September 2004 applied for and obtained payment out of virtually the entire amount of the very same moneys ("the 13 September 2004 application"). I asked Ms Norain whether she was aware of the terms of Prakash J's order dated 16 August 2004. She admitted having personal knowledge of the order but baldly and boldly asserted that the order was only directed against the PT and not at her client. Furthermore, when queried why the 13 September 2004 application had not been made *inter partes* with notice to the other interested parties in this OS, she responded most dubiously saying that as Mr Chua who represented Musa and Salim was present during the hearing of that application in the JAK Suit, it had not been made entirely *ex parte*.

24 As a consequence of the payment out of the sum of $4,270,000 to JAK's solicitors, there are no longer sufficient moneys in court to satisfy the judgment obtained by BP and Broadley against JAK in Suit No 453 of 2003 for the sum of $3,425,000 and/or to pay moneys to the UAAWB Estate and the ARAW Estate as earlier directed.

25 Pursuant to my directions, the parties appeared before me again on 24 January 2005 for Ms Norain and Ms Tan to explain what had happened to the moneys their firm had received. During this hearing, the solicitors for BP and Broadley raised two issues. First, the 13 September 2004 application ought to have been filed in this OS, if at all. Second, and in any event, the application in the JAK Suit for payment out ought to have been served on them and the other relevant parties. Ms Norain conceded that there was no case law authority or procedural rule supporting the rather remarkable procedure she and Ms Tan had adopted but was adamant that she, Ms Tan and Mr Chua had acted appropriately. The PT also filed an affidavit in relation to BP's and Broadley's pending application for the return of the moneys. The PT pointed out emphatically that JAK and their solicitors, ABTIP, "were fully aware that there were several claimants to the shares of the six beneficiaries paid into court" and that the purpose of the payment into court was "for the beneficiaries and/or their creditors/claimants to make their claims for payments out on the court being

satisfied in each case of the merits of their claims". I had little difficulty agreeing with the submissions of BP, Broadley, as well as the PT's contentions, and directed JAK to return forthwith the moneys that had been improperly paid to its solicitors. JAK now appeals against this order.

A solicitor's duty to the court

26 All solicitors are officers of the court: see s 82(1) of the Legal Profession Act (Cap 161, 2001 Rev Ed). The label "officer of the court" goes well beyond being a catchy or fancy turn of phrase. By definition it presupposes and connotes that those so appointed have obligations and responsibilities in upholding the legal framework (see my observations in *Re Econ Corp Ltd (No 2)* [2004] 2 SLR 264 at [81]).

27 One of the most crucial duties imposed on the solicitor is the duty not to mislead the court. Indeed this long-standing and incontrovertible obligation is now statutorily embedded in r 56 of the Legal Profession (Professional Conduct) Rules (Cap 161, R 1, 2000 Rev Ed) ("LPPCR") which unequivocally states:

> 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. [emphasis added]

28 This broad duty which has its origins in the common law has been evaluated and expounded upon in numerous decisions: see, for example, *Myers v Elman* [1940] AC 282 at 292 and 294, *Rondel v Worsley* [1969] 1 AC 191, *McBrearty v HM Advocate* 2004 SC 122, *Sharratt v London Central Bus Co Ltd* [2003] 4 All ER 590, *Geveran Trading Co Ltd v Skjevesland* [2003] 1 All ER 1, *Copeland v Smith* [2000] 1 All ER 457.

29 While the solicitor (the term is used here to include advocates) is expected to make all plausible honest endeavours to further his client's cause, he should not mislead the court on either the facts or the law. Without misleading the court he is entitled to present his client's cause in a manner which is most favourable or advantageous to the client: *cf Tombling v Universal Bulb Company, Limited* [1951] 2 TLR 289. Indeed r 54 of the LPPCR stipulates:

> Subject to these Rules, an advocate and solicitor shall conduct each case *in such a manner as he considers will be most advantageous to the client so long as it does not conflict with the interests of justice, public interest and professional ethics*. [emphasis added]

30 Misleading or deceptive conduct can be passive or active or a combination of both. It is passive when material facts are concealed and/or there has been economy with the truth. It is active when untruths are deliberately articulated and/or facts misrepresented. Given the broad spectrum of activity it encompasses, it would be pointless to attempt to precisely or exhaustively define it: see rr 55 to 63 of the LPPCR. What can be asserted with confidence, however, is that the solicitor's duty of candour to the court in any given matter is indivisible, uncompromising and enduring. The failure to be candid with the court can lead to misleading and/or deceptive conduct on the part of a solicitor.

