

Law Society of Singapore v Subbiah Pillai
[2004] SGHC 75

Case Number : OS 27/2004
Decision Date : 15 April 2004
Tribunal/Court : High Court
Coram : Chao Hick Tin JA; Tan Lee Meng J; Yong Pung How CJ
Counsel Name(s) : R Chandra Mohan and Christina Goh (Rajah and Tann) for applicant; Sarjit Singh Gill SC and Chua Sui Tong (Shook Lin and Bok) for respondent
Parties : Law Society of Singapore — Subbiah Pillai

Legal Profession – Conflict of interest – Solicitor acting for both parties in conveyancing transaction – Solicitor's sister party to transaction – Whether complainants' knowledge satisfied rule of informed consent – Whether involvement of sister's interests in transaction worsened conflict of interests situation – Rules 25, 26, 27, 28 Legal Profession (Professional Conduct) Rules (Cap 161, R 1, 2000 Rev Ed)

Legal Profession – Conflict of interest – Solicitor acting for both parties in conveyancing transaction – Whether absence of elements of self-dealing and undue influence in transaction a mitigating factor – Whether early plea of guilt a mitigating factor

Legal Profession – Show cause action – Conduct unbefitting an advocate and solicitor – Appropriate penalty – Sections 83(1), 83(2)(h) Legal Profession Act (Cap 161, 2001 Rev Ed)

15 April 2004

Yong Pung How CJ (delivering the judgment of the court):

1 This was an application by the Law Society of Singapore (the “Law Society”) under s 98(5) of the Legal Profession Act (Cap 161, 2001 Rev Ed) (“LPA”) to make absolute an order to show cause. We granted the application and ordered the respondent, Subbiah Pillai, to be suspended for a period of three years. We now give our reasons.

The facts

2 The proceedings before us stemmed from a series of three sale and purchase transactions involving Nos 19 and 21 Upper Dickson Road (“the property”). We should clarify at the outset that although the Law Society originally brought nine charges against the respondent, it eventually proceeded with only two of these charges – the amended alternative first and fourth charges. The respondent admitted culpability to these two charges based on an agreed statement of facts (“the Agreed Statement”). Hence, we only considered the amended alternative first and fourth charges in the proceedings before us. Further, as a significant portion of the facts surrounding the three sale and purchase transactions was hotly disputed by the complainants and respondent, we only had regard to the circumstances giving rise to the amended alternative first and fourth charges as well as to the facts in the Agreed Statement in reaching our decision.

3 We now set out the facts relevant to our decision.

Circumstances leading up to the first charge

4 The respondent was an advocate and solicitor of 18 years’ standing. He was a partner of the firm M/s Yong Koh & Pillai between 1987 and December 1995, before setting up as partner in the firm of M/s Pillai and Pillai. The complainants were a couple, Saminathan Shanmuganathan (“the first

complainant”) and his common law wife. Samynathan Chainthiran (“Chainthiran”) is the brother of the first complainant.

5 The complainants purchased the property around 5 May 1994, intending to use it for their restaurant business. The respondent’s firm at the time, M/s Yong Koh & Pillai, acted for the complainants. To finance the purchase, the complainants mortgaged the property to obtain a housing loan for the sum of \$2,100,000 from the Industrial and Commercial Bank (“ICB”). They also took out a further loan from ICB to finance the renovation of the property.

6 As it turned out, the complainants were unable to commence their restaurant business because they failed to obtain the Temporary Occupation Permit and Certificate of Statutory Completion from the relevant authorities. Consequently, they fell behind on their loan repayments to ICB, which commenced two separate suits against them in July 1995 for repayment of the outstanding loans.

The first charge

7 In or around July 1995, the respondent’s sister, Vasanthi Pillai (“Vasanthi”), agreed to purchase the property from the complainants at a price of \$4,500,000. The respondent acted for both the complainants and Vasanthi in the transaction. A sale and purchase agreement (“the Second Agreement”) incorporating the Singapore Law Society’s Conditions of Sale 1994 was drawn up by the staff of M/s Yong Koh & Pillai on the basis of information supplied by the respondent, who was still a partner of the firm at that time. Vasanthi applied for and obtained a loan of \$3,600,000 from Overseas Union Trust (“OUT”) to finance her purchase of the property. The respondent acted as guarantor for the loan.

