IN THE COURT OF THREE JUDGES OF THE REPUBLIC OF SINGAPORE

[2017] SGHC 80

Originating Summons No 6 of 2016

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

And

In the matter of Sum Chong Mun and Kay Swee Tuan, Advocates and Solicitors of the Supreme Court of the Republic of Singapore

Between

THE LAW SOCIETY OF SINGAPORE

… *Appellant*

And

(1) SUM CHONG MUN
(2) KAY SWEE TUAN

… *Respondents*

GROUNDS OF DECISION

[Legal Profession] — [professional conduct]

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v
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Chao Hick Tin JA, Andrew Phang Boon Leong JA and Judith Prakash JA
10 February 2017

11 April 2017

Andrew Phang Boon Leong JA (delivering the grounds of decision of the court):

Introduction

1 The respondents, Sum Chong Mun ("Sum") and Kay Swee Tuan ("Kay"), were advocates and solicitors of over 30 years' standing each at the material time of their alleged professional misconduct.

2 Sum signed as certificate issuer and as witness to the signature of the donor Ng Kong Yeam @ Woo Kwang Yean ("the Donor") under a form ("the Form") which created a lasting power of attorney ("LPOA") pursuant to the Mental Capacity Act (Cap 177A, 2010 Rev Ed) ("the MCA"). However, he did not personally witness the signature of the Donor or carry out his duties as certificate issuer.

3 Kay is the sister of Mdm Kay Swee Pin ("KSP"), who had cohabited with the Donor from 1995–2013. KSP and the Donor were not legally married. They had a daughter named Eva Mae ("Eva"). Separately, the Donor also had a legitimate family in Malaysia.

4 Kay procured Sum to certify and witness the Form when the signature of the Donor had already been affixed to the Form. Further, Kay knew that Sum would not be witnessing the Donor's execution of the Form or carrying out his duties as certificate issuer.

5 Sum faced two charges and two alternative charges, under s 83(2)(*b*) and s 83(2)(*h*), respectively, of the Legal Profession Act (Cap 161, 2009 Rev Ed) ("the LPA"). These related to his alleged failure to discharge his duties as a certificate issuer of the LPOA of the Donor, and his false attestation as witness to the signature of the Donor on the Form when the Donor did not personally sign before him. The two charges read as follows:

> **1st Charge [*Alternative 1st Charge*]**
>
> That you, Sum Chong Mun, are guilty of grossly improper conduct in the discharge of your professional duty within the meaning of Section 83(2)(*b*) of the Legal Profession Act (Cap. 161) [*are guilty of misconduct unbefitting an advocate and solicitor as an officer of the Supreme Court or as a member of an honourable profession within the meaning of Section 83(2)(*h*) of the Legal Profession Act (Cap. 161)*] in that you, on or around 28 December 2011, failed to discharge your duties as a certificate issuer of the lasting power of attorney (LPA No. 30047BE12) of Ng Kong Yeam @ Woo Kwang Yean as required under the Mental Capacity Act (Cap. 177A, 2010 Rev Ed) by not ensuring that:
>
> (a) The donor understood the purpose of the instrument and the scope of the authority conferred under it;
>
> (b) No fraud or undue pressure was used to induce the donor to create an LPOA; and

(c) There was nothing else that would prevent an LPOA from being created by the instrument.

2nd Charge [*Alternative 2nd Charge*]

That you, Sum Chong Mun, are guilty of grossly improper conduct in the discharge of your professional duty within the meaning of Section 83(2)(*b*) of the Legal Profession Act (Cap. 161) [*are guilty of misconduct unbefitting an advocate and solicitor as an officer of the Supreme Court or as a member of an honourable profession within the meaning of Section 83(2)(*h*) of the Legal Profession Act (Cap. 161)*] in that you, on or around 28 December 2011, falsely signed as witness to the signature of Ng Kong Yeam @ Woo Kwang Yean as it appeared on the form to create a lasting power of attorney (LPA No. 30047BE12) when the said Ng Kong Yeam @ Woo Kwang Yean did not so personally sign before you.

6 Kay faced one charge and one alternative charge, under s 83(2)(*b*) and s 83(2)(*h*), respectively, of the LPA ("s 83(2)(*b*)" and "s 83(2)(*h*)"). These related to her request and procurement of Sum to sign the Form as certificate issuer and as witness when she had known that Sum would not be witnessing the execution of the Form or carrying out his duties as certificate issuer. As amended, the charge and the alternative charge read as follows:

Amended Charge [*Amended Alternative Charge*]

That you, Kay Swee Tuan, are guilty of grossly improper conduct in the discharge of your professional duty as amounts to improper conduct within the meaning of Section 83(2)(*b*) of the Legal Profession Act (Cap. 161) [*Kay Swee Tuan, are guilty of misconduct unbefitting an advocate and solicitor of the Supreme Court or as a member of an honourable profession within the meaning of Section 83(2)(*h*) of the Legal Profession Act (Cap. 161)*] in that you, sometime in December 2011, had requested and did procure one Sum Chong Mun ("Sum"), a fellow advocate and solicitor, to act as certificate issuer and sign as witness to the signature of Ng Kong Yeam @ Woo Kwang Yean (the "Donor") as it appeared on the form (the "Form") to create a lasting power of attorney (LPA No. 30047BE12) (the "LPOA"), when in fact the signature of the Donor had already been pre-affixed to the Form and you knew that Sum would not be witnessing the Donor's execution