31 The reputable badge of an officer of the court should never be compromised on the pretext that one is acting in the client's best interests. Admittedly, solicitors do from time to time find themselves caught between two conflicting tensions: that is, the duty to their clients on the one hand and to the court on the other. There is, however, usually a clear demarcation delineating the boundaries of appropriate conduct when such conflicting tensions surface. The following incisive observations made by Whyatt CJ in *Shaw & Shaw Ltd v Lim Hock Kim (No 2)* [1958] MLJ 129 at 130–

131 are apposite and ought to be the lodestar by which all solicitors practise:

> The Court appreciates fully the difficulties which confront counsel from time to time in the discharge of their dual duty to their clients and to the Court, and it may be of assistance to them in the solution of such difficulties when they arise, to recall the guiding principles laid down in this matter by Judges of great learning and wisdom. Of the duty of an advocate to his client, it will suffice to quote the eloquent language of Chief Justice Cockburn cited by McCardie J. in an address delivered in the Middle Temple:—
>
> > My noble and learned friend Lord Brougham, … said that an advocate should be fearless in carrying out the interests of his client, but I couple that with this qualification and this restriction, that the arms which he wields are to be the arms of the warrior and not of the assassin. It is his duty to strive to accomplish the interests of his clients *per fas* and not *per nefas*. It is his duty to the utmost of his power to seek to reconcile the interests he is bound to maintain and the duty it is incumbent upon him to discharge with the eternal and immutable interests of truth and justice.
>
> The advocate's duty to the Court is perhaps more difficult to define but it has nevertheless been well expressed by an eminent Law Lord, Lord Tomlin in an address to the Canadian Bar Association in these words:—
>
> > There is, besides, the advocate's obligation to the Court owed by reason of his being engaged in assisting the Court properly to perform its functions. It is an obligation of frankness and candour founding that confidence reposed by the Bench in the Bar which is the most effective of all accelerators of the quick flow of justice. *By virtue of this obligation the advocate must with regard to facts be careful to display accuracy in his description of the materials before the Court, while presenting them in the light which seems to him most favourable to his client*.
> >
> > The advocate's obligation of disclosure in matters of law has not always been so clear. At any rate it can, I think, be said today that it is the duty of the advocate to call the attention of the court to any case or statute which is clearly against him. This doctrine has recently received support from the words of a distinguished member of the House of Lords. It satisfies conscience and is in accordance with the view of the advocate's position which I have already indicated."
>
> These, then, are the two principles laid down by Chief Justice Cockburn and Lord Tomlin for the assistance of both the Bench and the Bar in dealing with the problems which arise from the double aspect of an advocate's duty; they are indeed *two lamps of advocacy which both illuminate the difficulties and at the same time provide a safe and sure guide to their solution.*
>
> [emphasis added]

32 Solicitors can also profit by referring to the summary of duties instructively articulated by Sir Thomas Lund (extracted from *Cordery on Solicitors* (LexisNexis Butterworths, 9th Ed, 1995) at para 1404:

> You may well ask for a short summary of a solicitor's duties. I suppose really it is the old principal of "do unto others as you would they should do unto you".
>
> If I had to advise, very briefly, the young solicitor on the guiding principles of conduct when he

came into the profession, I think I should say to him that it is clear that only the very highest conduct is consistent with membership of this profession of ours. *Your client's interests are paramount–that seems to be clear–except that you should never do, or agree to do, anything dishonest or dishonourable, even in a client's interests or even under pressure from your best and most valuable client; you had better lose him.* Though you may be prevented by the rules affecting your client's privilege from disclosing something dishonourable which you feel you ought to disclose, *you should refuse to take any personal part in anything which you yourself think is dishonourable;* you should withdraw and cease to act for that client, even if he presses you to go on. So far as you possibly can, consistently with not actually letting your client down, you should be completely frank in all your dealings with the Court, with your brother solicitors and with the members of the public generally.

