

Law Society of Singapore v Yap Shao Sin Philip
[2004] SGHC 252

Case Number : OS 965/2004
Decision Date : 09 November 2004
Tribunal/Court : High Court
Coram : Chao Hick Tin JA; Tay Yong Kwang J; Yong Pung How CJ
Counsel Name(s) : Leslie Phua Oei Heong (Phua Wai Partnership) for applicant; Respondent absent
Parties : Law Society of Singapore — Yap Shao Sin Philip

Legal Profession – Show cause action – Advocate and solicitor convicted of criminal breach of trust – Weight to be given to mitigating factors – Appropriate order to be made – Section 83(1) Legal Profession Act (Cap 161, 2001 Rev Ed), s 409 Penal Code (Cap 224, 1985 Rev Ed)

9 November 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) (“the Act”) to make absolute an order to show cause. We granted the application and ordered the respondent, Philip Yap Shao Sin, to be struck off the roll of advocates and solicitors. We now set out our reasons.

Facts

2 The facts of this case were undisputed. The respondent was an advocate and solicitor of the Supreme Court of Singapore. At all material times, he was practising as a sole proprietor in the firm of M/s Philip Yap & Partners.

3 Sometime in 1993, Lim Jew Kann (“the complainant”) and his father Lim Hong Min (“the victim”) decided to purchase a private apartment, which was proposed to be erected at No 5 Jalan Masjid #04-03, Kembangan Court, Singapore. They applied to the Overseas Union Bank for a loan. They were recommended to appoint the respondent as their solicitor to transact all subsequent matters relating to the purchase of the apartment.

4 Towards the end of 1993, the victim executed a purchase agreement with the apartment developer, LKN Development Pte Ltd. Following this, the complainant and the victim met the respondent at his law firm, whereupon the respondent asked for the sum of \$31,200.52. He explained that \$7,255.02 of this were his legal fees, \$22,145.50 were the stamp fees and \$1,800 were the survey fees required to purchase the apartment.

5 The victim agreed to the amount and thereupon issued a cheque for the \$31,200.52, made payable to the respondent’s law firm.

6 The respondent banked the victim’s cheque at the Bank of China to open a current account in his own name. After that, he made use of the victim’s money to make payments, all of which were either for the payment of the respondent’s personal credit card bills or for his personal cash withdrawals.

7 In August 1996, the victim received, via courier service, documents relating to his purchase of the apartment and a note, addressed to him by the respondent, stating that the respondent had

ceased acting for the victim in relation to the purchase of the apartment. Subsequently, in December 1996, the victim received a letter from the developer stating that they had yet to receive the stamp fees from the respondent amounting to \$19,232. This was to have been the final payment to complete the purchase of the apartment.

8 The complainant lodged a police report alleging that the victim had paid a sum of \$31,200.52 to the respondent for the purchase of a private apartment but that the respondent had failed to fulfil his responsibility as the lawyer and had not repaid any money to the complainant.

9 The respondent was charged with committing criminal breach of trust under s 409 of the Penal Code (Cap 224, 1985 Rev Ed). The charge read:

You, Philip Yap Shao Sin, Male 42 years, NRIC No S 1424518/I, are charged that you, between 16th November 1993 and 14th February 1994, in Singapore, being entrusted with a certain property, to wit cash amounting to S\$19,232, in the way of your business as an attorney, did commit criminal breach of trust in respect of such property, by dishonestly converting the said amount of cash to your own use, and you have thereby committed an offence punishable under section 409 of the Penal Code, Chapter 224.

1 0 On 5 March 2003, the respondent pleaded guilty in a district court to the charge, and on 25 April 2003, he was sentenced by the district judge to 12 months' imprisonment.

The show cause proceedings

1 1 As the respondent was convicted of an offence involving dishonesty, the Law Society in accordance with s 94A(1) of the Act applied under s 98(1) for and obtained an order that the respondent be made to show cause why he should not be dealt with under the provisions of s 83(1) of the Act. Under s 83(1), an errant advocate and solicitor can be struck off the roll, suspended from practice or censured, if due cause has been shown. The respondent was not represented, nor was he present at the hearing to make any submissions before us on this point.

12 Under s 83(6), a court of three judges must accept the respondent's conviction as final and conclusive: *Law Society of Singapore v Junaini bin Manin* [2004] SGHC 200 ("*Junaini bin Manin*"); *Law Society of Singapore v Loh Wai Mun Daniel* [2004] 2 SLR 261 ("*Loh Wai Mun Daniel*"). The sole question for the court's determination is what consequences should flow from the fact that the respondent had committed the offences for which he was convicted: *Law Society of Singapore v Wee Wei Fen* [2000] 1 SLR 234 ("*Wee Wei Fen*").

13 Section 83(2)(a) provides that due cause may be shown by proof that an advocate and solicitor "has been convicted of a criminal offence, *implying a defect of character which makes him unfit for his profession*" [emphasis added]. The fact that the respondent was convicted of an offence involving dishonesty committed in his capacity as advocate and solicitor was, in itself, sufficient for the court to determine that due cause had been shown under s 83(2)(a): *Loh Wai Mun Daniel* and *Law Society of Singapore v Sarjit Singh s/o Mehar Singh* [2004] SGHC 51. As such, the sole issue that concerned this court was the determination of the appropriate order to be made under s 83(1) of the Act.

Appropriate order to be made

14 It is well established that where a solicitor has been convicted of a criminal offence involving fraud or dishonesty, the court has almost invariably, no matter how strong the mitigating factors,

chosen to strike a solicitor off the roll: *Law Society of Singapore v Ravindra Samuel* [1999] 1 SLR 696, followed in *Loh Wai Mun Daniel* and *Junaini bin Manin*.

15 Such a conviction unquestionably carries with it an implication that the respondent lacked the level of integrity and trustworthiness required of a solicitor. In this case, the respondent dishonestly converted funds, that the victim had entrusted to him, for his personal use. As a result, he had violated the trust that had been placed in him as the victim's solicitor.

16 The court also took into account the fact that this dishonest act had been committed in the capacity of an advocate and solicitor, and deserved to be dealt with accordingly: *Re Mohamed Jiffry Muljee* [1994] 3 SLR 520; *Law Society of Singapore v Tham Yu Xian Rick* [1999] 4 SLR 168; *Wee Wei Fen*; *Junaini bin Manin*. There was no reason to depart from the norm.

17 The respondent was not present at the hearing to make any submissions on mitigating factors. However, the presence of mitigating factors would have been of little avail. The settled position is that in cases of proven dishonesty, mitigating factors do not tilt the balance towards the more lenient sanctions of suspension or of censure except where they are consistent with the objectives of preserving the good name of the legal profession and of the protection of the public: *Law Society of Singapore v Ezekiel Caleb Charles James* [2004] 2 SLR 256; *Re Knight Glenn Jeyasingam* [1994] 3 SLR 531. Indeed, where a case involves an offender of proven dishonesty, the weight to be attached to a plea in mitigation is negligible and a striking off will be the consequence as a matter of course: *Tham Yu Xian Rick*; *Loh Wai Mun Daniel*.

18 For the foregoing reasons, we granted the Law Society's application to make the show cause order absolute, and ordered the respondent to be struck off the roll. We further ordered that he should bear the costs of these proceedings.

Order accordingly.