IN THE COURT OF THREE JUDGES OF THE REPUBLIC OF SINGAPORE

[2017] SGHC 30

Originating Summons No 7 of 2016

In the matter of Sections 94(1) and 98(1) of the Legal Profession Act (Cap 161, 2009 Rev Ed)

And

In the matter of Lau See Jin Jeffrey, an Advocate and Solicitor of the Supreme Court of the Republic of Singapore

Between

LAW SOCIETY OF SINGAPORE

… *Applicant*

And

LAU SEE JIN JEFFREY

… *Respondent*

EX TEMPORE JUDGMENT

[Legal Profession] — [Disciplinary Proceedings]

Law Society of Singapore
v
Lau See Jin Jeffrey

[2017] SGHC 30

Court of Three Judges — Originating Summons No 7 of 2016
Sundaresh Menon CJ, Chao Hick Tin JA and Andrew Phang Boon Leong JA
6 February 2017

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

1 Originating Summons No 7 of 2016 ("C3J/OS 7/2016") is an application made by the Law Society of Singapore ("the Law Society") for an order pursuant to s 94(1) read with s 98(1) of the Legal Profession Act (Cap 161, 2009 Rev Ed) ("the LPA") that Lau See Jin Jeffrey ("the Respondent"), an advocate and solicitor, be sanctioned under s 83(1) of the LPA.

2 C3J/OS 7/2016 arises out of a complaint dated 6 March 2015 ("the Complaint") that was made by Ms Serene Ng Phei Li ("the Complainant") to the Law Society against the Respondent. The Complaint states that in early April 2014, the Respondent entered into an oral contingency fee agreement with the Complainant to pursue a claim in medical negligence against the Complainant's doctors. Under the alleged contingency fee agreement, the Respondent was to be paid 20% of the damages awarded to the Complainant, which could further increase to 25% in the event the Complainant obtained more than $5m in damages.

Background

3 It is undisputed that the Complainant approached the Respondent for legal advice and representation in connection with an intended medical negligence claim after being introduced to him by a mutual friend, Mr Lee Tong Guan ("Mr Lee" and also known as "Steven Lee"). The Complainant and Respondent met a number of times thereafter to further discuss the case. Some of these discussions were held in the presence of Mr Lee.

4 The crucial meeting, where the alleged contingency fee agreement was entered into, took place at the Respondent's office on 4 April 2014 ("the 4 April 2014 Meeting"). It is undisputed that the issue of legal fees was discussed during the meeting and that only the Complainant and Respondent were involved in that discussion.

5 The Complainant's evidence is that shortly before the 4 April 2014 Meeting, she had conveyed to Mr Lee her concerns about having to incur substantial legal fees to pursue the claim. In response, Mr Lee suggested that the Complainant offer a share of the damages to the Respondent in lieu of paying regular legal fees. On this basis, she would only have to pay legal fees if she was successful in her claim. The Complainant claims that in accordance with this, she duly proposed at the 4 April 2014 Meeting that the Respondent take a 15% share of the damages but the Respondent negotiated for a 20% share instead. The Respondent then said that if he managed to obtain more compensation for the Complainant, that is a sum greater than $5m, the Respondent would expect to get a greater share of the damages awarded. The Complainant also claims that the Respondent informed her that he would start work on her case immediately after she provided him with a $5,000 deposit

which was to cover disbursements. The Complainant agreed to pay the $5,000 deposit.

6 As against this, the Respondent denies the existence of the contingency fee agreement and claims that the percentages, which he accepts he mentioned to the Complainant during the 4 April 2014 Meeting, namely 20% to 25% of the claim, were just "parameters" for calculating his fees. The Respondent also claims that he told the Complainant that he would "try to *cap* the fees" (emphasis added) at 20% of the claim amount (or 25% if the claim amount was higher). The Respondent further relies on the Complainant's payment of the $5,000 deposit as evidence to contradict the existence of the contingency fee agreement.

