

Wee Soon Kim Anthony v The Law Society of Singapore
[2000] SGHC 159

Case Number : OS 37/2000
Decision Date : 04 August 2000
Tribunal/Court : High Court
Coram : Lai Kew Chai J
Counsel Name(s) : Wee Soon Kim Anthony in person; Kenneth Tan [Kenneth Tan Kong & Tan] for the defendant
Parties : Wee Soon Kim Anthony — The Law Society of Singapore

JUDGMENT:

Grounds of Judgment

By an amended Originating Summons the plaintiff, an advocate and solicitor, applied for, among other reliefs, a declaration that the defendant should have referred his letter of complaint dated 18 August 1999 against Davinder Singh SC (DS) and Hri Kumar (HK), who are also advocates and solicitors, to the Chairman of the Inquiry Panel. Briefly the letter alleged that both DS and HK prepared or caused to be prepared two affidavits which were alleged to contain 4 falsehoods. At the conclusion of the hearing, I concluded that the first three complaints were baseless and frivolous and plainly did not and could not fall within s 85(1) of the Legal Profession Act, Cap 161 ("the Act").

2 However, with regard to the alleged 4th falsehood, learned counsel for the defendant, quite properly in my view, drew my attention not only generally to the documentary evidence in two pages but the particular passages of or columns in two exhibits annexed to the affidavit prepared and filed by DS and HK on behalf of their clients. He conceded that the plaintiff's 4th complaint fell within s 85(1) of the Act. In fairness to both DS and HK I hasten to add that whether there is a *prima facie* case of misconduct against them is a matter strictly for the Inquiry Committee to be constituted. Counsel for the defendant readily accepted right from the beginning that it was not within the duty or the jurisdiction of the Council of the Law Society to determine if there was a *prima facie* case. But he submitted that the Council had the right and the duty to determine if the complaint was one that fell within s 85(1) of the Act. The plaintiff, on the other hand, contended that s 85(1) of the Act in terms make it mandatory on the part of the Council of the defendant to refer a complaint to the Chairman of the Inquiry Committee. The Council, he said, had no role in the matter except to act as a "conduit". I accepted the submissions of counsel for defendant and made the declaration which was limited to the 4th complaint. As the plaintiff insisted that all 4 complaints should be referred to the Chairman of the Inquiry Committee and lost on his main submission that the function of the Council of the Law Society was limited to the administrative task of referring all complaints to the Chairman of the Inquiry Committee, I ordered that the plaintiff should pay the defendant costs fixed at \$2,500.00.

3 The complaints of the plaintiff arose out of another set of proceedings in which DS and HK acted for a bank. In Originating Summons 546 of 1999 filed on 14 April 1999 UBS AG, who were previously the investment bankers of the plaintiff, made an application seeking the court's directions as to the return of assets previously held in the accounts of the plaintiff and his family, namely his wife and son.

4 The plaintiff and his family began their banking relationship with UBS since 18 August 1997. They opened a joint account in their name with UBS's Singapore branch. On the same day, the plaintiff and his family opened a joint account in their names with the Hong Kong branch of UBS. A little later, the plaintiff opened an account No. 207012 in his sole name with the Hong Kong branch of UBS. The plaintiff by himself and at times jointly with family engaged in foreign exchange transactions. Some of those transactions were affected by the fall of the Malaysian Ringgit as against the US dollars. In September 1997 the plaintiff and his family were in a loss position on forex forward contracts. In December 1997 the plaintiff invested a sum slightly in excess of US\$10 million in a Fund established by UBS. Forex transactions continued. The banking relationship was, I think it's fair to say, somewhat turbulent. From May 1998 the plaintiff and his family made a number of allegations against UBS and its officers. He

alleged that UBS and their officers had made a number of misrepresentations and were negligent.

5 Inevitably, the banking relationship was terminated. All of the three accounts were closed. But UBS's return of the assets to the plaintiff and his family, which could have been done with the written consent of the plaintiff and members of his family, was not uneventful. Hence the originating summons.