Finally, I think I would say that where your word has been pledged, either by yourself or by a member of your staff, you should honour that word even at financial cost to yourself, because his reputation is the greatest asset a solicitor can have, and when you damage your reputation you damage the reputation of the whole body of this very ancient and honourable profession of ours.

[emphasis added]

33 The LPPCR has now codified several time-honoured and established ethical and professional conventions, practices and customs into statutory obligations. These rules must now unfailingly and assiduously be observed by all solicitors. They include the following (r 60):

An advocate and solicitor when conducting proceedings in Court —

(*a*) shall be personally responsible for the conduct and presentation of his case and shall exercise personal judgment upon the substance and purpose of statements made and questions asked;

…

(*c*) shall inform the Court of all relevant decisions and legislative provisions of which he is aware whether the effect is favourable or unfavourable towards the contention for which he argues;

(*d*) shall bring any procedural irregularity to the attention of the Court during the hearing and not reserve such matter to be raised on appeal;

(*e*) shall not advance submissions, opinions or propositions which to his knowledge is contrary to the law;

(*f*) shall not concoct evidence or contrive facts which will assist in advancing his client's case;

…

34 I must state emphatically that these statutory obligations are not exhaustive. They are indicative of a wider responsibility that solicitors assume as officers of the court. The responsibilities and obligations of an officer of the court embrace all direct or indirect facets of his interaction with the court. Solicitors in doubt as to whether to make disclosure to the court should invariably choose to err in favour of completeness rather than inadequacy. In *In re G Mayor Cooke* (1889) 5 TLR 407, it

was rightly observed at 408 that:

> [I]t was a part of [a lawyer's] duty that he should not keep back from the Court any information which ought to be before it, and that he should in no way mislead the Court by stating facts which were untrue. … How far a solicitor might go on behalf of his client was a question far too difficult to be capable of abstract definition, but when concrete cases arose every one could see for himself whether what had been done was fair or not. … *[I]f he were to know that an affidavit had been made in the cause which had been used and which, if it were before the Judge, must affect his mind, and if he knew that the Judge was ignorant of the existence of that affidavit, then if he concealed that affidavit from the Judge he would fail in his duty. … [I]f he were to make any wilful misstatement to the Judge he would be outrageously dishonourable.* [emphasis added]

35 A solicitor's duty to act in his client's interests must therefore take into account prevailing standards of conduct prescribed by the LPPCR, ethical rules and practices prescribed by the Law Society as well as general professional and ethical conventions and practices established through the effluxion of time. If a client insists on a course of action which is inimical to the prevailing professional standards prescribed for or expected of a solicitor, that solicitor has no option but to discharge himself from the matter: r 58 of the LPPCR. All solicitors *qua* officers of court have an absolute and overriding duty first and foremost to the court to serve public interest by ensuring that there is proper and efficient administration of justice. They should never mislead the court either actively or passively. Nor should they consciously furnish to the court erroneous or incomplete information or for that matter incorrect advice that may subvert the true facts. This is a sacred duty which every court is entitled to expect every solicitor appearing before it to unfailingly discharge. So overwhelming is the public interest in maintaining the dignity and honour of the legal profession through the preservation of the highest ethical and moral standards amongst solicitors that the courts cannot risk allowing it to be compromised by even a few recalcitrant individuals within the profession. If and when any such breaches come to light, they must be dealt with swiftly and severely.

36 In summary, the solicitor's obligation is to pursue his client's interests only in so far as it does not compromise or interfere with the administration of justice.

Analysis of events

37 The moneys were directed by Prakash J to be paid into court in this OS to ensure that the views of all the beneficiaries and competing claims could be heard before final distribution. It is clear that Prakash J's order made on 23 July 2004 for payment into court of the sum of $4,595,350.38 was made with a view to deferring payment to any of the competing claimants pending a proper determination of rights to these moneys. The respondents to this OS, including JAK, were aware of this, as were their solicitors. This much is incontrovertible.

