**IN THE COURT OF THREE JUDGES OF THE REPUBLIC OF SINGAPORE**

**[2019] SGHC 115**

Originating Summons No 13 of 2018

Between

Law Society of Singapore

… *Applicant*

And

Yeo Siew Chye Troy

… *Respondent*

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# *EX TEMPORE* JUDGMENT

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[Legal Profession] — [Disciplinary Proceedings]

# Law Society of Singapore
# v
# Yeo Siew Chye Troy

## [2019] SGHC 115

Court of Three Judges — Originating Summons No 13 of 2018
Sundaresh Menon CJ, Andrew Phang Boon Leong JA and Woo Bih Li J
29 April 2019

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**Sundaresh Menon CJ (delivering the judgment of the court *ex tempore*):**

**Background**

1 Yeo Siew Chye Troy ("the respondent") was admitted as an advocate and solicitor of the Supreme Court of Singapore on 9 February 1983. At the time of the proceedings before the Disciplinary Tribunal ("DT") that was appointed to hear and investigate the complaints against him, he was an advocate and solicitor of the Supreme Court of around 35 years' standing. From 5 April 2008, the respondent has been the sole proprietor and sole director of the firm Troy Yeo & Co (known as Chye Legal Practice since May 2012) ("the firm").

2 Sometime in the middle of 2011, the respondent engaged one Sim Tee Peng ("Sim") to establish a conveyancing department in the firm. There was some dispute as to Sim's precise status in the firm but we proceed on the basis

that he was engaged as an employee, which was the respondent's position. It should be noted that this was the first time the respondent would be working with Sim as he had met Sim just in or around January that year. It would also be the first time the respondent would be managing and running a conveyancing department. Prior to this, the respondent practised principally in litigation with some limited experience in transactional and conveyancing work.

3 Between June 2011 and March 2012, the respondent permitted Sim to interact directly with the firm's conveyancing clients, most of whom had evidently been introduced to the firm by Sim in any case, and to liaise with them on payment matters including the collection of payments for stamp duty and other conveyancing moneys. Unbeknownst to the respondent, Sim used the opportunity he was afforded during this period to commit cheating and/or criminal breach of trust offences in respect of conveyancing moneys he collected from 17 clients, and misappropriated a total sum of $848,335.09. Amongst other things, Sim falsely informed these clients that he had made payments for stamp duty and other conveyancing-related fees on their behalf.

4 Also within this period, specifically between 31 August 2011 and 19 October 2011, the respondent caused conveyancing moneys amounting to $448,803, paid by 22 clients, to be paid into the firm's office account. It was accepted by the respondent that these moneys should not have been paid into the firm's office account but we were told that this had been done because those managing the accounts were under the mistaken impression that it was permissible to do so as long as these payments were effectively to reimburse payments that had already been made on behalf of the clients in question. Accordingly, a substantial portion of these moneys was then paid out to Sim personally who represented to the firm that he had already made payments out of his own funds in respect of the stamp duty payments that were due from the

clients. In truth, most of these representations were false; Sim had not in fact made payments out of his own funds and the clients had submitted the cheques to the firm to enable the firm to make the stamp duty payments for them, but Sim produced forged stamp duty certificates to mislead the firm and thereby obtain payments purportedly by way of reimbursement.

**Decision**

5 We begin by setting out a number of points which were accepted before us today. The respondent accepts that:

(a) he has failed to exercise proper supervision over his employee Sim between June 2011 and March 2012, and thus breached r 8(1) of the Legal Profession (Professional Conduct) Rules (Cap 161, R 1, 2010 Rev Ed) – although he contested this before the DT, his counsel, Mr Kenneth Tan SC, was at pains to point out that he was not challenging this before us;

(b) he breached the relevant rules of the Legal Profession (Solicitors' Accounts) Rules (Cap 161, R 8, 1999 Rev Ed) ("LPSAR") (including r 3(1A)) and the Conveyancing and Law of Property (Conveyancing) Rules 2011 (S 391/2011), by allowing a substantial sum of conveyancing moneys to be paid into the firm's office account between 31 August 2011 and 19 October 2011;

(c) in relation to five client payments into the firm's office account made between 4 October 2011 and 19 October 2011, which amounted to $90,256.60, he did not keep proper accounts, and thus breached r 11(1) of the LPSAR; and

(d) his conduct as a whole warrants disciplinary sanctions being imposed by this court, meaning he accepts that he was guilty of grossly improper conduct in the discharge of his professional duty under s 83(2)(*b*) or of such misconduct unbefitting an advocate and solicitor as an officer of the Supreme Court or as a member of an honourable profession under s 83(2)(*h*) of the Legal Profession Act (Cap 161, 2009 Rev Ed) ("LPA") – in response to a question from the Bench, Mr Tan accepted that in relation to all of the charges, the respondent was guilty of such misconduct within the meaning of either of these provisions although we note that the charges were brought pursuant to s 83(2)(*b*).