> of the Form or carrying out his duties as certificate issuer, and further by wilfully, recklessly or negligently leading Sum to believe that you had personally witnessed the Donor execute the Form, thereby causing Sum to act as certificate issuer and sign as a witness to the pre-affixed signature of the Donor when in fact the Donor had not personally affixed his signature on the Form and you had not personally witnessed the Donor executing the Form

7 On 14 June 2016, a Disciplinary Tribunal ("the DT") comprising Mr Cavinder Bull SC and Ms Christine Sekhon determined that cause of sufficient gravity for disciplinary action had been disclosed against Sum (pursuant to s 83(2)(*b*)) and against Kay (pursuant to s 83(2)(*b*) or alternatively under s 83(2)(*h*)). The Law Society of Singapore ("the Law Society") thus commenced the present originating summons seeking orders that Sum and Kay be sanctioned under s 83(1) of the LPA ("s 83(1)"). The report of the DT can be found at *The Law Society of Singapore v 1) Sum Chong Mun 2) Kay Swee Tuan* [2016] SGDT 5 ("the DT Report").

8 Before us, Sum accepted that due cause for disciplinary action had been shown against him. Kay, however, challenged her charge and alternative charge.

9 On 10 February 2017, we found due cause for disciplinary action had been shown against both Sum and Kay. We ordered that Sum be suspended for one year with effect from 1 April 2017, and that Kay be suspended for 30 months with immediate effect. We also ordered Sum and Kay to bear the costs of the Law Society.

10 We now give the detailed grounds for our decision.

Factual background

11 In early December 2011, KSP asked Kay to be the certifier of an LPOA that the Donor wished to execute. Kay agreed, and thereafter met the Donor and KSP to discuss the making and registering of an LPOA. At the meeting, the Donor signed a form ("the Rejected Form") to register an LPOA with KSP and Eva as his donees ("the Donees" and, individually, "a Donee"). Kay signed the Rejected Form as certificate issuer and as witness. The Rejected Form was then lodged with the Office of the Public Guardian ("OPG"), but was rejected because a certificate issuer of an LPOA could not be related to a donee thereunder. KSP then asked Kay to approach another person to be the certificate issuer.

12 Subsequently, KSP prepared the Form, which comprised a completely new set of documents, to replace the Rejected Form. In the Form, KSP signed the Donor's signature on behalf of the Donor. KSP and Eva also signed the Form as co-Donees, in the presence of two witnesses. Thereafter, KSP handed the Form to Kay. KSP told Kay that one of the main reasons why the Rejected Form had not been accepted by the OPG was that the certificate issuer was KSP's sister. KSP asked if Kay could approach one of her colleagues to act as the certificate issuer instead.

13 On or around 27 December 2011, Kay approached Sum and asked him to "re-certify" the Form. Kay told Sum that the Donor was her brother-in-law and that she could not be the certificate issuer because she was related to the Donees. Kay also told Sum that the Donor had completed and signed the Form. Kay added that she had explained the contents of the LPOA to the Donor and that he had understood them, and that she had personally witnessed the Donor's signature on the Form.

14 Kay left the Form with Sum after meeting him.

15 On or around 28 December 2011, Sum signed the Form in two places. First, at Part D of the Form, as *witness* to the signature of the Donor. Second, he signed at Part E of the form, as *certificate issuer* who certified the following three requirements:

(a) that the Donor understood the purpose of the LPOA and the scope of the authority conferred under it;

(b) that no fraud or undue pressure was being used to induce the Donor to create the LPOA; and

(c) that there was nothing else that would prevent the LPOA from being created.

We shall refer to these three requirements as "the Part E Requirements".

16 Sum did not personally witness the Donor's signature on the Form, nor did he speak to the Donor prior to signing the Form.

17 Sum did not ask for and did not receive any payment for certifying and witnessing the Form. After Sum returned the Form to Kay, Kay sent the Form to KSP, who submitted it to the OPG. The OPG accepted the Form, and the Donor's LPOA was registered on 15 February 2012.

The challenge to the Donor's LPOA

18 On or around August 2013, Sum was contacted by the Police, who asked whether he had witnessed the Donor executing the Form when he had certified it. Sum informed Kay about the call, and Kay arranged for a meeting,

which was attended by Kay, Eva, KSP, Sum, and Mr Wilfred Yeo (Sum's friend who was also an advocate and solicitor). This was the first time that Sum met and spoke to KSP and Eva. At this meeting, Sum was informed that the Donor had a legitimate family and was not legally married to KSP, and that therefore Kay was not the Donor's sister-in-law. He was also told that Kay had not actually witnessed the Donor complete or execute the Form. KSP said that she had signed the Donor's signature on the Form because the Donor had asked her to prepare the Form and sign it on his behalf.

19 After the meeting, Sum wrote to the Police on or about September 2013, detailing his recollection as to how he came to be the certificate issuer of the LPOA. Sum also prepared and signed a Statutory Declaration dated 3 June 2014 ("the 3 June 2014 SD") in which he set out his account of events relating to the LPOA. The 3 June 2014 SD was filed in Court by the lawyers of the legitimate family of the Donor in an application to revoke the LPOA ("OSF 323/2014"). In the 3 June 2014 SD, Sum stated that he had signed the Form even though he had not witnessed the Donor executing it because he had relied on Kay's repeated representations and assurances to him that she had witnessed the Donor execute the Form, and that the only reason she could not witness and/or certify the Form was that she was conflicted from doing so as the sister of a Donee. Sum also stated that whilst he had initially informed Kay that he could not serve as the certificate issuer of the Form, Kay had made persistent requests to him to witness and/or certify the Form.