8 In the course of this transaction, the respondent never advised the complainants that there was a conflict of interest in his acting for them as well as for his sister Vasanthi in the matter. He failed to advise the complainants to seek independent legal advice or to ensure that they had reasonable opportunity to do so. He admitted that this was misconduct within s 83(2)(h) of the LPA and pleaded guilty to the amended alternative first charge framed against him by the Law Society, which read:

That you, Subbiah Pillai, are guilty of misconduct within the meaning of Section 83(2)(h) of the Legal Profession Act (Cap 161) IN THAT you, between 19 July 1995 to 1 September 1995 (both dates inclusive) whilst acting as solicitor for your sister, Vasanthi Pillai, in the purchase of the property known as 19 and 21 Upper Dickson Road Singapore, acted as solicitor for the vendors of the said property, Saminathan Shanmuganathan and Madam S Sudhendra in the same transaction, and thus allowed a conflict of interest to arise, without first advising the vendors of the same and/or advising that they should seek independent legal advice, and/or ensuring that they had a reasonable opportunity to do so.

The fourth charge

9 On or about 1 July 1996, the complainants entered into another agreement to re-purchase the property from Vasanthi for \$4,500,000. Again, the respondent acted for both the complainants and Vasanthi to prepare a sale and purchase agreement dated 1 July 1996. The agreement was not completed and the property was not re-purchased by the complainants.

10 Later in July, the first complainant informed the respondent that he had persuaded his brother, Chainthiran, to purchase the property on behalf of both complainants. Vasanthi and

Chainthiran subsequently executed four sale and purchase agreements on four different dates in August 1996 and September 1996. All four agreements were for the sum of \$4,850,000, were stated to be subject to the Law Society's Conditions of Sale 1994 and save for the different dates, contained identical terms and conditions. They were all prepared by the respondent who acted for both Vasanthi and Chainthiran. We will refer to these four agreements collectively as "the Third Agreement".

11 Although there were certain conditions in the Third Agreement which were not favourable to the purchaser (Chainthiran), the respondent failed to give him the necessary advice. For example, although Condition 4 of the Third Agreement provided that the property was to be sold with vacant possession, there was actually an existing tenancy agreement in force between Vasanthi and one "Pradeep Kummar" in respect of the property. Chainthiran was not apprised of this agreement, nor told that he would not be obtaining vacant possession of the property. Pradeep Kummar subsequently commenced proceedings against Vasanthi and Chainthiran in District Court Suit No 3675 of 1997.

12 Another condition which was unfavourable to the purchaser was Condition 7. Condition 7(a) of the Third Agreement stated that sale of the property was subject to two caveats and Condition 7(b) provided that Chainthiran was deemed to have purchased the property with knowledge of these two caveats and should not be deemed to raise any objections or queries on the title or otherwise in respect thereof, nor should the same operate as a ground for Chainthiran to delay completion of the sale and purchase. Again, the respondent failed to advise Chainthiran or the complainants about the consequences or effect of these conditions. Acknowledging his misconduct, the respondent pleaded guilty to the amended alternative fourth charge, formulated as follows:

That you, Subbiah Pillai, are guilty of misconduct within the meaning of Section 83(2)(h) of the Legal Profession Act (Cap 161) IN THAT you, between the period 6 August 1996 to 6 December 1996 (both dates inclusive) whilst acting as solicitor for your sister, Vasanthi Pillai, in the sale of the property known as 19 and 21 Upper Dickson Road Singapore, acted as solicitor for the purchaser of the said property, Samynathan Chainthiran in the same transaction, and thus allowed a conflict of interest to arise, without first advising the purchaser of the same, and/or advising that he should seek independent legal advice, and/or ensuring that he had a reasonable opportunity to do so.

The Disciplinary Committee's findings

13 The Disciplinary Committee ("DC") found that the respondent's conflict of duties and conduct in the transactions were of a nature serious enough to warrant disciplinary action under s 93(1)(c) of the LPA. In reaching this conclusion, the DC noted that this was not a simple conflict of duties situation. Rather, the DC considered at para 38 of its report that there were "unusual" features to the various transactions. We now summarise some of these unusual features:

- (a) This was not one transaction but a series of transactions involving the sale and buy-back of the property involving the first complainant, the second complainant, the first complainant's brother Chainthiran, and Vasanthi.
- (b) Vasanthi was the sister of the respondent. No doubt the first complainant knew this, but the family relationship made the conflict of duties more acute.
- (c) The respondent was the guarantor for the OUT loan to Vasanthi for the purchase of the property. If the respondent was unable to get the first complainant or his nominee to repurchase the property, the respondent would have had to pay on the guarantee, as by July 1996 or earlier,

the bank loan to Vasanthi was in default. Both the respondent and Vasanthi could have faced legal proceedings unless they found the financial means to repay the defaulted loan or find a buyer.