7 It is undisputed that the Complainant went to the Respondent's office with Mr Lee to hand the Respondent a cheque of $5,000 being the deposit that had been sought as well as documents relating to her claim on 11 April 2014. The Respondent suffered a stroke in late April 2014 and was on medical leave until 15 May 2014. But even after this, the Complainant claims that she had difficulty contacting the Respondent for updates on her case.

8 On 22 July 2014, frustrated with the abject lack of progress, the Complainant decided to terminate her engagement with the Respondent. She sent an email to the Respondent to terminate his engagement and seek a refund of the $5,000 deposit. The last paragraph of the email alludes to the contingency fee agreement between the parties:

> As per our verbal agreement in Mar 2014, we have both agreed upon that *you will not charge me any legal fees except for disbursement fees and only upon winning the case then a 20% of the sum awarded will go to you.* This verbal agreement will be void with the closure of this case. [emphasis added]

9 The Respondent denied the agreement in his response. Between August 2014 and March 2015, the Complainant made a police report and sent several complaint letters to the Law Society seeking the return of the $5,000 deposit. These documents also make mention of the contingency fee agreement. On 6 March 2015, the Complaint was made to the Law Society.

10 The Disciplinary Tribunal ("the DT") comprising Mr Jimmy Yim SC and Ms Carrie Seow heard the matter on 9 and 10 March 2016. By its written decision dated 8 July 2016, the DT found that the Respondent had entered into a contingency fee agreement with the Complainant in breach of s 107(1)(*b*) and s 107(3) of the LPA. The DT further determined that there was cause of sufficient gravity for disciplinary action pursuant to s 83(2)(*b*) of the LPA.

Our decision

11 The issues before us are:

(a) whether due cause for disciplinary action has been shown; and

(b) if so, what the appropriate sanction should be.

Whether due cause for disciplinary action has been shown

12 We begin by reiterating that contingency fee agreements remain expressly prohibited under s 107(1)(*b*) and s 107(3) of the LPA (see *Law Society of Singapore v Kurubalan s/o Manickam* [2013] 4 SLR 91 ("*Kurubalan*") at [33] to [35]). We are also mindful of the standard for appellate intervention as we stated in *Law Society of Singapore v Manjit Singh s/o Kirpal Singh and another* [2015] 3 SLR 829 ("*Manjit Singh*") citing *Law Society of Singapore v Lim Cheong Peng* [2006] 4 SLR(R) 360 at [13]. In *Manjit Singh*, we held at [41] that "an appellate court does not lightly interfere

with findings of fact by a lower court or disciplinary committee unless their conclusions are clearly against the weight of evidence".

13 The DT considered the evidence and found that the Law Society had proved the charge against the Respondent beyond a reasonable doubt. In our judgment, the DT was correct in its finding.

14 The evidence of the Complainant was consistent and clear as to the following:

(a) First, she was concerned about fees and the cost of the intended litigation.

(b) Second, she had discussed these concerns with Mr Lee who was known to both the Complainant and the Respondent. Mr Lee had suggested that the Complainant offer the Respondent a share of the damages instead of paying regular legal fees. This part of the Complainant's evidence is undisputed by the Respondent.

(c) Third, in the light of these concerns and Mr Lee's suggestion, when the Complainant met the Respondent on 4 April 2014, she suggested a 15% contingency fee to which he counter-proposed a 20% arrangement. Her evidence is that the Respondent also suggested that if he managed to obtain damages of more than $5m, he wanted a greater share of the damages.

15 The Complainant's evidence is corroborated by her subsequent actions. In our judgment, the Complainant's email to the Respondent on 22 July 2014 offers strong corroboration of the contingency fee agreement given its contemporaneous nature and underlying purpose, which was to terminate the

engagement of the Respondent and seek a refund of the $5,000 deposit. There was no reason, in this context, for the Complainant to fabricate a story to the effect that they had agreed on a contingency arrangement. In the circumstances, we find it improbable that the Complainant would have made up the contingency fee arrangement described in her email on 22 July 2014 (see [8] above).