20 Kay filed a Response to Sum's statements in the 3 June 2014 SD on or around 29 July 2014 ("the 29 July 2014 Response"), in which she stated as follows:

> I explained the circumstances to [Sum] CM about the need for re-certification but there was never at any time any pressure put on Sum to be the certifier.

21 After reviewing the court papers filed pursuant to OSF 323/2014, the OPG commenced proceedings ("OSM 16/2014") to determine the validity of the Donor's LPOA. On 31 October 2014, the Family Court recorded a consent order pursuant to which KSP and Eva consented to: (a) a determination that the requirements for the creation of the Donor's LPOA had not been met; (b) a declaration that they never had any authority to act as donees under the LPOA; and (c) the cancellation of the registration of the LPOA.

The disciplinary proceedings

22 By a letter dated 23 October 2014, the OPG complained about Sum and Kay to the Law Society. The letter was forwarded to the Chairman of the Inquiry Panel. The Inquiry Committee was constituted on 26 December 2014 and on 5 June 2015 recommended that there should be a formal investigation of the matters by a DT. With the consent of all parties, the DT directed that there would be one hearing dealing with both Sum and Kay and that the evidence adduced would be admissible in respect of both of them, subject to relevance. The DT then heard the matter on 4 and 5 January 2016 (see the DT Report at [27]).

The decision of the DT

23 The DT observed that Paragraph 2(1)(*e*) of the First Schedule of the MCA specifically required an instrument to create an LPOA to include a certificate by a person of a prescribed description that, in his opinion, at the time when the donor executed the instrument, the Part E Requirements (see

above at [15]) had been met. Regulation 8(3)(*b*) of the Mental Capacity Regulations 2010 ("the MCR") in force at the material time provided that the donor must have signed Part D of the instrument in the presence of the certificate issuer (see the DT Report at [30]).

24 The DT added that these duties of a certificate issuer were safeguards against abuse of the LPOA regime under the MCA. They ensured that donors understood what they were executing. A breach or abdication of these duties undermined the integrity of the process for creating LPOAs. Advocates and solicitors belonged to the limited classes of persons qualified to act as certificate issuers of LPOAs, and therefore had to perform their roles with utmost independence, integrity, and professionalism when certifying LPOAs (see the DT Report at [31]).

Sufficient cause against Sum

25 The DT found that Sum had certified the Form falsely. He had signed the Form knowing that he could not issue the certificate because he had not fulfilled the Part E Requirements. Indeed, he had not even met the Donor (see the DT Report at [42]).

26 The DT found that Sum must have known that his certification of the Form was false and that he had not fulfilled the duties of a certificate issuer of actually meeting with and speaking to the Donor. Sum had been a practising lawyer for 30 years and a Commissioner for Oaths for 14 years at the material time. He had also previously been a certificate issuer for two LPOAs. The duties of a certificate issuer were set out in the Form itself. Further, Sum clearly knew at the material time that what he was doing was wrong. His own evidence was that he had initially declined to sign the Form, and had

eventually agreed only because of Kay's persuasion. He had even suggested to Kay to have the Donor appear before him. Yet he deliberately and knowingly circumvented the safeguards in the MCA and MCR, which was grossly improper conduct (see the DT Report at [43]–[46]).

27 The DT added that the duties of a certificate issuer of a LPOA were not delegable, and that Sum could not rely on Kay or KSP to discharge his professional responsibilities. This was particularly so in this case, where neither KSP nor Kay (who were, respectively, a Donee and the sister of a Donee) were independent of the Donor (see the DT Report at [48]).

28 Accordingly, s 83(2)(*b*) applied, and there was no need to consider the application of s 83(2)(*h*) (see the DT Report at [91]).

Sufficient cause against Kay

29 The DT found that Kay had asked Sum to certify and witness the Donor's LPOA. She then handed Sum the Form, on which KSP had signed the Donor's signature at Parts D and E. The Donees had signed the Form and the witnesses to the Donees' signatures had also affixed their signatures to it. Hence, the Form was ostensibly completed and bore all the necessary signatures, save for those of the certificate issuer at Parts D and E. Kay testified that she had looked briefly at the Form and knew that Parts D and E had been pre-signed by the Donor (see the DT Report at [52]–[60]).

30 The DT added that Kay believed that she was giving Sum pre-signed replacement pages for Parts D and E of the Rejected Form, whereas she had in fact given him the entirely new but nevertheless pre-signed Form. This was consistent with Kay asking Sum to sign without meeting with the Donor to

satisfy himself of the Part E Requirements and without personally witnessing the Donor's signature. Such pre-signed pages would have been otiose had Kay intended the Donor to sign the Form or Rejected Form in the presence of Sum. Indeed, Kay had, when asked what she would have done if she had been handed pre-signed pages of an LPOA application, replied that she "would tear it up" and "make sure that the donor came before" her. Clearly, Kay knew that providing pre-signed pages could be construed as a suggestion for Sum to sign the documents without even meeting the Donor (see the DT Report at [61]–[63]).