(d) The respondent claimed in paras 15 and 32 of his defence that the first complainant had verbally agreed for the sale to Vasanthi to be coupled with a buy-back on certain terms. As those terms were not met, the complainants signed the third sale and purchase agreement to repurchase the property from Vasanthi for \$4.5m. There were unusual features to this agreement:

(i) The series of transactions showed that Vasanthi was buying the property and doing a sale back at transaction prices which were geared to make it possible to obtain higher loans from banks.

(ii) The purchase and sale back by Vasanthi showed that she had no commercial intention to own the property, and she was part of the series of transactions to facilitate the complainants being able to hold on to the property and to obtain financing.

(iii) Since the first complainant was in no financial position to repurchase the property, he arranged for his brother Chainthiran to purchase the property from Vasanthi. This sale was also geared to make it possible for the first complainant to hold on to the property and obtain financing notwithstanding his financial problems.

(iv) The respondent failed to document his verbal agreement with the first complainant properly. In acting for both buyer and seller in the sale and purchase transactions, the respondent was not able to discharge his duties in a professional manner, which was conduct unbecoming of a solicitor.

(e) The mess that the respondent found himself in with regard to the allegations by the complainants was to a large extent caused by his own failure to document the transactions properly and to give a final complete accounting. The fact that the respondent had helped to expedite matters by pleading liability to the first and fourth charges and also agreeing to costs did not make it untenable for the DC to make a decision under s 93(1)(c) of the LPA.

14 In the DC's opinion, having regard to the penalty imposed in *Law Society of Singapore v Ganesan Krishnan* [2003] 2 SLR 251, the respondent ought to be at least censured, and a reprimand or fine would be inadequate.

The application

Conflict of interests – the law

15 There is no absolute bar on a solicitor acting for both parties to the same transaction. Nevertheless, the courts have often warned of the risks involved where a solicitor acts for both parties in a conveyancing transaction. In *Moody v Cox and Hatt* [1917] 2 Ch 71 at 81, Lord Cozens-Hardy MR said:

A solicitor may have a duty on one side and a duty on the other, namely, a duty to his client as solicitor on the one side and a duty to his beneficiaries on the other; ... The answer is that if a solicitor involves himself in that dilemma it is his own fault. He ought before putting himself in that position to inform the client of his conflicting duties, and either obtain from that client an

agreement that he should not perform his full duties of disclosure or say – which would be much better – “I cannot accept this business.”

16 As the law stands, therefore, the solicitor who is accepting instructions to act for more than one party in a conveyancing transaction must warn each party of the potential conflict of interests and of his duty should such a conflict arise. He may then act if he obtains the informed consent of all parties to his acting. As defined by the Privy Council in *Clark Boyce v Mouat* [1994] 1 AC 428 at 435, informed consent is:

... consent given in the knowledge that there is a conflict between the parties and that as a result the solicitor may be disabled from disclosing to each party the full knowledge which he possesses as to the transaction or may be disabled from giving advice to one party which conflicts with the interests of the other.

17 These principles have since been encapsulated in rr 25 to 28 of the Legal Profession (Professional Conduct) Rules (Cap 161, R 1, 2000 Rev Ed). Bearing these principles in mind, we turned to the question of the appropriate order to be made.

Issues before the court

18 The respondent accepted full culpability for his actions but sought to persuade this court that his conduct did not warrant suspension or striking out. He raised several points for our consideration.

19 First, the respondent argued that he did not bring any undue influence or pressure to bear on either of the complainants or Chainthiran to enter into the transactions or agree to the dual representation. He further highlighted the fact that there was no element of self-dealing in the transaction. We considered these factors to be irrelevant to the charges preferred against the respondent since their presence or absence did not change the fact that he had placed himself in situations where his duties to both parties were in conflict.

20 The respondent then canvassed the argument that the complainants had known all along that Vasanthi was his sister and further, that the respondent’s duty to advance the complainants’ interests was never affected by Vasanthi’s interests. We were not convinced by this. Even if the complainants knew that Vasanthi was the respondent’s sister, the onus was still on the respondent to point out any potential conflicts which might arise and to advise them to obtain independent legal advice. He failed signally in his duty to do so. In addition, there was evidence before us that Vasanthi was unable to pay back the OUT loan and would have been faced with legal proceedings had the complainants not agreed to buy back the property from her. In fact, the respondent’s interests would also have been involved since he had acted as guarantor for the loan and would similarly have been faced with legal proceedings if Vasanthi defaulted on the loan. Contrary to the respondent’s submissions, we were of the opinion that the involvement of Vasanthi’s interests in the transaction exacerbated the conflict of interests situation.