16 Mr Chandra Mohan Nair ("Mr Nair"), counsel for the Respondent, submits that the Respondent denies the arrangement and therefore that we should give him the benefit of the doubt. We point out that the fact that the Respondent denies the arrangement does not in itself, give rise, to a reasonable doubt. The denial must be assessed in the light of all the circumstances in order to assess whether a reasonable doubt has in fact been raised. It is only then that the benefit of such a doubt can be given to the Respondent.

17 We find the Respondent's account to be wholly unbelievable and insufficient to raise a reasonable doubt. It is apposite to highlight two factual concessions made by the Respondent in his evidence before the DT:

(a) First, the Respondent admitted that he was aware of the Complainant's financial constraints in seeking a lawyer and that she was looking to engage a lawyer who would charge her less:

> President: Yes. So, if you gave this explanation to her, were you aware that she was looking for lawyers that would do her case, to say the least, on the cheaper side?
>
> [Respondent]: Yes, you see, when---when she asked---
>
> President: Did---were you aware of that?
>
> [Respondent]: Yes, I'm aware of that…
>
> …
>
> President: Yes. That's not my question. My question is: Were you aware that she was looking for lawyers that would not charge her too much? Were you aware of that?
>
> [Respondent]: Yes, I---I was aware of that…

(b) Second, the Respondent accepted that he might have mentioned the possibility of the Complainant claiming up to $5m of damages:

> President: …Now, according to Steven Lee's letter, which is R3, he said that it was you who have said that there is a chance of claiming $5 million or more in damages. You recall this note?
>
> [Respondent]: Yes.
>
> President: Yes.
>
> [Respondent]: I read that.
>
> President: And I think you said it somewhere that you might have said something to that effect.
>
> [Respondent]: I might have said something to that.

18 From the foregoing, it is common ground that:

(a) the Respondent was aware that the Complainant had concerns over the cost of pursuing the claim;

(b) Mr Lee had advised that it might be possible to address these concerns by proposing a contingency fee arrangement to the Respondent;

(c) the question of fees was specifically discussed between the Complainant and Respondent at the 4 April 2014 Meeting; and

(d) at the 4 April 2014 Meeting, mention was made of a figure amounting to 20% of the claim in relation to the cost of pursuing the matter.

19 Against this backdrop, the only issue is whether the reference to 20% of the claim was a reference to the contingency fee arrangement as asserted by the Complainant or an estimated parameter of the costs of the claim as alleged by the Respondent. Considering that 20% of the claim could amount to a sum as high as $1m, having regard to the discussions that were held as to the potential size of the claim (that is, $5m), and given the Complainant's known concerns as to the cost of the litigation, we find it impossible to believe the Respondent's account or even to hold that it raises a reasonable doubt. The Complainant would not have agreed to embark on litigation if she had in fact been given to understand that she could be exposed to legal costs of such proportions without any assurance whatsoever as to the outcome of her case.

20 We also find it implausible, contrary to the Respondent's contention, that the Complainant might have misunderstood what the Respondent had said to her at the 4 April 2014 Meeting in respect of the fee arrangement. This is because it was the Complainant who had brought up the idea of the contingency fee agreement to the Respondent after her discussion with Mr Lee. Her precision in articulating the contingency fee agreement in her email on 22 July 2014 further buttresses this finding.

21 We digress to make one further observation. The Respondent's conduct in this matter was notable also for the absence of attendance notes in general and of anything dealing with the question of fees in particular. It is not necessary, in this case, for us to rely on any adverse inference against the Respondent arising out of his failure in this regard but we take this opportunity to remind solicitors of the importance of keeping accurate and contemporaneous attendance notes. Where a solicitor fails to do so and his account of any discussion is at odds with that of the client, the court may disbelieve the solicitor's account in favour of the client's or draw an adverse inference against that solicitor: see *Law Society of Singapore v Tan Phuay Khiang* [2007] 3 SLR(R) 477 at [83] citing *Lie Hendri Rusli v Wong Tan & Molly Lim* (a firm) [2004] 4 SLR(R) 594 at [63]-[64].

