IN THE COURT OF THREE JUDGES OF THE REPUBLIC OF SINGAPORE

[2021] SGHC 258

Originating Summons No 4 of 2020 (Summons No 2 of 2021)

Between

Seow Theng Beng Samuel

… *Applicant*

And

The Law Society of Singapore

… *Respondent*

EX TEMPORE JUDGMENT

[Legal Profession] — [Disciplinary proceedings] — [Holding disciplinary proceedings in abeyance]

Seow Theng Beng Samuel
v
Law Society of Singapore

[2021] SGHC 258

Court of Three Judges — Originating Summons No 4 of 2020 (Summons No 2 of 2021)
Sundaresh Menon CJ, Andrew Phang Boon Leong JCA and Steven Chong JCA
16 November 2021

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

Introduction

1 The central question in this application concerns the proper conduct and management of the pending disciplinary proceedings against the applicant, an advocate and solicitor of 22 years' standing. At the material time, the applicant was the managing director of his own law firm and owned and managed a talent management company.

2 The Law Society of Singapore ("the Law Society") brought eight principal and eight alternative charges against the applicant for physically and verbally abusing three of his employees in March and April 2018. The applicant pleaded guilty to the charges and the disciplinary tribunal ("the DT") found that there was cause of sufficient gravity for disciplinary action under s 93(1)(*c*) of

the Legal Profession Act (Cap 161, 2009 Rev Ed) ("LPA"). The Law Society then filed C3J/OS 4/2020 ("OS 4") for an order pursuant to s 94(1) read with s 98(1) of the LPA that the applicant be sanctioned under s 83(1) of the LPA.

3 It is helpful here to recount the relevant chronology:

(a) The Law Society filed the charges for professional misconduct against the applicant on 2 May 2019.

(b) Criminal charges were filed against the applicant on 7 June 2019 arising from broadly the same set of facts, involving some of the incidents that were also the subject matter of the professional misconduct charges.

(c) The applicant pleaded guilty to the professional misconduct charges that corresponded to the incidents forming the subject matter of the criminal charges on 14 August 2019 and to the remaining professional misconduct charges on 19 November 2019.

(d) Closing submissions were made to the DT sometime in November and December 2019.

(e) The DT issued its report on 10 March 2020.

(f) The Law Society filed OS 4 on 7 April 2020.

(g) The applicant pleaded guilty to the criminal charges on 27 July 2020.

4 It should be noted that by the time the applicant pleaded guilty to all the professional misconduct charges before the DT, he had tendered two psychiatric reports to support his argument that he was suffering from Adjustment Disorder

("AD") at the material time and that this had a bearing on his culpability. It will be evident from the foregoing narration of the chronology that the applicant was content to plead guilty before and make his submissions to the DT without regard to the criminal proceedings, even though they were already underway by then. The applicant also adduced psychiatric evidence to similar effect in the criminal proceedings. As the Prosecution disputed the psychiatric evidence, it sought to adduce its own expert evidence. As a result, the District Court held a Newton hearing, which is ongoing. The Law Society, however, has not sought to adduce any rebuttal evidence; counsel for the Law Society, Mr Dinesh Dhillon, confirmed that the Law Society is content to deal with the issue on the basis of submissions. As will shortly be seen, this was also the position that the Law Society took before the DT.

5 OS 4 was initially fixed for hearing in September 2020. However, on the understanding that the Newton hearing would conclude by September 2020, the applicant proposed and the Law Society agreed that OS 4 be held in abeyance pending the conclusion of the Newton hearing. As it turned out, more than a year later, the Newton hearing has yet to conclude. As the Law Society now wishes to proceed with the hearing of OS 4, the applicant has filed this application seeking an order that the hearing of OS 4 continue to be held in abeyance pending the completion of the Newton hearing.

6 Having heard the parties, we dismiss this application. The court should only stay one of two concurrent sets of proceedings if there would otherwise be a real risk of serious prejudice that may lead to injustice in either or both sets of proceedings. In our judgment, the applicant has failed to establish any risk of such prejudice.

Background facts

7 We briefly set out the background facts. In late 2019, the applicant pleaded guilty before the DT to all 16 charges against him. As earlier alluded to at [4] above, he adduced two medical reports by a private psychiatrist, Dr Tan Chue Tin ("Dr Tan"), in which Dr Tan opined that the applicant was suffering from AD at the material time and that this had contributed to his misconduct ("the 2019 reports").

8 The DT found the 2019 reports to be of little assistance. It noted that Dr Tan did not explain how he had ascertained that the applicant was suffering from AD at the material time in around April 2018, even though he had first examined the applicant only in May 2019. Nor did Dr Tan explain his diagnosis or how the applicant's AD had purportedly contributed to his misconduct. In the circumstances, the DT found that there was cause of sufficient gravity for disciplinary action.