38 It bears mention that as far back as 6 May 2003, BP and Broadley had also filed an application, in this OS, for the sum of $3,622,000 representing the deposit they had paid to JAK to be withdrawn from the fund. Judith Prakash J made no order on that particular application given that BP's and Broadley's rights had not been adjudicated upon and determined by that date. This should and would have signalled in no uncertain terms to all interested parties including JAK, Musa and Salim as well as their solicitors, the court's view that no further payment out of the court-held moneys ought to be made without proper notice to the other interested parties. That this was indeed the prevailing view is amply illustrated in yet another instance: as a consequence of the various competing claims to the court-held moneys claimed by the six beneficiaries allegedly represented by Musa and Salim, the PT, by way of Summons in Chambers No 600406 of 2004 filed in this OS, correctly did not ask the

court to pay out any portion of the moneys representing the interests of these six beneficiaries. In short, it was plain to all involved that the court had earmarked these moneys as the subject of competing claims by BP, Broadley, JAK, Musa and Salim, as well as any of the six beneficiaries who disputed Musa and Salim's purported representative capacity.

39 It also bears emphasis that in an affidavit filed in this OS on 31 January 2001, JAK conceded that "most of the funds paid towards the purchase of the properties were provided … by [BP and Broadley]". This is an unequivocal admission by JAK, represented by ABTIP, that "most of the funds" claimed from Musa and Salim in the JAK Suit were actually derived from and were traceable to BP and Broadley. How then could ABTIP's solicitors, Ms Norain and Ms Tan, with full knowledge of, *inter alia*, BP's and Broadley's claims to these very moneys, contemplate filing the 13 September 2004 application, let alone filing it in altogether different proceedings?

40 JAK, in its affidavit supporting its application for payment out of court, was conspicuously economical with the relevant facts. There was, astonishingly, no reference whatever to the earlier unsuccessful garnishee application made against the PT in respect of the same sale proceeds or for that matter to the decision of AR Tung which had not been reversed by a superior court. On 12 December 2003, AR Tung had held, quite rightly in my view, that:

> I considered the Agreement dated 12 February 1996 under which the plaintiffs were said to have purchased the rights, titles and interest of the 29 properties. The Agreement did not appear to me to be signed by Syed Jafaralsadeg Bin Abdul Kadir Alhadad on behalf of the plaintiffs. In fact, he was himself referred to as the Assignee, and not the plaintiffs. I therefore accepted the arguments in Paragraph 10(a) of the affidavit filed by the garnishee. Even though the garnishee application was based on a judgment obtained by the plaintiffs, I noted that the agreement which the plaintiffs sought to rely upon as the basis for the judgment was not filed together with the writ of summons and that the judgment was, in fact, entered in default of appearance. In the circumstances, *I was not satisfied that there was a judgment debt due to the proper party in this case and the application was therefore dismissed*. [emphasis added]

41 There was no reference at all in JAK's supporting affidavit to the competing claims for the same moneys not just among BP, Broadley and JAK, but among the very six beneficiaries themselves. Significantly, AR Ching's attention had not been drawn to the application of the UAAWB Estate filed on 1 September 2004 either: see [16] above. It is highly disconcerting to note that on the very same day JAK's solicitors appeared before AR Ching for the 13 September 2004 application, they had also filed an affidavit in this OS opposing the claim of the UAAWB Estate to be paid from the very same moneys.

42 Astoundingly, there was also no real mention in JAK'S supporting affidavit of the circumstances necessitating the payment into court by the PT apropos the interests of the six beneficiaries. Prakash J's direction envisaging that the PT would notify BP and Broadley of any application was presumptuously swept under the carpet and dismissed as inconvenient or legally irrelevant. Not only was the PT not made a party to the 13 September 2004 application, but that application was also not served on him.