31 The DT observed that Kay had told Sum that she had personally witnessed the Donor sign the Rejected Form. Yet, Kay did not clarify that although she had witnessed the Rejected Form, she did not witness the signatures on the replacement pages. This was peculiar given her disdain for pre-signed pages (see the DT Report at [67]–[70]).

32 The DT observed further that KSP had informed Kay that the potential certificate issuer "should contact the Donor before the year [*ie*, 2011] ended" as the Donor and she were going on a cruise. Given that KSP had handed the Form to Kay only on 27 December 2011, the fact that Kay had made no efforts to arrange for the Donor to meet Sum suggested that she had not contemplated any such face-to-face meeting (see the DT Report at [71]–[73]).

33 The DT buttressed its conclusions by taking into account (see the DT Report at [74]) a letter sent by Kay to the Chairman of the Law Society's Inquiry Committee on 5 February 2015 ("the 5 February 2015 Letter"), where Kay had stated the following:

> Further, I wish to stipulate as follows:
>
> …
>
> c) CM [Sum] never once asked to meet [the Donor] for purposes of verification in respect of the signatures;
>
> d) I would not have had any objections ***if CM wanted to indulge in a verification exercise***. In fact ***the verification exercise could have been done with a simple phone call*** to [the Donor];
>
> …
>
> g) Given the above, ***it was a simple request based on trust***, which request could have been rejected and supplemented with a verification exercise by CM. It must be noted that the assent to any request and the verification exercise were all exclusively within CM's sphere of control and I did not and could not feature in any way;
>
> [emphasis in original]

34 The DT concluded that Kay had asked Sum to sign the Form as certificate issuer without properly fulfilling his duties, which therefore constituted misconduct on her part. It reasoned as follows (see the DT Report at [75]–[77]):

> (a) Stipulation (d) (reproduced above at [33]) demonstrated that Kay did not envisage that there was any need for a face-to-face meeting between Sum and the Donor. Kay did not think that a verification exercise was actually necessary, and had simply asked Sum to trust her and just sign the Form; and
>
> (b) Stipulation (g) (also reproduced above at [33]) that Kay thought that "a simple phone call" would have been an adequate verification exercise was far from the case. To have performed his duties as certificate issuer, Sum would have had to at least have personally seen

the Donor sign the Form. A phone call would never have been sufficient.

35 The DT rejected an argument that the rule in *Browne v Dunn* (1893) 6 R 67 ("*Browne v Dunn*") prevented the Law Society from advancing arguments based on the 5 February 2015 Letter because the Law Society had not put its interpretation thereof to Kay. First, the 5 February 2015 Letter was written and signed by Kay; those were her words. Second, Kay had been brought to the 5 February 2015 Letter during cross-examination, and confirmed that it was her written explanation that she stood by. Kay also confirmed that the contents of the 5 February 2015 Letter were correct, and even clarified that the timeline therein referred to the number of days it took before Sum returned the Form to her. Third, it was open to Kay to clarify any part of the 5 February 2015 Letter in re-examination (see the DT Report at [79]–[84]).

36 The DT also rejected an argument that Kay's s 83(2)(*b*) charge was unsustainable because Kay had been acting purely in a personal capacity and had merely acceded to KSP's request to find a new certificate issuer. Although KSP and Kay were sisters, KSP had approached Kay to sign the Rejected Form because Kay was an advocate and solicitor, and thus possessed the qualification needed to be a certificate issuer. When the Donor's LPOA application was rejected, KSP returned to Kay and asked Kay to arrange for one of her colleagues to act as certificate issuer. Further, Kay had told Sum that she had explained the implications of the LPOA to the Donor and that she had witnessed the Donor's signature, and used these acts to persuade Sum to act as certificate issuer of the LPOA without seeing the Donor. Kay had thus been acting in a professional capacity *vis-à-vis* Sum, and had therefore been

under ethical and professional responsibilities to act fairly and honestly. At a minimum, Kay should have informed Sum that she had not witnessed the Donor's signature on the new Form (or what were, in her mind, "replacement pages"), which she expected Sum certify and witness. Hence, s 83(2)(*b*) applied. Significantly, Kay accepted that the fact that she was acting in her personal capacity would not excuse her if she had knowingly asked Sum to do something improper and that s 83(2)(*h*) would therefore apply in any event (see the DT Report at [86]–[90] and [92]).

The parties' submissions

Sum

37 In essence, Sum accepted that he was guilty of the charges proffered against him. He made submissions only in relation to mitigation of the sanction to be imposed on him. In this regard, he submitted that:

(a) there was no dishonesty or moral turpitude on his part;

(b) he had cooperated fully with the police and the legitimate family of the Donor in making the 3 June 2014 SD, which facilitated the revocation of the LPOA registered pursuant to the Form; and

(c) both his charges arose out of a single transaction.

Kay

38 Kay submitted she did not intend for Sum to sign as certificate issuer without meeting the Donor. She was concerned only with finding an alternative certificate issuer, and that Sum had misconstrued her intentions. The DT, she argued, had erred in finding that she was under a duty to arrange

a meeting between Sum and the Donor, because such an alleged duty was never pleaded by the Law Society. Further, the Law Society's allegation of a conspiracy between her and KSP to prevent Sum from meeting the Donor was neither pleaded nor put to her at the hearing before the DT, and the Law Society confirmed that a conspiracy between KSP and her to deceive the OPG was not part of its case. Moreover, there was nothing inherently improper in handing a pre-signed Form to Sum, because there were many innocuous reasons as to why a donor's signature may have been affixed on an LPOA application. Finally, she had not been dishonest in her dealings with Sum; she had simply not applied her mind in her interaction with Sum.