21 The respondent also stressed his early plea of guilt on the first day of the hearing before the DC as a mitigating factor. We held in *Law Society of Singapore v Tham Yu Xian Rick* [1999] 4 SLR 168 that considerations which usually weigh in mitigation of punishment have less effect on the exercise of the disciplinary jurisdiction than on sentences imposed in criminal cases, since show cause proceedings are primarily civil and not punitive in nature. The purpose of these show cause proceedings was to ascertain whether the respondent was still fit to be held out as a solicitor by this court. Moreover, whilst the respondent had pleaded guilty at the first available opportunity, this was

undermined by his attempts to qualify his guilt at several points during proceedings before the DC. For instance, the respondent repeatedly cast aspersions on the complainants' credibility and also sought to limit his involvement in the Second Agreement by implicating another of the partners of M/s Yong Koh & Pillai. As such, we were of the opinion that any weight placed on the respondent's plea of guilt should be minimal.

The appropriate penalty

22 Having disposed of these issues, the question before us at this stage was to what extent the respondent had conducted himself in a manner "as would render him unfit to remain as a member of an honourable profession": *In re Weare* [1893] 2 QB 439; *Law Society of Singapore v Arjan Chotrani Bisham* [2001] 1 SLR 684 and *Ganesan Krishnan* ([14] *supra*).

23 To this end, we bore in mind that the rationale for disciplinary sentencing, as set out by Sir Thomas Bingham MR in *Bolton v Law Society* [1994] 1 WLR 512 and adopted by this court in *Law Society of Singapore v Ravindra Samuel* [1999] 1 SLR 696 and *Law Society of Singapore v Wong Sin Yee* [2003] 3 SLR 209, is:

- (a) punishment of the errant solicitor for his misconduct;
- (b) deterrence against similar defaults by other like-minded solicitors in the future; and
- (c) protection of public confidence in the administration of justice.

24 We also reminded ourselves of another portion of the judgment in *Bolton v Law Society* (at 518) which has been approved by this court in *Arjan Chotrani Bisham* and *Ganesan Krishnan*. It reads:

Any solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon him by the Solicitors Disciplinary Tribunal. Lapses from the required high standard may, of course, take different forms and be of varying degrees. The most serious involves proven dishonesty, whether or not leading to criminal proceedings and criminal penalties. In such cases the tribunal has almost invariably, no matter how strong the mitigation advanced for the solicitor, ordered that he be struck off the Roll of Solicitors. ... If a solicitor is not shown to have acted dishonestly, but is shown to have fallen below the required standards of integrity, probity and trustworthiness, his lapse is less serious but it remains very serious indeed in a member of a profession whose reputation depends upon trust. A striking off order will not necessarily follow in such a case, but it may well. The decision whether to strike off or to suspend will often involve a fine and difficult exercise of judgment, to be made by the tribunal as an informed and expert body on all the facts of the case. Only in a very unusual and venial case of this kind would the tribunal be likely to regard as appropriate any order less severe than one of suspension.

25 This statement was approved in the case of *Law Society of Singapore v Lim Kiap Khee* [2001] 3 SLR 616, where the court went on to observe at [26] that:

Ordinarily, where the misconduct does not involve fraud or intention to deceive, striking off would not be imposed. But this is not an absolute rule. Ultimately, it is the gravity of the misconduct, or where there is more than one act of misconduct, the totality of them all which will be determinative. Equally relevant here is the presence of antecedents.

26 Although the facts surrounding the Third Agreement were somewhat murky, no allegations of

dishonesty were made out against the respondent. It was not disputed that the complainants were aware of the relationship between the respondent and his sister Vasanthi from the start. Similarly, the DC did not find that the respondent's behaviour had fallen below the required standards of integrity, probity and trustworthiness, and there was no evidence before us to indicate otherwise. In our judgment, striking the respondent off the rolls was not in order, but a period of suspension was appropriate.

27 In coming to our decision as to an appropriate period of suspension, we considered the following factors. First, Chainthiran had indubitably suffered prejudice from the respondent's failure to advise him fully as to the purport and effect of Conditions 4 and 7 of the Third Agreement. Second, the respondent had failed to adhere to elementary principles of professional conduct by his failure to advise the complainants of the conflict of interests and of the need to obtain independent legal advice. We also noted the DC's finding that there were "unusual" aspects to this case, and that this was no "simple" conflict of duties situation because of the familial relationship between the respondent and Vasanthi. The respondent not only placed himself in a position where he had conflicting duties to both parties in the transaction, but also in a situation where his loyalties must surely have been inclined towards one party, Vasanthi. He then worsened this by failing to document the oral agreements reached between the parties and by failing to keep proper accounts.

28 In the premises, we deemed it fit to make the show cause order absolute and to suspend the respondent from practice for three years.

Order accordingly.