43 When Ms Norain and Ms Tan appeared before AR Ching on 13 September 2004, they failed, in particular, to draw her attention to the finding of AR Tung determining that the very foundation of the default judgment was without substance. In my view, they were duty bound to do this even if they disagreed with that determination. Not only was there a blatant failure to disclose this critical fact, there was a further blatant misrepresentation by Ms Norain and Ms Tan when they asserted that the "[default] judgment is still valid" although they were fully conscious of AR Tung's determination to the

contrary (see [12] and [40] above) – which had not been reversed by a superior court.

44 The audacity of JAK and its solicitors in making the 13 September 2004 application in the JAK Suit without notice to the other interested parties leaves one nothing short of speechless. To begin with, this was, to all intents and purposes, an application similar in substance to the earlier unsuccessful application made in the JAK Suit, to garnish the moneys which the PT had subsequently paid into court. AR Tung had earlier held that the default judgment was suspect, to say the least. Secondly, JAK and its solicitors were not only aware of but fully apprised of the other competing claims to these very moneys and conscious that the moneys paid into court were wholly inadequate to satisfy all the competing claims. Thirdly, such an application by JAK and its solicitors amounted in effect to wilfully applying, in entirely different proceedings, for a sum of money which had been paid into court earlier in this OS, in entirely different circumstances, to be paid to them without any modicum of reference to all the other parties who had an interest in the same moneys. Had AR Ching been notified of such material and relevant facts, I cannot imagine for one moment that the payment out of court would have been sanctioned by her. Although both Ms Norain and Ms Tan could not but have been aware of these crucial facts and material circumstances, they nevertheless omitted to bring them to the court's attention.

45 I shall not mince my words. To put it bluntly, both JAK and its solicitors, by wilfully suppressing material facts and information, perpetrated a fraud on the court by applying for and obtaining the payment out of court of the sum of $4,270,000 plus interest amounting to $9,827.16. The consent of Musa and Salim's solicitor, Mr Chua, apart from raising pertinent questions as to his complicity in this blatant charade, was legally immaterial. It seems to me that his presence was procured in order to confer on the application a semblance of procedural legitimacy. The release of the sum in question should never have been made from moneys paid into court in altogether different proceedings without prior notice being duly given to all the interested parties in this OS. It is not only preposterous but inconceivable that an order should have been made in the JAK Suit for the payment out of moneys paid into court in this OS, given that the two proceedings involved parties who were distinct and disparate and who were in any event being sued in different capacities.

46 I cannot accept for a moment that Ms Norain and Ms Tan, as solicitors for JAK, made the application for the payment out, either out of procedural naïvety or inadvertence, or even more inconceivably, in good faith. It appears to me that they willingly subordinated and/or wilfully ignored and relinquished both their obligations of candour to the court and their duty to place all material facts before the court. They acted as willing tools of JAK in this flagrant and audacious deception of the court. It bears emphasis that after payment out of court had been surreptitiously obtained, both Ms Norain and Ms Tan had the temerity to continue to appear in court, after 13 September 2004, opposing the remaining applications for payment out of court by two other beneficiaries. Not once did they alert the court that as a result of the payment out they had procured, the funds that remained available were insufficient for payment to the two beneficiaries in accordance with the court's directions. This was brazen conduct to say the least. Were they seeking to buy time for their clients to further dissipate the improperly obtained moneys and/or to stymie any remedies that the other interested parties may have obtained? It appears from an affidavit filed in response to my subsequent directions, that the entire amount paid out of court was subsequently paid out to various purported creditors of JAK including, very significantly, the sum of $200,000 to ABTIP "being outstanding legal fees from April 2002 till September 2004". The invoice for these fees was purportedly raised on 5 September 2004, very shortly before the subject application. It does not appear that JAK had or has any independent funds to satisfy that invoice.