6 The plaintiff was obviously peeved by those proceedings and by the fact, as he complained, that UBS had joined his family as fellow defendants. The plaintiff and his family applied to stay the proceedings in Singapore in favour of Hong Kong. He complained that he had no personal knowledge as to how his assets were transferred to the account in Singapore.

7 On 18 August 1999 the plaintiff lodged his complaint against DS and HK with the Council of the defendant. His letter, addressed to the President of the Law Society, was in the following terms:

August 18, 1999

The President,
Law Society of Singapore
39 South Bridge Road
Singapore 058673

SIR

1. I hereby lodge a complaint touching upon the professional misconduct of Senior Counsel Daviinder Singh M.P. and his legal assistant one Hri Kumar both of Drew & Napier pursuant to s.85 of the Legal Profession Act CAP 161 [LPA].

2. Both of them are Officers of the Supreme Court by virtue of s.82(1) of the LPA.

3. Section 82(2)(b) & (h) of the LPA provides that they may be visited by the rigours of the LPA and may be liable to be struck off the Roll or suspended from practice or censured if they are:

(i.) found guilty of fraudulent or grossly improper conduct in the discharge of their professional duty; and/or

(ii.) found guilty of misconduct unbefitting an advocate and solicitor as an officer of the Supreme Court or as a member of an honourable profession. It is submitted that a MP comes within the purview of s.83(2)(h).

4. In *Re An Advocate & Solicitor* (1962) 28 MLJ 125 it was held by a Court of 3 judges that "the preparation by a professional man of an affidavit that is untrue and known to him to be untrue, is a very serious offence. As has been said so often, an advocate and solicitor is an Officer of the Court and as such he owes a duty not only to himself and to his client but also to the Court". The same principles should apply equally to honourable Members of Parliament.

5. The cases are legion in which solicitors have been disciplined for administration of justice offences. For example, from as early as 1869, a solicitor has been suspended for 10 years from practice for allowing his client to make a false affidavit – *see in Re Gray, ex p Inc Law Soc* [1869] 20 LT 730.

6 As a further example, it was also held that where a solicitor deliberately arranged for a witness to be kept out of the way he was found guilty of grossly improper conduct – *see* [1953] MLJ 161. In the administration of justice, this was so even though his intention was more of annoying the police rather than bringing about a miscarriage of justice.

7. Furthermore, in a recent article in the Straits Times 1 June 1999 – **"Behave, CJ WARNS LAWYERS"** some 3,200 lawyers in Singapore were urged by the Chief Justice not to let their personal greed and self-interest override the moral principles of integrity and honesty. [For] *"if you allow yourself to stoop to dishonest and unethical behaviour [such as preparing a false affidavit for a client for the purposes of perjury], you will not only destroy the trust of your clients in you, but also of society's opinion of the legal profession as an honourable one"*. He further warned that the court would take strong disciplinary action against lawyers who are found guilty of such misconduct. Annexed hereto and marked **"ASKW-1"** is a copy thereof.

8. RELEVANT BACKGROUND FACTS: On about 14 April 1999, Senior Counsel Singh and his assistant Hri Kumar of Drew & Napier filed proceedings on behalf of UBS AG Singapore in Originating Summons 546 of 1999 [OS 546/99]. The proceedings were filed to annoy and embarrass my wife and my son cited as Defendant. The purpose of the proceedings was for the delivery of my personal Hong Kong assets to them in Singapore. On a date unknown, UBS AG Hong Kong transferred from my account 207038 in Hong Kong my personal "Assets" to a joint account 110628 in Singapore against my written instructions.

9. THE MISCONDUCT: Senior Counsel Singh MP and his assistant Kumar of Drew and Napier knowingly prepared an affidavit which contained certain allegations that were false and/or otherwise permitted Shirreen Sin Meng Mei [SSMM] an employee of their client UBS AG to perjure herself in a Court of Law. Annexed hereto and marked collectively **"ASKW-2"** are copies of said affidavit together with a copy of the Originating Summons 546 of 1999 [OS 546/99]. Particulars of the falsehoods are as follows:

10. FALSEHOOD #1: By paragraph 3 thereof, said SSMM alleged that the "Assets" *"were previously held in the Defendant's accounts with the Plaintiff"*. Said allegation is, as they well knew, false because at all material times they knew that the "Assets" were never held in the *"Defendant's accounts"* [207012 in Hong Kong or 110628 in Hong Kong]. The Assets in question as they well knew belonged to me and me alone held under a personal account 207038 in Hong Kong. Said knowledge appears in the ensuing paragraph 6.