39 Kay added that she had acted in a personal capacity. She had simply performed a favour for KSP by finding an alternative certificate issuer. At best, she had been acting as a messenger. Moreover, the issue of whether she was acting in a professional capacity was not pleaded by the Law Society.

40 Kay argued that the rule in *Browne v Dunn* precluded the DT from relying on the 5 February 2015 Letter to find that she had an improper intention when she approached Sum. In cross-examination, she had been asked only to confirm the contents of the 5 February 2015 Letter, and was not asked about their meaning. Hence, she had no opportunity to explain what she had meant.

41 As for the question of penalty in the event that due cause for disciplinary action was established against her, Kay submitted that a fine or a suspension of not more than 2 years reflected her culpability, although a fine might not be appropriate because she was a bankrupt. She had acted purely out of goodwill and did not benefit from her actions. Further, she had never sought

to undermine the LPOA regime, and had discharged the Part E Requirements when she met the Donor, albeit in respect of the Rejected Form. Finally, the Donor had not suffered any monetary loss from her actions.

The law

42 An advocate and solicitor who falsely attests to witnessing the signature of a person on a document commits a disciplinary offence even if he is certain that the document was signed by that person (see Jeffery Pinsler SC, *Ethics and Professional Responsibility: A Code for the Advocate and Solicitor* (Academy Publishing, 2007) ("*Ethics and Professional Responsibility*") at para 04-067).

43 Further, an advocate and solicitor who falsely attests to having personally witnessed the execution of a consent document cannot exculpate himself by relying on a third-party to discharge the duties attendant on his position with regard to the execution of the consent document. In the decision of this court in *Law Society of Singapore v Ahmad Khalis bin Abdul Ghani* [2006] 4 SLR(R) 308 ("*Ahmad Khalis*"), the respondent was charged with, *inter alia*, falsely declaring and acknowledging in the attestation clause of a document titled "Consent for an Order that Sureties Be Dispensed With" that the signatories did personally appear before him and voluntarily executed the consent document. He claimed that he had told his then-clerk to explain the consent document to the signatories. However, the Court held (at [31]–[32]) that the fact that the respondent had delegated his responsibility did not negate the charge against him, and that his improper conduct "was not merely technical in nature".

44 More specifically, an advocate and solicitor, in attending to the execution of a power of attorney, performs more than a mere ministerial role of "perfunctor[ily] preparing the power of attorney and witnessing its execution". He must "tak[e] reasonable care to advise and ensure that his clients understand the implications of their actions" (see the decision of this court in *Law Society of Singapore v K Jayakumar Naidu* [2012] 4 SLR 1232 at [71]). These concerns must apply *a fortiori* for an LPOA which, unlike a power of attorney that generally deals with financial matters, may enable the donee to make decisions that affect the very life of the donor himself or herself.

45 Indeed, an advocate and solicitor who certifies an LPOA application is an important safeguard against the abuse of the LPOA regime. He works alongside the OPG, which exercises registry and investigative functions, to uphold the LPOA framework under the MCA and the MCR. Indeed, given that the certificate issuer ascertains a donor's understanding of the implications of his LPOA, and may be the sole individual who is truly independent from the donor in an LPOA application, he is probably the primary bulwark against abuse of the LPOA regime. Indeed, during the Second Reading of the Mental Capacity (Amendment) Bill, Mr Tan Chuan-Jin, the Minister for Social and Family Development, observed as follows (see *Singapore Parliamentary Debates, Official Report* (14 March 2016) vol 94):

> OPG typically does not question the donor's choice of donee – whether the donee is a family member, as in most cases, or a professional – because the donor is deemed to have mental capacity. The donor must also get a certificate issuer to certify that the donor understands the purpose of the LPA and the scope of the authority conferred on donees in the LPA, and that no fraud or undue pressure was used to induce the donor to make the LPA.

Our decision

Sum

46 As we have noted (above at [37]), Sum accepted that due cause for disciplinary action had been established against him. Nevertheless, we set out briefly our findings on the two charges and the two alternative charges against him.

47 It was undisputed that Sum had certified the Form and signed as witness to the signature of the Donor falsely. Given his experience as an advocate and solicitor, commissioner for oaths, and certificate issuer of two previous LPOAs, Sum must have known that he was in no position to issue the Form. He had not even met the Donor and had therefore not fulfilled the Part E Requirements.

48 Further, Sum was not entitled to rely on any assurances by Kay and/or KSP that the Part E Requirements had been fulfilled in respect of the Donor. His duties as certificate issuer were not delegable (see above at [43]).

49 Sum described his actions as a "blemish" on his record as a practicing solicitor. He accepted also that "a reprimand is in order and justified." Further, his submission that he acceded to Kay's request to sign the Form "not without any reservation", and that he had eventually "succumbed" because of Kay's persistent persuasion, demonstrated that he had knowingly signed a false certification and consciously stated falsely that he had witnessed the Donor's signature.