47 Both Ms Norain and Ms Tan have conducted themselves in an entirely inappropriate manner. Time and time again, they have blatantly and disconcertingly ignored their obligations as officers of

the court. In this case, I am not dealing with a single isolated lapse of judgment or breach of duty. After conniving with their clients for the release of the subject moneys, they continued to appear in court without disclosing to the court that its subsequent directions in relation to the payment out of the fund would be wholly ineffectual. A large sum of money has now been dissipated. JAK does not have any apparent assets. Its alter ego, one Syed Jafaralsadeg bin Abdul Kader Alhadad, seemingly responsible for pulling all the corporate strings in instructing ABTIP, is a bankrupt and has been so at all material times. I have consciously used rather strong language in this judgment in articulating my views about the conduct of Ms Norain and Ms Tan even though I am generally loathe to characterise a solicitor's professional conduct in legal proceedings. I am mindful that solicitors often find themselves operating in difficult circumstances and can from time to time be tossed on the horns of a dilemma in resolving their conflicting duties. In this case however, the choices open to Ms Norain and Ms Tan were clouded by neither confusion nor ambiguity. The duty to disclose the relevant facts to the court was obvious, patent and compelling.

48 When one of the lamps of advocacy adverted to by Whyatt CJ (see [31] above) is deliberately snuffed out, it is not just the immediate parties who feel the dark shadow of malfeasance. The integrity of the entire profession is diluted and tarnished if conduct of this nature is left unpunished or repeated. The standing of the profession will be darkened, diminished and eventually eroded unless a wrong such as this is addressed in both stark and uncompromising terms. I am hardly optimistic that the very substantial amount of moneys dissipated through the industry of Ms Norain and Ms Tan will ever be recovered. Ms Norain and Ms Tan have given me precious little grounds to believe that they were candid with AR Ching or with me when they appeared before us at the various junctures. In my view, Ms Norain and Ms Tan have wilfully misled the courts and consciously compromised their sacred obligation of trust with the courts.

49 After according this matter the anxious consideration that it merits, I have decided to refer the conduct of Ms Norain and Ms Tan to a disciplinary committee pursuant to the provisions of s 85(3) of the Legal Profession Act. Their failure to inform the court of material facts was not the result of mere inadvertence or a series of unfortunate procedural oversights. I have no hesitation in concluding in the light of all the circumstances that it was calculated, deliberate and perhaps even self-serving. The recovery of their long accumulated legal fees, unpaid for some two years, may have constituted the catalyst precipitating the tack they eventually chose. There do not appear to be any mitigating circumstances to exonerate them. Certainly, none were drawn to my attention. They were not positioned between a rock and a hard place in resolving "conflicting" obligations to client and court. I cannot fathom how any solicitor, irrespective of experience or ability, could have fallen so far short of the standards of integrity, disclosure and candour that our courts rightly and legitimately expect of all solicitors appearing before them.

50 I am also constrained to refer Mr Chua to a disciplinary committee so that it may scrutinise his role in this disturbing matter. Given that he was fully conversant with the entire background of the matter at all material times, I am of the firm view that he should have drawn AR Ching's attention to the conflicting claims apropos the amount directed to be paid out on 13 September 2004. He consciously omitted to do so. His conduct in dubiously appearing before AR Ching even after his client, Salim, had allowed a default judgment to be entered (and the JAK Suit against Musa had been withdrawn) needs to be carefully scrutinised and evaluated. What inspired or precipitated such an appearance? Precisely what instructions did he receive from his clients and or the purported Indonesian solicitors? What further interest could he or his clients have had in the matter upon allowing the default judgment to be entered? Why did he omit to draw AR Ching's attention to the conflicting claims? What precisely was his relationship with JAK and or with Ms Norain/Ms Tan? He further failed to disclose to me, when he appeared before me on 2 December 2004, that as a result of the earlier direction made by AR Ching for payment out from the very fund, insufficient moneys

remained in the fund to give effect to any order that I was being asked to make. He had also sought an adjournment purportedly to take his clients' instructions when the reality now seems crystal clear to me that his clients had in fact no further legitimate interest in the matter nor in the moneys when they failed to "dispute" the JAK Suit. Having carefully reviewed all the facts, I am left with the deeply disquieting impression that he was in all likelihood working hand in glove with Ms Norain and Ms Tan.