11. FALSEHOOD #2: Senior Counsel who is concurrently an M.P. then went on to allege that the *"... said sum [US\$4,334.61] was transferred from the Hong Kong account No 207038 on 10 September 1997"*. Said allegation was, as he well knew, false because by virtue of being a legal adviser, he had, at all material times, access to the internal records touching upon my customer/banker accounts. The internal records reveal that:

10.1: On 9 September 1998 UBS AG Hong Kong branch was instructed by me not to take instructions from Shirreen Sin and/or one N. Wood of UBS AG with regard to my Hong Kong accounts 207038 and 207012. Annexed hereto and marked **"ASKW-3"** is a copy of the fax instructions dated 9 September 1998.

10.2: On 10 September 1998, UBS AG Hong Kong without my instructions transferred a sum of US\$4,185,000 [four million one hundred and eighty five thousand] from my personal Hong Kong account 207038 to a joint account 110628 in Singapore. Annexed hereto and marked **"ASKW-4"** is a copy of a fax from the said N. Wood in Singapore dated 10 September 1998 to that effect. Consequently, the transfer of a sum of US\$4,334.61 [say four thousand three hundred and thirty four and cents sixty one] on 10

September 1998 in the manner alleged is false.

12. **FALSEHOOD #3:** Senior Counsel Singh MP continued in the same vein as reflected in paragraph 4 where he alleged falsely that the Defendant claimed that "*the dispute herein is more closely connected to **Hong Kong** than to Singapore*". This is not an expression of an opinion in law. This statement of fact is false in light of my statement as follows:

"I also emphasise that the letter of offer for the facilities expressly provided that the governing law of the facilities for the Hong Kong bank accounts was Hong Kong and that both parties submitted themselves irrevocably to the non-exclusive jurisdiction of Hong Kong. Clearly any disputes arising out of or relating to the facilities on my Hong Kong accounts should be governed by Hong Kong law".

13. **FALSEHOOD #4:** Paragraph 5 is false made to found the doctrine of forum non conveniens on the grounds that "*The account opening forms for all three accounts were prepared by the Plaintiff UBS AG] **in Singapore** and executed by the Defendant **in Singapore*** [emphasis added]. The allegation was coloured with the following:

*"I introduced Wee to the Plaintiff's banking services sometime in August 1997. My discussions with Wee took place **in Singapore**. As a result of these discussions, the Defendant opened a joint account No. 110628 ("the Singapore Account") on 18 August 1997 and two accounts in Wee's sole name No. 207038 on 26 August 1997. The account opening forms **for all three accounts** were prepared by the Plaintiff **in Singapore and executed by the Defendant in Singapore**"*

This is a falsehood made knowingly as follows:

14. The "internal records" of UBS AG Singapore reveal that the account opening documents in respect of 110628, 207012 & 207038 were not ALL prepared and signed in Singapore. They prove that:

- i. only two sets of standard account opening forms relating to joint private bank accounts numbered 110628 & 207012 were dated 18 August 1997 prepared and duly witnessed by SSMM **in Singapore**.
- ii. one similar set of standard account opening forms relating to a personal account numbered 207038 were dated 26 August 1997 prepared and duly witnessed by one Sheila Wong of UBS AG **in Hong Kong**.
- iii. I was in Hong Kong on 26 August 1997 when said Sheila Wong attended to me and presented the account opening for the purposes of obtaining my signature thereon to open my personal account number 207038 in Hong Kong. Annexed hereto and marked "ASKW-5" is a relevant extract of my passport entries proving that I was in Hong Kong from 24 August 1997 and did not return to Singapore until 11 September 1997. Annexed hereto and marked collectively "ASKW-6" are copies of the account opening documents in respect of the accounts 110628, 207012 and 207038 respectively.

