

Law Society of Singapore v Tan Sok Ling
[2007] SGHC 37

Case Number : OS 2154/2006, SUM 5749/2006
Decision Date : 23 March 2007
Tribunal/Court : High Court
Coram : Chan Sek Keong CJ; Kan Ting Chiu J; Andrew Phang Boon Leong JA
Counsel Name(s) : Suresh Damodara (David Lim & Partners) for the applicant; Respondent in person
Parties : Law Society of Singapore — Tan Sok Ling

*Legal Profession – Show cause action – Lawyer failing to pay moneys into client's account
– Lawyer transferring moneys due to him from client's account to his firm's account resulting in
overdrawn client's account – Whether lawyer's conduct contravening Legal Profession Act and
warranting disciplinary action – Appropriate sentence where lawyer not acting dishonestly but out of
gross inefficiency and incompetence – Section 83(2)(j) Legal Profession Act (Cap 161, 2001 Rev Ed),
rr 3, 7 Legal Profession (Solicitors' Accounts) Rules (Cap 161, R 8, 1999 Rev Ed)*

23 March 2007

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

Introduction

1 This was an application by the Law Society of Singapore ("the Law Society") pursuant to s 94(1) read with s 98 of the Legal Profession Act (Cap 161, 2001 Rev Ed) ("the Act") to make absolute an order to show cause. Having heard the submissions of the Law Society and those of the respondent in mitigation, we granted the application at the conclusion of the hearing and ordered the respondent to be suspended from practice for a period of one year. We now give the detailed grounds for our decision.

Background facts and charges

2 The respondent is an advocate and solicitor of the Supreme Court of the Republic of Singapore of about 14 years' standing. He was admitted to the roll on 20 March 1993 and was, at all material times the sole proprietor of the firm Tan S L & Partners ("his firm").

3 The respondent faced 11 charges for breaches of the Legal Profession (Solicitors' Accounts) Rules (Cap 161, R 8, 1999 Rev Ed) ("Solicitors' Accounts Rules") within the meaning of s 83(2)(j) of the Act. Of the 11 charges, two related to breaches of r 3, while nine related to breaches of r 7 of the Solicitors' Accounts Rules.

4 The respondent had admitted to all 11 charges from the outset and did not dispute the statement of facts as submitted by counsel for the applicant, Mr Suresh Damodara. So as to set the case in its proper context, it would be significant to note the following:

- (a) Breaches in relation to the first to fifth charges concerned moneys due to the respondent, transferred from the client's account to his firm's account when there was no balance in the client's account. These errors have since been rectified.

(b) Breaches in relation to the sixth and seventh charges concerned moneys not paid into the client's account. These have since been reimbursed.

(c) Breach in relation to the eighth charge concerned moneys due to the respondent, transferred from the client's account to his firm's account, resulting in \$2,152 being overdrawn from the client's account. This error has since been rectified.

(d) Breaches in relation to the ninth to eleventh charges concerned moneys due to the respondent, transferred from the relevant client's accounts to his firm's account on 12 November 2003. However, the respective amounts were only received from the said clients at later dates and the bills for those amounts were drawn at even later dates.

(e) The above breaches have not resulted in any loss to any client.

5 In the interest of completeness, the relevant portions of the above-named rules are set out as follows:

Client accounts

3. —(1) Subject to rule 9, every solicitor who holds or receives client's money, or money which under rule 4 he is permitted and elects to pay into a client account, shall without delay pay such money into a client account.

(2) Any solicitor may keep one client account or as many such accounts as he thinks fit.

Moneys which may be drawn from client account

7. —(1) There may be drawn from a client account —

(a) in the case of client's money —

(i) money properly required for a payment to or on behalf of the client;

(ii) money properly required in full or partial reimbursement of money expended by the solicitor on behalf of the client;

(iii) money drawn on the client's authority;

(iv) money properly required for or towards payment of the solicitor's costs where a bill of costs or other written intimation of the amount of the costs incurred has been delivered to the client and the client has been notified that money held for him will be applied towards or in satisfaction of such costs; and

(v) money to be transferred to another client account;

...