In those circumstances, the only issue before us is that of the appropriate sanction to be imposed on the respondent under s 83(1) of the LPA.

6 For present purposes, we begin with a few observations. First, the paramount considerations of the court in determining the appropriate sanctions are to uphold public confidence in the integrity of the legal profession and to protect the public who are dependent on solicitors. It is also to deter other like-minded members of the profession. We have repeatedly said that the punishment of the solicitor in question is in relative terms not as important a sentencing consideration as those we have already mentioned, and as a result, considerations of the personal culpability of the solicitor do not carry much weight in the context of mitigation when considering the appropriate sanction to impose for professional misconduct: see *Law Society of Singapore v Ravi s/o Madasamy* [2016] 5 SLR 1141 ("*Ravi s/o Madasamy*") at [33], [41]; *Law Society of Singapore v Chia Choon Yang* [2018] 5 SLR 1068 at [17]; *Law Society of Singapore v Ezekiel Peter Latimer* [2019] SGHC 92 at [46].

7 This is significant because the crux of Mr Tan's submissions on behalf of the respondent were directed at suggesting that the respondent's culpability was on the low end of the scale. While, for the reasons we mention below, we do not accept this, we observe that even if the respondent's personal culpability could be said to be low, where the misconduct was otherwise regarded as serious, the solicitor's low culpability alone would not weigh significantly in the respondent's favour: see *Ravi s/o Madasamy* at [73].

8 In any case, we turn to Mr Tan's submissions which rested on a few specific points. First, Mr Tan submitted that the respondent was himself a victim of the fraud that had been perpetrated by Sim (on the firm's conveyancing clients, the firm and the respondent). We accept this but we do not think it takes the respondent anywhere. He has not been charged with dishonest misappropriation himself. Instead, he has been charged with a failure to exercise proper supervision over an employee, and in that context, it is ultimately irrelevant for him to say that he was not dishonest. If the respondent had been privy to the fraud, it would be an entirely different type of case that we would be dealing with; the fact that he was not dishonest says nothing about whether he has seriously failed to supervise his employee with all the grave consequences that have ensued.

9 Second, Mr Tan submitted that the respondent did establish a system of sorts in respect of conveyancing files and conveyancing moneys but that it was not robust enough to prevent the fraud that Sim committed. Again, that does not help the respondent. Even assuming one could call it a system, it was precisely because it was so weak that the fraud was able to be perpetrated over a long period of almost eight months. The fact of the matter was that the respondent wholly failed to take steps to safeguard against the sort of fraud that Sim was

evidently able to perpetrate with ease and over a substantial period of time. This was the crux of the misconduct that we are faced with.

10 Third, Mr Tan submitted that the respondent relied on the fact that Sim had produced stamp duty certificate(s) to defraud the firm and it was simply not known that these were forged. And when asked why even on this basis, stamp duty moneys were not paid into the conveyancing account, Mr Tan's response was that the respondent did not realise that there is a separate set of obligations applicable to conveyancing moneys. In our judgment, this too does not help the respondent. It is true that Sim produced the forged stamp duty certificate(s), but these certificate(s) were tendered to claim reimbursement for moneys that Sim had purportedly made on his own on behalf of his clients. It was undoubtedly incumbent on the respondent, *at least*, to understand the nature of the transaction(s) in respect of which reimbursement was sought and had he applied his mind to this, it would immediately have become clear Sim was representing that he had personally made payments of stamp duty on behalf of the firm's clients. This was such an extraordinary fact that it should in and of itself have given rise to a number of concerns. How was he even able to afford to do this? On a single day in September 2011, he was reimbursed a sum of about $169,000 in respect of eight different clients, arising from payments he claimed to have made earlier on. We find it difficult to understand how this could have been missed as an alarming discovery; and if it was not missed, how it did not raise serious questions that *had* to be pursued, not least of which was why Sim, an employee of the firm, would be making such substantial payments out of his own assets on behalf of the firm's clients.