15. Meanwhile, I respectfully request the following:

1. A list of the "Inquiry Panel" of advocates & solicitors and lay persons duly appointed by the Chief Justice under s.84 of the LPA.

2. The names of the members of the Inquiry Committee appointed by the Council under s.85(6) of the LPA.

Yours truly,

Sdg: ASK WEE

8 After receipt of the complaint, the Council of the defendant requested for copies of all affidavits filed and served in OS 546 of 1999, The plaintiff sent them to the Council in September 1999.

9 By a letter dated 5 November 1999 the Director of the defendant stated that a recent meeting the Council of the defendant decided that in view of the decision of the Court of Appeal in *Tan Liang Hong v Lee Kuan Yew & Ors* [1998] 1 SLR 97 no information of misconduct which must be referred to the Chairman of the Inquiry Committee was disclosed in the plaintiff's letter of complaint. The plaintiff asked for the basis upon which the Court of Appeal "empowered the Council to disregard due process of an inquiry committee to determine the facts complained of."

10 By his letter of 9 December 1999 the then President of the defendant, George Lim, set out the position in this way:

"In the case of *Tan Liang Hong v Lee Kuan Yew (1998) 1 SLR 97*, the Court of Appeal held that a solicitor did not have the duty to verify the truth or otherwise of an affidavit affirmed by his client. LP Thean, JA said:-

In any case, we think it would be placing an unduly onerous burden on counsel in every instance to verify the truth or otherwise of what their clients have deposed to in affidavit. In this respect, Chan Sek Keong JC (as he then was) held in Wee Soon Kim Anthony v Law Society of Singapore (1988) SLR 510, at p515 as follows:

...TKQ was under no duty (i) specifically, to take statements from the clients named in GSH's affidavit; (ii) generally, to verify the source of information of GSH. Counsel for the plaintiff was unable to cite any authority to support his contention that an advocate and solicitor has such a duty generally or in the circumstances of this case. Nor was he able to persuade me, in principle, that such a duty existed. In my view, no such duty existed generally or in the circumstances of this case. It is not for an advocate and solicitor, whether in his capacity as counsel or solicitor, to believe or disbelieve his client's instructions, unless his client's statements are inherently incredible or logically impossible. His duty to his client does not go beyond advising him of the folly of making incredible or illogical statements.

We agree with the judge."

11 The plaintiff asserted that the explanation left him "none the wiser". He therefore commenced these proceedings.

12 The complaint was lodged under s 85(1) of the Act. It states:

"Any complaint of the conduct of an advocate and solicitor shall in the first place be made to the

Society and the Council shall refer the complaint to the Chairman of the Inquiry Panel"

13 The scope of the Council's role on receipt of a complaint was considered by the Court of Appeal in *P Suppiah v The Law Society of Singapore* [1986] 1 MLJ 459. The same provision, though amended but in respects immaterial for present purposes, was considered by the Court of Appeal in the light of the submission by counsel for P Suppiah, the plaintiff himself, who contended that the Council on receipt of Suppiah's letter was obliged under section 86(1) of the Legal Profession Act, Cap 217 to refer it to the Inquiry Committee, because the sub-section said that the Council "shall refer to the ...complaint to the Inquiry Committee." Apparently, the plaintiff as counsel in that case had gone on to submit that it was not the concern, nor was it within the power, of the Council to decide whether a *prima facie* case touching on the conduct of the advocate and solicitor in question in his professional capacity had been disclosed. The first part of those submissions was firmly rejected by the Court of Appeal. However, the second part of those submissions was upheld.

14 Thean J (as he then was) in delivering the judgment of the Court of Appeal stated at p 460 F/Grhc as follows:

Where a person makes ...a complaint which falls within the meaning of section 86(1) of the Act, it is mandatory on the part of the Council to refer it to the Inquiry Committee. On the other hand, where ... a complaint does not fall within that sub-section, the Council has no such obligation and, indeed, will be obliged to reject it. From this, it follows that the Council must on receipt of ...a complaint consider whether it comes within section 86(1). However, the Council should not consider further whether the ...complaint discloses a *prima facie* case against the advocate and solicitor concerned.