(2) In the case of client's money and trust money referred to in paragraph (1) (a) and (b), the money so drawn shall not exceed the total of the money held for the time being in the client account on account of the client or trust.

Further, the salient portions of s 83 of the Act read as follows:

Power to strike off roll or suspend or censure

83. —(1) All advocates and solicitors shall be subject to the control of the Supreme Court and shall be liable on due cause shown to be struck off the roll or suspended from practice for any period not exceeding 5 years or censured.

(2) Such due cause may be shown by proof that an advocate and solicitor —

...

(j) has contravened any of the provisions of this Act in relation thereto if such contravention warrants disciplinary action;

...

6 After hearing counsel for the applicant and the respondent in mitigation, the Disciplinary Committee ("DC") found that there existed cause of sufficient gravity for disciplinary action against the respondent under s 83 of the Act on all 11 charges.

Findings of the DC

7 The DC noted the respondent's claims that the breaches of the Solicitors' Accounts Rules were due to mistakes, oversight and omissions on his part and that of his staff. The DC acknowledged that the breaches did not cause any loss to any client as confirmed by the Accountant's Report and that the respondent deeply regretted the breaches.

8 The DC accepted that the issue before it was whether the breaches were such as to warrant show cause proceedings against the respondent under s 83(2) of the Act. To this end, the DC affirmed, citing *Law Society of Singapore v Lim Yee Kai* [2001] 1 SLR 721 at [17] ("*Lim Yee Kai*"), that "[m]embers of the public must have confidence in the integrity of the accounting system of solicitors and must have trust that their solicitors can properly maintain their client's accounts accurately. It is of vital importance that solicitors should be scrupulously diligent in keeping and maintaining proper accounts of such moneys. ... Where rules relating to accounts are breached, disciplinary action is warranted under s 72(3) or 83(2)(j) of the Act".

9 On a closer look at the Accountant's Report and the respondent's mitigation plea, the DC found that the respondent was not "scrupulously diligent in keeping and maintaining proper accounts". In such circumstances, the DC did not accept that the breaches of r 7 were merely technical in nature and therefore found them grave enough to warrant show cause proceedings.

10 Further, the DC noted from the Second Section of the Accountant's Report that the respondent took several weeks to raise bills after the transfer from his client's account to the firm's account in relation to three of the r 7 breaches. The DC felt that there was no excuse for this undue delay and the respondent did not provide any explanation for this delay either. In respect of the other six breaches of r 7, the DC found that there was no indication as to when the reimbursements were received from the clients and when the bills, if any, were raised.

11 Moving on to the breaches of r 3 of the Solicitors' Accounts Rules, the DC found that based on *Law Society of Singapore v Prem Singh* [1999] 4 SLR 157 ("*Prem Singh*") and *Re Lim Kiap Khee; Law Society of Singapore v Lim Kiap Khee* [2001] 3 SLR 616 ("*Lim Kiap Khee*"), a breach of the said rule

was a serious disciplinary offence. In conclusion, the DC found that the respondent was delinquent in keeping and maintaining a proper client's account. In the absence of any meaningful explanation from the respondent, the DC found that there existed cause of sufficient gravity for disciplinary action against the respondent under s 83 of the Act on all 11 charges.

The appropriate sentence

12 In so far as the appropriate sentence was concerned, Mr Damodara stated that the Law Society would leave the decision entirely to the discretion of the court.

13 However, Mr Damodara helpfully pointed to the fact that the prior decisions involving breaches of the Solicitors' Accounts Rules were distinguishable from the situation in the present proceedings. We agree with him. As importantly, we would like to commend Mr Damodara for his assistance even though the points made were actually in the respondent's favour. This is in the spirit of fair play and in the best traditions of the Bar. And the following observations of this court in *Law Society of Singapore v Ahmad Khalis bin Abdul Ghani* [2006] 4 SLR 308 at [40] are, in this regard, particularly apposite:

[O]ne major ideal underlying the practice of the law is that, even (or, perhaps, especially) under an adversarial system, counsel concerned can join in "legal combat" and still display the nobility of the law. Indeed, as Whyatt CJ also put it in the Singapore High Court decision of *Shaw & Shaw Ltd v Lim Hock Kim (No 2)* [1958] MLJ 129 at 130–131:

The Court appreciates fully the difficulties which confront counsel from time to time in the discharge of their dual duty to their clients and to the Court, and it may be of assistance to them in the solution of such difficulties when they arise, to recall the guiding principles laid down in this matter by Judges of great learning and wisdom. Of the duty of an advocate to his client, it will suffice to quote the eloquent language of Chief Justice Cockburn cited by McCardie J. in an address delivered in the Middle Temple:-

My noble and learned friend Lord Brougham, ... said that an advocate should be fearless in carrying out the interests of his client, but I couple that with this qualification and this restriction, that the arms which he wields are to be the arms of the warrior and not of the assassin. It is his duty to strive to accomplish the interests of his clients *per fas* and not *per nefas*. It is his duty to the utmost of his power to seek to reconcile the interests he is bound to maintain and the duty it is incumbent upon him to discharge with the eternal and immutable interests of truth and justice.

And in *China Insurance Co (Singapore) Pte Ltd v Liberty Insurance Pte Ltd* [2005] 2 SLR 509, [the court also] had occasion to observe thus (at [64]):

Although we operate within an adversarial system which, by its very nature, mandates counsel on each side advocating, as persuasively and as fearlessly as possible, their arguments on behalf of their respective clients, this can – indeed, ought – to be achieved within a framework of what, for want of a better term, I would classify as professional courtesy and common decency. Put in simpler terms, one can disagree and yet not be disagreeable. The clash of arguments that is supposed to result in the emergence of the light of truth must not degenerate so that more heat than light issues. Looked at in a practical light, where there is the (hopefully, merely occasional) descent into a less than agreeable situation, not only is the legal system in general sullied by such unseemly conduct but the court is also hindered in ascertaining what the true facts are and, hence, in arriving at a fair

and just decision. I am therefore pleased to note that counsel in the present case conducted themselves in a manner that was both exemplary as well as helpful to the court.

14 Returning to relevant prior decisions, in *Prem Singh* ([11] *supra*), the lawyer concerned was found to have contravened r 3 of the Solicitors' Accounts Rules by failing to place two sums of his client's money into his firm's client account. The lawyer was suspended from practice for two years. However, unlike the situation in the present proceedings, the lawyer in that case and in the words of the court itself (at [18]), "had adopted a course of action that was completely at variance with his initial plea of guilt". Further, as this court observed, in *Law Society of Singapore v Chiong Chin May Selena* [2005] 4 SLR 320 at [30] ("*Selena Chiong*"):

In *Law Society of Singapore v Prem Singh* [1999] 4 SLR 157, the respondent was charged with:

- (a) failing to deposit his client's money into a client account as required by r 3 of the then applicable Solicitors' Account[s] Rules; and
- (b) failing to keep proper written accounts of his dealings with client's money as required by r 11(1)(a)(i) of the same Solicitors' Accounts Rules.

Finding that the solicitor was also not guilty of dishonesty in that case, the court determined that a suspension for a period of two years was appropriate. *We note, however, that the solicitor in that case was a senior practitioner of 23 years' standing when the complaint was made against him. Furthermore, he could neither satisfactorily nor adequately explain nor justify his failure to adhere to the Solicitors' Accounts Rules.*

[emphasis added]

15 Like the lawyer in *Selena Chiong*, the lawyer in the present proceedings was called to the Bar at approximately the same time (albeit some two years earlier). We do acknowledge, however, that the lawyer in that case was also medically unwell. In the circumstances, she was suspended from practice for a period of one year.

16 Returning to the decision of this court in *Prem Singh* ([11] *supra*), we also note Mr Damodara's observation that, in that case, and unlike the present, the lawyer concerned did not deposit any of the moneys received from his client in any account that was connected to his practice and that, therefore, an audit of the practice (as statutorily required) would not have detected the breach.