9 The Law Society proceeded to file OS 4 on 7 April 2020. By then, as we have noted, the applicant was also facing criminal proceedings in respect of some of the acts that were the subject of the disciplinary proceedings. In June 2020, the applicant's solicitors sought the Law Society's consent for OS 4 to be held in abeyance pending the disposal of the criminal proceedings. They explained that even though the applicant intended to plead guilty to the criminal charges, a Newton hearing would likely be held as the Prosecution intended to contest the psychiatric evidence adduced by the applicant.

10 The Law Society sought the views of the prosecutors conducting the criminal proceedings as to whether OS 4 should be held in abeyance. The Prosecution aligned itself with the applicant as it wished to avoid inconsistent findings by this court and the District Court. The Prosecution also indicated that

the applicant would likely plead guilty to the criminal charges on 27 July 2020 and that a Newton hearing would likely be held four to six weeks thereafter. Importantly, it was in this context that the Law Society consented to the applicant's request. OS 4, which had originally been fixed for hearing in September 2020, has been held in abeyance since July 2020, as agreed between the applicant and the Law Society.

11 In respect of the criminal proceedings, the applicant pleaded guilty in July 2020 to a charge of voluntarily causing hurt and a charge of using criminal force. Two other charges were taken into consideration for the purpose of sentencing. The applicant relied on the 2019 reports in mitigation. However, as the Prosecution disputed the applicant's claim to have been suffering from AD, the District Court convened a Newton hearing.

12 The first and second tranches of the Newton hearing took place in February 2021 and June 2021 respectively. The Prosecution adduced rebuttal evidence, namely, a medical report and a clarificatory note issued by a psychiatrist from the Institute of Mental Health. The applicant in turn adduced two further medical reports issued by Dr Tan. A third tranche of the Newton hearing has been fixed for March 2022.

13 The Law Society grew concerned over the delay in the conduct of OS 4, which was well beyond what had been contemplated. In September 2021, the Law Society requested that OS 4 be restored for hearing. The applicant then filed the present application.

Our decision

14 It is clear to us that the mere fact of concurrent criminal and disciplinary proceedings does not necessarily mean that either set of proceedings should be

stayed or held in abeyance; in fact, the contrary is true. In *Law Society of Singapore v Uthayasurian Sidambaram* [2009] 4 SLR(R) 674 ("*Uthayasurian Sidambaram*"), the court of 3 Judges emphasised (at [86]) that "where there are concurrent civil or criminal and disciplinary proceedings, a stay of either proceedings should *not* be granted lightly" [emphasis in original]. The court set out the following guidelines for determining whether a stay should be granted:

> (a) Where there are concurrent proceedings before the courts, the courts *may* grant a stay of one of the concurrent proceedings where there is a *real risk of serious prejudice* which may lead to *injustice* in either the civil or disciplinary proceedings or both.
>
> (b) However, the courts will only exercise their discretion to stay one of two concurrent sets of proceedings sparingly and with great care.
>
> (c) If the court is satisfied that, absent a stay, there is a real risk of serious prejudice, then the court must balance that risk against the countervailing considerations such as the protection of the public interest in ensuring that the disciplinary process is not impeded.

15 In fashioning these guidelines, the court drew from English authorities such as *R (on the application of Land and others) v Executive Council of the Accountants' Joint Disciplinary Scheme* [2002] EWHC 2086 (Admin) ("*Land*"). Although *Land* concerned a stay of disciplinary proceedings pending the conclusion of *civil* proceedings, the principles set out therein are nonetheless instructive. It was emphasised in *Land* (at [22]) that the court need only engage in the balancing exercise set out at [14(c)] above if the party seeking a stay has established a real risk of serious prejudice that may lead to injustice. Furthermore, as far as the balancing exercise is concerned, the strong public

interest in seeing that the disciplinary process is not impeded will almost always be a relevant countervailing consideration (see *Land* at [22]).