50 We thus found that the two charges, and in any event, the alternative charges brought against Sum, had been established beyond a reasonable doubt.

51 On the question of sanction, Sum submitted that the court ought − if it was minded to impose a period of suspension from practice − impose a period of suspension lower than that meted out in *Ahmad Khalis* (*viz*, a suspension from practice of two years).

52 In our view, there were indeed mitigating factors as set out above by Sum (who had hitherto an unblemished record during a relatively lengthy period of practice (see also DT Report at [49])). His general remorse as exemplified by the actions he took subsequently (and which culminated in the revocation of the LPOA) was consistent with what he stated was his desire to assist Kay as a fellow professional based on the representations and assurances that Kay had given to him. However, we could not ignore the fact that, notwithstanding these specific (and positive) factors that were personal to Sum, there was nevertheless an overriding ***public*** interest that had been adversely affected. In the words of the DT, Sum had, by his actions, "[undermined] the integrity of the process for creating lasting powers of attorney where certificate issuers are intended to act as independent safeguards against possible abuse" (see the DT Report at [48] as well as above at [24]).

53 In the circumstances, we were of the view that a suspension from practice for one year was an appropriate sanction. Were it not for the mitigating factors that operated in favour of Sum, the sanction would have been much more severe.

Kay

54 We agreed for the reasons given by the DT that the rule in *Browne v Dunn* did not prevent the Law Society from advancing arguments based on the 5 February 2015 Letter (see above at [35]).

55 As for whether due cause for disciplinary action existed against Kay, we noted that in contrast to Sum, Kay mounted a concerted attack against the finding of the DT that cause of sufficient gravity for disciplinary action had been disclosed against her.

56 We also observed that the essence of Kay's case entailed placing the blame wholly upon Sum. In this regard, it is of the first importance to note that the DT had heard the testimony of both Sum and Kay and had rejected Kay's purported explanation of the events that led to Sum's signing of the Form.

57 To recapitulate, Kay's argument was that she had merely passed the Form to Sum. She had no knowledge of its contents because she had perused it only cursorily. She had believed that what she had passed Sum in an envelope ("the Envelope") was the *original* Rejected Form *together with two replacement pages*. This was *instead of* the *new* Form that she had in fact passed to Sum, and on which *her sister* (*ie*, KSP) had in fact *signed the Donor's signature and the Donees had appended their signatures*, so that all that was absent from the document was the signature of the certificate issuer. The nub of her defence to the charges proffered against her was that she had merely passed the aforementioned document to Sum, whom she assumed would then obtain the necessary verification that was required. In response to the Law Society's argument that Kay had never arranged − or offered to arrange − for Sum to meet the Donor even though she was the only point of contact between Sum and the Donor, Kay argued that the Donor's contact details were in the Form.

58 We were unable to accept Kay's argument. As we have already noted, her defence was diametrically opposed to Sum's account and the DT's

findings. The DT, having seen and heard the testimony of both Sum and Kay, preferred Sum's version and rejected Kay's version. This is the more general – as well as fundamental – point.

59 More specifically, the DT also found as follows (see DT Report at [52]−[65]), which findings are worth setting out in full:

> 52 What is not in dispute however is that the 2nd Respondent [Kay] had approached the 1st Respondent [Sum] to ask him to act as the certificate issuer for the Donor's lasting power of attorney. When she made this request, she had handed him an envelope containing some documents. The envelope actually contained the Form on which KSP [the 2nd Respondent's sister and the Donor's partner] had signed the Donor's signature. The donees had also signed the Form and the witnesses to the donees' signatures had also affixed their signatures to the Form.
>
> 53 In other words, the Form had ostensibly been completed and bore all the signatures it needed, save for the certificate issuer's signature on two pages. This was what the 1st Respondent received from the 2nd Respondent.
>
> 54 However, the 2nd Respondent's evidence is that she was mistaken about what was in the envelope. Her evidence was that she thought the envelope contained the Rejected Form with two replacement pages.
>
> 55 There was some variation in her position on what those two replacement pages were. At paragraph 4(b) of her Defence, she pleaded that she believed she had given the 1st Respondent the Rejected Form, "save for Part E which contained the space for the certificate issuer to sign."
>
> 56 Part E consists of 2 pages. A donor has to sign on both pages. The certificate issuer has to sign only on the second page.
>
> 57 It thus appeared from the 2nd Respondent's Defence that the envelope did not contain a replacement page for Part D where the certificate issuer had to sign as a witness to the Donor's signature.
>
> 58 This position seemed to be confirmed by her Affidavit of Evidence-in-Chief ("AEIC"). At paragraph 13 of her AEIC, the 2nd Respondent stated:

> "I believed that these forms were the same ones as the ones that I had witnessed, save that Part E, where I had signed as certificate issuer, had been replaced. I did not think that my signature at Part D was also problematic or that anyone but the Donor would have re-signed the relevant pages."

59 However, when she was questioned at the hearing, her evidence was different. She said that the two replacement pages were actually the two pages that required the certificate issuer's signature, one from Part D and the other from Part E of the form.

60 In any event, the 2nd Respondent's evidence at the hearing was that the two replacement pages, both of which still required a certificate issuer's signature, already bore the signature of the Donor when she handed the envelope to the 1st Respondent. She testified that she had looked briefly at the documents and had seen that the two replacement pages had the Donor's signature on them.