17 Turning to the decision of this court in *Lim Kiap Khee* ([11] *supra*), there had also been a contravention of r 3 of the Solicitors' Accounts Rules. Unlike the present proceedings, however, in that case, there had also been grossly improper conduct within the meaning of s 83(2)(b) as well as misconduct unbefitting an advocate and solicitor within the meaning of s 83(2)(h) of the Act. The lawyer concerned was struck off the roll. In that regard, however, it is also significant to note that the lawyer had in fact been suspended from practice for a period of one year in relation to an earlier and unrelated set of misconduct (comprising five charges). Further, at the time of the misconduct, the lawyer was an experienced practitioner of over 20 years' standing. Finally, he had totally ignored the proceedings and had not tendered any arguments in mitigation. We agree with Mr Damodara that the facts and circumstances in that case were very different from those in the present proceedings.

18 In another decision of this court in *Lim Yee Kai* ([8] *supra*), the conduct of the lawyer concerned was even more blatant. Indeed, there was not only a breach of the Solicitors' Accounts Rules; the lawyer in question had misappropriated his clients' moneys and had in fact absconded.

There was clear dishonesty on his part and it is not surprising that he was struck off the roll. As Mr Damodara pointed out, the facts in that case were vastly different from those in the present proceedings.

19 We acknowledge, however, that the Solicitors' Accounts Rules are undergirded by important concerns. In *Prem Singh* ([11] *supra*), L P Thean JA, who delivered the judgment of the court, observed thus (at [22]):

Rule 3 of the Legal Profession (Solicitors' Accounts) Rules prescribes a mandatory requirement that the client's funds be placed into a separate account. The purpose of this rule is to protect the public and to instil public confidence in solicitors. If a member of the public is going to deposit his funds with a solicitor, there has to be some form of assurance that his funds will be well protected in a separate client account and will not be misappropriated. In our opinion, the respondent's omission to place the funds in his client account was a serious breach of the Legal Profession (Solicitors' Accounts) Rules.

The above observation was cited and followed by this court in *Lim Kiap Khee* ([11] *supra* at [24]).

20 And in a similar vein, in *Lim Yee Kai* ([8] *supra*), L P Thean JA, who delivered the judgment of the court, observed thus (at [17]):

In respect of the first charge, there was clear evidence that the respondent had contravened paras (1)–(4) of r 11 of the Legal Profession (Solicitors' Accounts) Rules. These rules prescribe mandatory requirements for proper accounts to be maintained in respect of clients' moneys. The purpose of these rules is to protect the public and to instil public confidence in solicitors. Solicitors are placed in a position of trust by their clients, and they are often entrusted by their clients to hold large sums of moneys. Members of the public must have confidence in the integrity of the accounting system of solicitors and must have trust that their solicitors can properly maintain their client's accounts accurately. It is of vital importance that solicitors should be scrupulously diligent in keeping and maintaining proper accounts of such moneys. In this case, large sums of moneys had been entrusted to the respondent to hold on behalf of his clients, and he failed or neglected to keep proper accounts of such moneys. These were serious breaches of the rules. Where rules relating to accounts are breached, disciplinary action is warranted under s 72(3) or s 83(2)(j) of the Act. In our opinion, such contravention of the rules by the respondent amounted to grossly improper conduct in the discharge of his professional duty.

21 More recently, in *Selena Chiong* ([14] *supra*), V K Rajah J, who delivered the judgment of the court, observed thus (at [19]):

Solicitors have been conferred a unique statutory privilege by Parliament for the purpose of facilitating the efficient discharge of their professional duties. They are allowed to hold moneys belonging to clients and third parties. This right in turn entails serious responsibilities. The public must be confident that moneys held or maintained by solicitors will be adequately safeguarded and legitimately disbursed at any cost. To this end, detailed accounting rules, practices and conventions have been put in place through subsidiary legislation and practice directions. All practising solicitors are *ipso facto* subject to the Solicitors' Accounts Rules and other relevant rules made pursuant to the LPA. The *raison d'être* for these rules is clearly to protect the public against any unauthorised use of money maintained by solicitors and to instil in the public confidence that the legal profession is effectively regulated and policed. It is not enough that a solicitor conducts himself honestly in relation to the discharge of his professional duties. A solicitor also has to discharge his obligations and responsibilities competently and conscientiously.