22 Finally, the Respondent's reliance on the Complainant's payment of the deposit of $5,000 to disprove the existence of a contingency fee agreement is misplaced. As we said in *Kurubalan* at [40], "champerty refers to a particular form of maintenance 'where one party agrees to aid another to bring a claim on the basis that the person who gives the aid shall receive *a share* of what may be recovered in the action': *Otech Pakistan Pvt Ltd v Clough Engineering Ltd* [2007] 1 SLR(R) 989 at [32]" [emphasis added]. Even if we accept the Respondent's submission that the $5,000 cheque was not only on account of disbursements (as the Complainant asserts) but also of legal fees, this would not preclude the finding that the parties had entered into a contingency fee agreement, pursuant to which it was also contemplated that a percentage of any damages awarded to the Complainant would be paid to the Respondent.

23 For all these reasons, we affirm the conviction by the DT and find that due cause for disciplinary action has been shown.

24 Although not directly relevant to our decision concerning the contingency fee agreement, we take this opportunity to make some observations in response to Mr Nair's submissions concerning the fee charging practices of sole proprietorships and small law firms. Mr Nair submits that flexible fee arrangements without any agreed fee amount or time costs structure are often adopted by sole proprietors and practitioners in small law firms. In such an arrangement, the fees that a client may be liable to pay are based on (a) the relationship between the solicitor and client; and (b) the amount of work done as the relationship progresses. Mr Nair made these submissions in an attempt to dispel our concerns that in his case, there was no other documented fee arrangement with the client, such as was contended by the Respondent or at all.

25 First, we do not accept Mr Nair's submission which seems to suggest that the standards of acceptable conduct that apply to sole proprietorships or to practitioners in small law firms are lower than those which apply to practitioners in general. All lawyers are subject to the same professional duties and obligations under the LPA and the Legal Profession (Professional Conduct) Rules 2015 (Cap 161, R 1, 2009 Rev Ed) ("the Professional Conduct Rules 2015"). Under r 3 of the Professional Conduct Rules 2015, no distinction is made with respect to the establishment from which a lawyer conducts his or her legal practice. In our judgment, this is a sensible position given, as we observed in *Law Society of Singapore v Chiong Chin May Selena* [2005] 4 SLR(R) 320 at [41], that "solicitors have been accorded extraordinary privileges [and] are in turn entrusted with extraordinary responsibilities".

26 Second, we do not think it is satisfactory for a lawyer to leave a client unaware and uninformed of her exposure to legal fees. When a lawyer enters into a contract for services with a client, that client has an entitlement to know

and that lawyer has a duty to ensure that the client understands the extent of her exposure to fees "to the extent reasonably practicable". These duties will be especially significant to a client with concerns over the cost of litigation, as most clients will be, and as the Complainant undoubtedly was. Such a duty is founded on r 17(3) of the Professional Conduct Rules 2015 which provides that:

> (3) A legal practitioner must –
>
> (a) inform his or her client of the basis on which fees for professional services will be charged, and of the manner in which those fees and disbursements (if any) are to be paid by the client;
>
> (b) inform the client of any other reasonably foreseeable payments that the client may have to make, either to the legal practitioner or to any other party, and of the stages at which those payments are likely to be required;
>
> (c) to the extent reasonably practicable and if requested by the client, provide the client with estimates of the fees and other payments referred to in sub-paragraphs (a) and (b), respectively; and
>
> (d) ensure that the actual amounts of the fees and other payments referred to in sub-paragraphs (a) and (b), respectively, do not vary substantially from the estimates referred to in sub-paragraph (c), unless the client has been informed in writing of any changed circumstances.

27 Furthermore, it bears emphasis that where an agreement on fees between a lawyer and a client is concluded, such an agreement must be recorded in writing as required under s 109(4) of the LPA (in relation to non-contentious matters) and s 111(1) of the LPA (in relation to contentious matters).