51 In the circumstances, it is only appropriate that Ms Norain, Ms Tan and Mr Chua now explain their conduct to disciplinary committee(s). I should also add that at the conclusion of the application, I informed counsel that I intended to refer the relevant papers to the Attorney-General. I understand from the Registrar that the relevant papers have since been sent to the Attorney-General.

Concluding observations

52 There is a common misconception among many a lay person that a solicitor, once engaged, becomes the proverbial cat's paw who is then duty-bound to ensure success on his client's behalf by "hook or by crook". Nothing can be further from the truth. A solicitor is not a malleable tool who can be stretched or strained at will to fulfil a client's goal. He is first and foremost a statutory officer of the court who has an obligation to discharge each and every one of his duties within the parameters of the law and established standards which are nothing less than sacrosanct. In *Rondel v Worsley* ([28] *supra*) at 227, Lord Reid helpfully provided a succinct overview of the responsibilities of an officer of the court:

> [A]s an officer of the court concerned in the administration of justice, he has an overriding duty to the court, to the standards of his profession, and to the public, which may and often does lead to a conflict with his client's wishes or with what the client thinks are his personal interests. Counsel must not mislead the court, he must not lend himself to casting aspersions on the other party or witnesses for which there is no sufficient basis in the information in his possession, he must not withhold authorities or documents which may tell against his clients but which the law or the standards of his profession require him to produce.

53 The courts are legitimately entitled to expect solicitors appearing before them to be candid and conscientious. The duty of candour warrants a solicitor, in the absence of any legitimate issues relating to solicitor-client privilege, drawing to the court's attention all material facts that may have a bearing on the court's determination of a matter if there is reason to believe that the court has not already been apprised of them. In addition, solicitors must never mislead or deceive a court whether actively or passively. That is not all. Solicitors are further expected and required to generally assist the court in its functions to achieve justice. For example, solicitors are expected to draw the court's attention to the existence of all relevant adverse legal authorities, notwithstanding that the same authorities may *prima facie* undermine their client's case. Without the security of trust, which in turn is founded upon and inextricably linked to the duty of candour, the courts will be unable to unreservedly and confidently rely on solicitors appearing before them.

54 A solicitor's abiding and unerring guide must be his very own conscience combined with the collective conscience of the profession – not that of his client's. It is axiomatic that the plea of acting in the best interests of a client can *never* condone any breach of the obligation of candour that every solicitor owes to the court *qua* officer of the court.

55 Solicitors must exercise practical and deliberative wisdom and restraint in striking a prudent and pragmatic balance between ethics and expediency. Ethical rules and conventions can never exhaustively prescribe or proscribe standards of professional conduct. Using established standards as basic guides, solicitors must draw on their own internalised moral compasses to guide them through

the myriad of conflicting priorities they have to regularly address and make in practice.

56 As officers of the court, solicitors have to continuously, vigilantly and discerningly evaluate their relationship with the court while pursuing their client's interests. The attainment of justice cannot be viewed solely through a client's lenses, divorced and detached from the solicitor's professional functions and obligations to ensure the attainment of justice. A solicitor, while a champion of his client's cause, cannot remain a wholly partisan champion oblivious to the interests of and the administration of justice.

57 Within the boundaries of ethical permissibility, the client's interests should be accorded supremacy. Beyond these boundaries, the priority to be accorded to the client's interests evanesces. Granting that this entails neither a cut-and-dried nor mechanical approach, it must be pointed out that solicitors grapple with these conflicting priorities regularly and without too much trial or tribulation. Their own internalised moral compasses provide the surest touchstone in resolving these tensions appropriately. In the final analysis, solicitors, as officers of the court, must in their dealings with the court, acknowledge that their obligations to the court reign supreme, over and above their client's and their own interests. When they enter the profession, solicitors accept a responsibility to assist in upholding the rule of law. To fulfil that responsibility, they must be committed to ensuring the sanctity and soundness of the legal system and the administration of justice. Solicitors must aid and assist, and never impair the court's ability to discharge its impartial adjudicatory responsibilities. They must recognise and affirm that the practice of law is not an amoral business geared purely towards the pursuit and satisfaction of private ends.

First and second respondents' application allowed.