11 Mr Tan submitted that the respondent did query Sim and was told that this situation had arisen because the firm's conveyancing department was not processing payments timeously. We find it difficult to accept that this was

seriously investigated or pursued. There is no evidence at all to suggest that there were in fact such failures on the part of the firm's conveyancing department. Therefore, if Sim had in fact been queried and if he had in fact made this claim, this could and should have been investigated, and if it had been, it would likely have been exposed as false. As to the respondent's ignorance of the position in respect of the nature of the applicable rules and the correlative obligations, this simply does not aid a solicitor. Ignorance of the law cannot excuse a solicitor's misconduct and this is all the more so where, as is the case here, the various rules in question are directed at solicitors precisely in order to prevent such fraud. Indeed, it cannot even be a mitigating circumstance for a solicitor to say the fraud was able to take place because he did not take the trouble to correctly inform himself of his obligations.

12 Mr Tan further submitted that the respondent had undertaken several steps to ameliorate the position for his clients after he realised what had been happening. We disagree. As we pointed out to Mr Tan, whatever steps the respondent took were taken as reactive measures after the consequences of his failures had started to emerge, and in the final analysis, the respondent was their author because he had not supervised Sim, had failed to accurately inform himself of his obligations and duties and had overlooked serious warnings that something was amiss.

13 Mr Tan submitted on the forgoing basis that the respondent's culpability was at the low end of the scale. It will be evident from what we have said that we cannot accept this because none of the arguments advanced on the respondent's behalf in fact can be said to validly diminish his personal culpability. But on top of that, there were a number of other factors which showed the gravity of the misconduct.

14 First, we are troubled that the respondent went into what for him was a new area of practice with a complete lack of care. He had exercised little, if any, diligence in assessing whether it was appropriate to leave Sim to run this part of his practice despite knowing very little about Sim. This was especially serious given that this was an area of practice that the respondent must have known, or be taken to have known, involved the handling of clients' moneys, and which as a result was subject to significant regulation. Yet this is what the DT found at para 86 of its decision in relation to the first charge:

> As regards the contents and discharge of the duty, we find that the Respondent was derelict in his duty to exercise proper supervision over Sim. We agree with the Law Society that the Respondent had essentially given Sim a free rein to deal with the Firm's clients, with little to no supervision over his activities (when in fact a higher standard of supervision should have been warranted in all of the circumstances), and with no adequate system of periodic checks to monitor Sim's dealings with the Firm's clients and their conveyancing moneys, to prevent abuse.

This can only be described as a gross breach of duty.

15 Second, we are also troubled with the long duration over which Sim was able to operate his fraud, largely because of this lack of adequate supervision. It was extremely unsatisfactory that the respondent appeared blissfully unaware of what Sim was up to, or more seriously, that he might have been disinclined to pursue further steps or inquiries when serious irregularities seemed to emerge. Indeed, even after the Inland Revenue Authority of Singapore raided the firm's office premises in early January 2012, at which time the respondent was informed that Sim was believed to have forged at least one stamp duty certificate, he did not immediately take steps to alert all the clients of the firm who might themselves have been or might be defrauded by Sim in the same way. Mr Tan suggested that the respondent took steps to inform the main clients of the firm but nothing was advanced to explain how he defensibly judged that

other clients did not need to be told. It is a fact that the fraud continued and affected some of the firm's clients even after that time.

16 Third, we also note the substantial amounts that were misappropriated and the substantial number of clients who were affected. Mr Tan submitted that we should not assess the scale of the harm caused by reference to the amounts that were misappropriated because as it turned out the actual losses were brought down to $47,669.27, at least in respect of the firm's clients. We do not accept this for at least two reasons:

(a) Sim committed his fraud across a number of firms and it appears that at least part of the recoveries in relation to the losses initially sustained by the firm's clients came from frauds he had committed on other clients of other firms. We fail to see how this can possibly be a mitigating factor as far as the respondent is concerned.

(b) Aside from this, in our judgment, in this context, the true scale of the harm is to be assessed by reference to the extent of harm to public confidence in the legal profession and this is undoubtedly to be determined by considering the gross amounts that were misappropriated, the number of clients who were affected by the fraud and the duration of time over which the fraud continued, and on all these counts, this was a very serious case of harm occasioned by the respondent's misconduct.

17 In all the circumstances, we think a substantial period of suspension is warranted and we fix this as a term of four years. We order that the suspension is to take effect from 1 June 2019.

18 We fix the costs the respondent is to pay to the applicant in the aggregate sum of $6,000.

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| Sundaresh Menon<br>Chief Justice | Andrew Phang Boon Leong<br>Judge of Appeal | Woo Bih Li<br>Judge |

Vergis S Abraham and Bestlyn Loo (Providence Law Asia LLC) for the applicant;
Kenneth Tan SC (Kenneth Tan Partnership) for the respondent.