Appropriate Sanction

28 We turn to the question of sanction. We reviewed the law in this area in *Kurubalan* and said as follows at [78] to [81] of that judgment:

> 78 In our view, the pith and substance of an offence under s 107 of the Act is that the Advocate and Solicitor acquires an interest in the proceeds of litigation. His ultimate remuneration depends not on the value of his efforts as a lawyer but on the outcome of the litigation. We think it would be of little deterrent effect, given the public policy interests we have discussed, to impose a fine, because this would tend to be treated as just another variable in the stakes. This is why we stated at the outset that in the normal case, the starting point would be a period of suspension. We did not think that striking off was called for in this case because we did not think the Respondent had acted dishonestly (see [*Law Society of Singapore v Ravindra Samuel* [1999] 1 SLR(R) 266] ([37] supra) at [15]).
>
> 79 Having regard to the fact that the offence in this case had limited impact on our jurisdiction and related to a foreign jurisdiction that appeared to take a modest view of its gravity, a period of suspension at the lowest end of the range suggested to us might have been warranted. However this was to be balanced against the two aggravating circumstances to which we have referred (see [50]–[53] above).
>
> 80 In all the circumstances, we thought that a six-month suspension from practice was appropriate and we so ordered, with the term of suspension to begin one month from the date of judgment in order to give the Respondent time to settle his affairs. We also ordered the Respondent to pay costs of the proceedings to be taxed.
>
> 81 We wish to emphasise that until and unless there is a change in the law, lawyers who enter into champertous agreements can expect to face at least a substantial period of suspension and depending on the factual matrix this period could well exceed the present imposition of six months.

29 The sanction that we imposed in *Kurubalan* was significantly affected by the fact that the offence in that case involved a claim in a foreign jurisdiction and had limited impact within our jurisdiction. Hence, despite the presence of some other aggravating circumstances, we imposed a period of

suspension of six months but observed that other offenders should expect a substantial period of suspension that could exceed the period of six months.

30 In the present case, we consider it material that:

(a) first, unlike *Kurubalan*, the present case involved an offence which was directly and entirely concerned with legal practice in Singapore;

(b) second, the Respondent was fully aware that contingency fee agreements were prohibited;

(c) third, the Respondent, in our judgment, used the bait of a contingency fee arrangement and an inflated prospective claim to entice the Complainant to entrust him with a matter in which he had no real expertise; and

(d) fourth, the Respondent has not demonstrated any remorse and has even maintained in his submissions before this Court that the offence is almost inchoate given that the Respondent's engagement had been terminated soon after it began.

31 For the avoidance of doubt, we reject the Respondent's characterisation of his offence as inchoate. The Respondent had completed the commission of the offence save that the contingency fee arrangement was subsequently terminated because of his inaction. In our judgment, this is not a mitigating circumstance.

32 It was also submitted that no damage had in fact ensued and that this should be accorded weight as a mitigating factor. We disagree. In a sense, this is an attempt to frame the argument that the offence was virtually inchoate in

another way since the essence of this submission is that the contingency arrangement was never acted upon as the Respondent's retainer was terminated. For the same reason that we have rejected the previous iteration of this point at [31] above, we also reject this version of the argument. But there is a further point. Even if no 'damage' was caused by the contingency fee agreement because the Complainant did not proceed with the suit and terminated the Respondent's engagement soon after it began, this does not change the fact that the offence was committed and the absence of damage in this context cannot be regarded as a mitigating factor because it has no bearing on the gravity of the Respondent's ethical lapse.

33 In all the circumstances, we order that the Respondent be suspended from practice for a period of 12 months. The suspension is to take effect from 1 April 2017.

34 We award costs, to be taxed if not agreed, in favour of the Law Society.

Sundaresh Menon	Chao Hick Tin	Andrew Phang Boon Leong
Chief Justice	Judge of Appeal	Judge of Appeal

Ramesh Selvaraj and Lim Jun Rui, Ivan (Allen & Gledhill LLP) for the applicant; and
Chandra Mohan K Nair (Tan Rajah & Cheah) and Wee Pan Lee (Wee, Tay & Lim LLP) for the respondent.