61 There is thus no doubt that the 2nd Respondent believed that she was giving pre-signed replacement pages to the 1st Respondent. This appeared to us to be consistent with the 2nd Respondent asking the 1st Respondent to sign the Form without personally witnessing the Donor signing the Form nor meeting with the Donor to satisfy himself of the matters which the 1st Respondent would have to certify.

62 It seemed strange to us that the 2nd Respondent would hand the 1st Respondent these pre-signed pages if she actually expected the 1st Respondent to meet with the Donor and personally witness the Donor signing on the Form. Such pre-signed pages would be otiose if she had intended the Donor to sign such pages in the 1st Respondent's presence. So if that was her thinking, there was no reason to hand the 1st Respondent these replacement pages.

63 Moreover, when the 2nd Respondent was asked what she would have done if she had been in the 1st Respondent's position and the 1st Respondent had taken two pre-signed replacement pages to her, she said that she "would tear it up" and "make sure that the donor came before [her]". This seemed to us to be a clear recognition by the 2nd Respondent that the provision of pre-signed pages could effectively be a suggestion to sign the documents without even having met the donor.

64 It is incongruous to think that on the one hand, the 2nd Respondent thought so poorly of being given pre-signed

> pages that she would tear them up and yet, on the other hand, she would think it innocent to hand the 1st Respondent such pre-signed pages. The logical conclusion, it appeared to us, was that the 2nd Respondent had handed the pre-signed pages to the 1st Respondent because she was asking him to sign them as a certificate issuer without meeting the Donor.
>
> 65 The 2nd Respondent had either given the pre-signed pages to the 1st Respondent because she was asking him to certify without meeting the Donor, or she had handed the pre-signed pages to the 1st Respondent without thinking that it was suggestive of any such thing. Considering that the 2nd Respondent expressed such disdain towards the provision of pre-signed pages to a lawyer to certify, it is difficult to imagine that she did so unthinkingly.
>
> [emphasis added]

60 We agree with the DT's analysis and append a few observations of our own. Kay had been a practising lawyer of considerable seniority and experience as well as a Commissioner for Oaths and a Notary Public since 2006, and the evidence demonstrated that she had known the relevant legal requirements of a certificate issuer and witness of an LPOA. She had, after all, served as certificate issuer and witness for the Rejected Form (which was rejected only because of her relationship with KSP, a Donee), and there was no suggestion that the Rejected Form was in any other way defective. Although she claimed before the DT to have lacked such knowledge at the time when she handed Sum the (new) Form, this claim was swiftly debunked after the Law Society pointed out that she had insisted that the Donor sign the (original) Rejected Form.

61 Looked at in this light, it is difficult to believe that Kay would have simply left everything in the hands of Sum to do as he wished – particularly since she was assisting her sister (*ie*, KSP) to complete what she knew to be an important document. Indeed, it was also Sum's evidence that Kay had told him that *the Donor* had "idiosyncrasies and would definitely refuse" to appear

before Sum to execute the Form. Although Kay has argued that no weight should be placed on this evidence because Sum could have learnt of the Donor's idiosyncrasies other than from her, her argument is unpersuasive. Indeed, the Donor's idiosyncrasies were confirmed by her sister, who testified that the Donor had become agitated when he was asked by Kay to sign the original Form (that had been rejected) personally, and would likely become agitated if he were asked to meet Sum to sign the Form. Crucially, in our view, Kay did not disagree with her sister's description of the Donor. Under these circumstances, it is *a fortiori* the case that Kay would *not* (*contrary to* what she had claimed) have – without more − simply left everything in the hands of Sum.

62 In so far as the actual document Kay had in fact passed Sum is concerned, even if we take Kay's case at its highest, this would mean that she had passed Sum the (original) Rejected Form together with two replacement pages (the latter of which was intended to be signed by Sum, the certificate issuer). We agree with and echo the observations of the DT that Kay's acts of handing Sum the pre-signed Form and informing Sum about her certification and witnessing of the Rejected Form would have been otiose if she had truly intended that Sum would properly discharge his duties as certificate issuer and as witness to the signature of the donor of the LPOA (see the DT Report at [62]; also reproduced above at [59]).

63 As we have observed (above at [60]), Kay clearly knew the duties that Sum was obliged to discharge as certificate issuer, which included Sum having to not only ***personally explain*** the legal effect of the LPOA to the Donor but also to ***personally witness the Donor's signature on the relevant parts of the Form***. In this light, the ***pre-signed Form*** (or, on Kay's case, the Rejected

Form which was *also pre-signed*) ***would have been <u>of no use whatsoever</u>***. Indeed, the illogicality of such an action was acknowledged by Kay herself – she stated that had she been in Sum's shoes and received *pre-signed* pages, she would have ***rejected*** it, ***"tear it up"***, and ***"make sure that the donor came before me"***. The DT pertinently observed that it was "incongruous to think that on the one hand", Kay herself had "thought so poorly of being given pre-signed pages that she would tear them up" had she been in the shoes of Sum and "yet, on the other hand, she would think it innocent to hand [Sum] such pre-signed pages" (see the DT Report at [64]; also reproduced above at [59]). Not surprisingly, the DT proceeded to state that "[t]he logical conclusion, it appeared to us, was that [Kay] had handed the pre-signed pages to [Sum] because she was asking him to sign them as a certificate issuer ***without meeting the Donor***" [*ibid*; emphasis added]. We agree with the DT.