Observance of the relevant accounting rules, practices and conventions is a fundamental obligation that all solicitors must observe as a condition for their privilege to practise. We find an observation of Thomson CJ in *In re A Solicitor* (1962) 3 MC 323 at 323 apposite:

The legal profession enjoys very great privileges. In return for these privileges they owe the public a duty and that duty involves not only an extremely high standard or probity but a way of conducting business, and particularly business in relation to financial matters, which is beyond suspicion. *In particular it is required, and it is part of the price the profession must pay for its privileges, that separate accounts of solicitors' money and clients' money should be kept.*

[emphasis added]

The learned judge also stated (at [21]):

It is settled law that failure to maintain the requisite financial and/or accounting records inevitably results in a finding of professional misconduct. It is immaterial that the inadvertence was not inspired by improper motives. In the case of *In re A solicitor* [1972] 1 WLR 869, Lord Denning MR observed, at 873, that negligence "may amount to a professional misconduct if it is inexcusable and is such as to be regarded as deplorable by his fellows in the profession.

22 However, Rajah J also recognised the fact that whilst acknowledging the general rationale underlying the Solicitors' Accounts Rules, the court cannot ignore the fact that individual lawyers commit specific breaches in a large variety of circumstances. The court constantly holds in tension the need to be fair on both general as well as specific levels and, hence, attempts its level best to balance the rights of the public with those of the individual in order to achieve fairness in both instances. As this court put it in *Law Society of Singapore v Ong Ying Ping* [2005] 3 SLR 583 at [72]:

This process of balancing the rights of the public and that of the individual (even of one who has transgressed the law and has either actually and/or potentially injured the fabric of society) is obviously not an easy one to effect. It is nevertheless necessary and an integral part of what the courts do every day.

23 In *Selena Chiong* ([14] *supra*), Rajah J acknowledged this balance as well as furnished some useful practical guidance thus (at [20]):

Any breach of the Solicitors' Accounts Rules will be deemed to warrant disciplinary attention. *Having said that, it is only right to acknowledge that there is a wide spectrum of breaches, ranging from trivial or technical infractions to more substantive or even heinous ones. Each case will have to be resolved on its merits. It seems neither possible nor practical to catalogue the various consequences for breaches of these obligations.* [emphasis added]

24 Bearing the above principles (especially those embodied in the quotation above) in mind, we turn now to the specific facts of the present proceedings to ascertain the appropriate sentence to be imposed on the respondent.

Our decision

25 Whilst the respondent in the present proceedings was indeed remiss in not having a proper accounting structure and committed the breaches of the Solicitors' Accounts Rules as a result of what, in the final analysis, was gross inefficiency, there was, in the nature of things, clearly no

evidence of dishonesty on his part. Indeed, none of the respondent's clients suffered any loss. The respondent also struck us as being genuinely remorseful and, indeed, he had pleaded guilty to the charges at the earliest opportunity. The respondent promised that he would endeavour to strengthen this particular area of his practice and explained that he had already put in place a more thorough system of checks since the year 2004.

26 It was clear that in so far as the spectrum of possible breaches of the Solicitors' Accounts Rules was concerned, the breaches here were on the less culpable end of the continuum despite the large number of charges. This is not to state that such breaches were, in *principle*, excusable or that the court was going soft on errant lawyers. The court takes a serious view of breaches of the Solicitors' Accounts Rules. In the same breath, it is essential to confine each case to its own factual matrix when assessing the appropriate sentence.

27 However, given the fact that these breaches arose out of sheer incompetence (which also explained why they were in fact detected by the auditor concerned), a sentence that would reflect the seriousness as well as importance of observing these Rules whilst recognising that the respondent's actions did not constitute the grosser breaches that could have been committed, would be ideal. Indeed, as we have already mentioned, Mr Damodara himself pointed out that the present proceedings differed (in a positive fashion) from the situations embodied in the previous case law.

Conclusion

28 For the reasons given above, and taking all the relevant factors and circumstances into account, we deemed it appropriate to order that the respondent be suspended from practice for a period of one year. Mr Damodara, in the general spirit in which he conducted the case on behalf of the Law Society, did not press for costs and we therefore did not make any order for costs in the present proceedings.

29 We trust that the respondent will, in the meantime, avail himself of the opportunity to learn how to better manage his practice in general and the accounts therein in particular, and that he will return to practice with both greater management capability and renewed dedication.

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