16 In our judgment, the applicant has failed to establish a real risk of serious prejudice that may lead to injustice in OS 4 and/or the criminal proceedings. The risk of inconsistent findings plainly does not meet this threshold. As the court stressed in *Law Society of Singapore v Ravi s/o Madasamy* [2016] 5 SLR 1141 ("*Ravi s/o Madasamy*") at [37], sentencing in the criminal context engages different considerations from those in the context of legal disciplinary proceedings. Unlike criminal punishment, the principal purpose of disciplinary sanctions is not to punish the errant solicitor but to protect the public and uphold confidence in the integrity of the legal profession (see *Law Society of Singapore v Chia Choon Yang* [2018] 5 SLR 1068 at [17]). These "higher order considerations" explain why mitigating factors carry less weight in disciplinary proceedings than in criminal proceedings (see *Ravi s/o Madasamy* at [33] and [67]). Accordingly, even if the District Court accepts the applicant's AD as a mitigating factor, his AD will likely and legitimately be of less consequence in OS 4 (see *Ravi s/o Madasamy* at [33], citing *Law Society of Singapore v Kurubalan s/o Manickam Rengaraju* [2013] 4 SLR 91 at [48]–[49]). This is not at all indicative of any real risk of serious prejudice that may lead to injustice; it is but a function of both sets of proceedings serving different interests.

17 The applicant's argument as to the risk of inconsistent findings is also misplaced because this risk is wholly unrelated to whether both sets of proceedings take place sequentially. The risk of inconsistent findings is "inherent in a regulatory and disciplinary system separate from the courts" and would only cease to exist if either this court or the District Court were bound by the other's findings (see *Land* at [28]–[29]). There can be no question that this court's findings in OS 4 will not be binding or determinative of the issues in the

Newton hearing (see *Uthayasurian Sidambaram* at [87] and *Land* at [28]); indeed, the applicant does not suggest otherwise. In line with our earlier observation (at [16] above) that criminal and legal disciplinary proceedings fulfil different objectives, we find that the risk of inconsistent findings is inherent in concurrent proceedings but is not inherently *unfair*, and therefore does not justify holding OS 4 in abeyance.

18 The most persuasive evidence that concurrent proceedings, and the attendant risk of inconsistent findings, are not inherently unjust is perhaps the fact that the applicant was content to plead guilty before the DT *prior* to the Newton hearing (see [3]–[4] above). Notwithstanding the purported risk of inconsistent findings by the DT and the District Court, and even though the applicant was already facing criminal charges by the time he pleaded guilty before the DT, he did not object to the DT's assessment of the 2019 reports. At the hearing before us, the applicant was unable to explain how OS 4 differs in any material respect from the proceedings before the DT such that the hearing of the former, but not of the latter, should be impeded by the ongoing Newton hearing. In our judgment, the applicant was not prejudiced by the fact that the criminal proceedings and the proceedings before the DT took place concurrently, and he will not be prejudiced if the Newton hearing and OS 4 are conducted in parallel. Even more significantly, the Law Society does not intend to adduce any rebuttal evidence because it considers that, on the face of the psychiatric evidence adduced by the applicant, that evidence can be dealt with in submissions on the basis that it is unpersuasive and/or immaterial to the issues in OS 4. This puts an end to the applicant's contentions before us.

19 Since the applicant has failed to establish any real risk of serious prejudice that may lead to injustice in either or both sets of proceedings, there is, strictly speaking, no need for us to carry out the balancing exercise outlined

at [14(c)] above. It nonetheless bears reiterating that OS 4 has been held in abeyance since July 2020. The third tranche of the Newton hearing has been fixed for March 2022, after which the District Court is likely to adjourn the criminal proceedings, pending the parties' submissions and its decision on sentence. Even assuming that the Newton hearing will be concluded by the third tranche (which is by no means guaranteed), OS 4 would have been held in abeyance for roughly two years by then. Moreover, if the risk of inconsistent findings that the applicant raises is to be given full weight, OS 4 would also have to be held in abeyance pending the determination of any appeal that may be filed against the District Court's decision on sentence. If so, the delay in the prosecution of OS 4 would almost certainly exceed two years. Such a long delay in the conduct and conclusion of OS 4 will surely undermine the overriding objectives of legal disciplinary proceedings, namely, the protection of the public and the maintenance of public confidence in the integrity of the legal profession (see [16] above).

20 Although the Law Society previously consented to the holding of OS 4 in abeyance, this was on the understanding that the Newton hearing would conclude by September 2020 and that OS 4 would be heard shortly thereafter (see [5] and [10] above). Instead, the delay in the prosecution of OS 4 has been a matter not of a few weeks but of many months – and, if the applicant's position is accepted, possibly of years. In the circumstances, we see every reason for the Law Society to withdraw its consent and to proceed with the hearing of OS 4.

21 For these reasons, we dismiss the application with costs fixed in the aggregate sum of $3,000.

Sundaresh Menon
Chief Justice

Andrew Phang Boon Leong
Justice of the Court of Appeal

Steven Chong
Justice of the Court of Appeal

Eugene Singarajah Thuraisingam and Johannes Hadi (Eugene Thuraisingam LLP) for the applicant;
Dinesh Dhillon Singh, Loong Tse Chuan and Alisa Toh Qian Wen (Allen & Gledhill LLP) for the respondent.