15 That the Council must apply its mind and consider the question whether a complaint falls within section 85(1) of the Act is eminently reasonable. The Council is largely an elected body and comprises of elected members in whom members of the Law Society have reposed confidence. As envisaged under the Act, they constitute a responsible body of opinion on what professional misconduct which merits an inquiry and what is outside it. While they have a duty in the public interest to maintain honour and standards of probity amongst members, they have a duty too in the public interest to ensure that members of the Honourable profession are not subjected to the trauma and expense of a disciplinary inquiry if the complaint is one which clearly is outside the scope of the subsection. If a Council should mis-direct itself when considering this question, or if it elides into considering the question whether there is *prima facie* case, it is subject to judicial review and an appropriate declaration may be obtained to reverse a wrong decision.

16 The question is therefore whether the Council of the defendant was right in deciding that none of the complaints was within the subsection. I turn to each of the 4 complaints of the plaintiff. Before I do so, I should refer to the allegations of misconduct as summarised by the plaintiff in para 9 of his letter of complaint. He alleged that DS and HK "knowingly prepared an affidavit which contained certain allegations that were false and/or otherwise permitted Shirren Sin Meng Mei ("SS"), an employee of UBS, to perjure herself in a Court of Law". The allegation that DS and HK had assisted or aided the deponent in her alleged perjury are serious allegations. The important question was to see if there was any basis which brought the complaint within the subsection.

17 I turn to the first complaint as summarised in the plaintiff's letter. On the materials produced before the Council, the picture that emerged was that some of the assets were earlier owned by all three of them, namely the plaintiff and his family. In the context of the banking relationship and the fact that some of the assets were earlier owned by all three of them, any prudent banker would seek directions as UBS did. I agreed with counsel for the defendant that there was no complaint within the meaning of section 85(1) because there was no perjury by the deponent. All the more, I could not see how the lawyers could have known that it was a lie. A bare and bold allegation does not convert a mere assertion or a fantasy into a complaint within the meaning of the subsection.

18 The complaint under the pejorative rubric of "Falsehood #2" is set out in para 11 of the plaintiff's letter. He alleged that by virtue of being a legal adviser DS had access to the internal records. Those records would have revealed that the plaintiff had withdrawn the authority of the two named officers and that there were the unauthorised transfers. The fact was that the transfers were not themselves lies. It was quite a different matter whether the transfers were authorised or not. Again, there was

no basis for the assertion.

19 The third complaint, which was labelled unfairly as "Falsehood #3", was based on para 4 of the affidavit of Shirreen Sin. It has to be noted that in para 12 of his affidavit the plaintiff rather disingenuously attempted to muddy the waters by referring to para 5 of the affidavit of Shirreen Sin which had nothing to do with complaint #3 but which was relevant for complaint #4. I was not impressed by his attempt. The statement complained of was contained in para 4 of the deponent's second affidavit. It stated: "The Defendants (namely the plaintiff and his family) claim that these proceedings should have been commenced in Hong Kong as the dispute herein is more closely connected to Hong Kong than to Singapore." It was on its face a summary of the contention or position of the plaintiff and his family in their capacities as the defendants in the other Originating Summons. It was not a statement of fact but a summary of the plaintiff's position regarding the question of the most convenient forum which should adjudicate on the Originating Summons. There was therefore no complaint within the meaning of section 85(1).

20 As I had stated, I granted a limited declaratory order in respect of the fourth complaint. In the last sentence of para 5 Sheerrin Sin deposed thus: "The account opening forms for all the three accounts were prepared by the Plaintiff (ie UBS) in Singapore and executed by the Defendants (ie the plaintiff and his family) in Singapore." Learned counsel for the defendant drew my attention specifically to two places at pp 56 and 63 of the exhibit SSMM-2 in which it was clear, once attention was drawn to it, that the accounts opening forms and documents were signed by the plaintiff in Hong Kong. It followed that there was a basis for the complaint to amount to a complaint within the meaning of section 85(1) of the Act.

Lai Kew Chai

Judge

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