64 Indeed, it appeared to us that Kay ***knew*** that what she had handed to Sum was a ***completely new Form***, rather than the Rejected Form with two replacement pages. We shall elaborate on this point.

65 On her own admission, Kay had looked at the contents of the Envelope, at least briefly, before handing them to Sum. As Kay deposed in her Affidavit to Show Cause at the hearing before us, the Envelope contained not the original Rejected Form with two replacement pages but "a brand new set of forms (which became the [Form])". Optically, the Form and the Rejected Form, as exhibited in Kay's AEIC, are very different. Even a brief perusal of the format of the Form would have revealed that it was not the Rejected Form for the following reasons:

(a) first, the Form comprised a document titled "Lasting Power of Attorney: OPG Form 1" while the Rejected Form comprised documents titled "Application to Register an Instrument as a Lasting Power of Attorney: OPG Form A1" and "Lasting Power of Attorney: OPG Form 1";

(b) second, the Form and the Rejected Form had starkly different cover pages; and

(c) third, the name of the Donor was spelt "Ng Kong Yeam @ Woo Kwang Yean" on the Form but "Ng Kong Yeam" on the Rejected Form.

66 Substantively too, the Form and the Rejected Form provided different instructions from the Donor on at least two different matters:

(a) whether any person was to be notified of the LPOA application comprised in the Form; and

(b) whether the power conferred on the Donees included the authority to consent to the carrying out or continuation of healthcare treatment for the Donor.

67 Moreover, even on Kay's own case, her representation to Sum that she had witnessed the signing of the Form by the Donor was untrue. Kay conceded that she had not witnessed the execution of the two replacement pages. Further, KSP (who was a Donee) testified that she had not passed Kay the (original) Rejected Form with the two replacement pages, but the (new) Form. Indeed, KSP *repeatedly* confirmed in cross-examination that she had expressly told Kay that the Form comprised a completely new set of documents.

68 We were also of the view that Kay had acted ***in a professional capacity*** when she asked Sum to certify and witness the Donor's LPOA application. Kay had no reason to approach Sum in a personal capacity because there had never been any personal or social relationship between them. As she deposed in her AEIC:

> Prior to joining Hin Tat, I did not know SCM [Sum] personally. In all the time when I was at Hin Tat, I cannot recall ever socialising with SCM.

69 Kay was not a mere "messenger" as she submitted. She had used her certification and witnessing of the original Rejected Form to persuade Sum to certify the Form. Kay could have performed such certification and witnessing only *qua* advocate and solicitor because she was not a prescribed medical practitioner under Regulation 7(1) of the MCR.

70 In any event, Kay accepted that the fact that she had acted in her personal capacity would not exonerate her had she asked Sum to do something improper (see also above at [36]).

71 In summary, Kay's case was ***riddled with illogicality, and it was not the least surprising that the DT, having heard both Sum and Kay, preferred the testimony of Sum over that of Kay.*** At this juncture, we should pause to observe that the DT had – in addition to the logic of its relevant analysis – the advantage of assessing both Sum and Kay as they gave their respective testimony. In the circumstances, it was clear that the charges laid against Kay had been established beyond a reasonable doubt.

72 Turning to the issue of ***sanction***, it was clear that Kay had not only denied any liability whatsoever but also sought to pin all the blame on Sum in

a desperate attempt to exonerate herself. She mounted a root-and-branch attack against the charges laid against her both before the DT as well as before us. There was not a modicum of remorse demonstrated throughout both these sets of proceedings. In addition, like those of Sum, her actions had undermined the integrity of the process of creating LPOAs.

73 In *The Law Society of Singapore v Low Seow Juan* [1996] SGDSC 4 ("*Low Seow Juan*"), the respondent "persuaded his colleagues … to attest their signatures to these documents by misrepresenting to them that the signatures were that of his wife thereby intending the same to be acted upon by his colleagues and/or others". However, the Disciplinary Committee also noted that the respondent "unreservedly admitted the facts", "deeply regret[ted] what he had done", and "voluntarily ceased to practice law since the commencement of disciplinary proceedings against him". Accordingly, a two-year suspension appears to have been imposed, although there is no report of the show cause proceedings before the High Court (see *Ethics and Professional Responsibility* at para 04-067).

74 In contrast, Kay had at no point expressed remorse for her actions. Even in the section on "mitigating factors" in her submissions on sentencing, she continued to assert that "Sum's breach of duty was due to his misinterpretation of [her] conduct". As an advocate and solicitor of over 30 years' standing, as compared with the 10 years' standing of the respondent in *Low Seow Juan*, Kay is a senior member of the Bar whose deliberate and knowing misconduct cast a pall over the integrity and honour of the profession. In the circumstances, we were of the view that a substantial suspension of 30 months from practice was an appropriate sanction and we so ordered.

Costs

75 We also awarded the costs of these proceedings to the Law Society.

Chao Hick Tin Judge of Appeal	Andrew Phang Boon Leong Judge of Appeal	Judith Prakash Judge of Appeal

Edric Pan XingZheng, Chu Hua Yi and Nerissa Tan Yin Shi (Dentons Rodyk & Davidson LLP) for the applicant;
Lim Kia Tong (Hin Tat Augustine & Partners) for the first respondent;
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