IN THE COURT OF THREE JUDGES OF THE REPUBLIC OF SINGAPORE

[2017] SGHC 190

Originating Summons No 2 of 2017

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

And

In the matter of Ismail bin Atan, an Advocate
and Solicitor of the Supreme Court of the
Republic of Singapore

Between

THE LAW SOCIETY OF SINGAPORE

… *Applicant*

And

ISMAIL BIN ATAN

… *Respondent*

EX TEMPORE JUDGMENT

[Legal Profession] — [Disciplinary proceedings]

[Legal Profession] — [Professional conduct] — [Breach]

[Legal Profession] — [Professional conduct] — [Grossly improper conduct]

The Law Society of Singapore
v
Ismail bin Atan

[2017] SGHC 190

Court of Three Judges — Originating Summons No 2 of 2017
Sundaresh Menon CJ, Andrew Phang Boon Leong JA and Steven Chong JA
26 July 2017

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

1 The respondent is a solicitor of about 20 years' standing. The complainant is the Attorney-General. The complaint relates to certain events that concern a female legal executive employed by Messrs Salem Ibrahim LLC, the firm of which the respondent was a member at the material time. We refer to the female legal executive as "the victim". The victim reported directly to the respondent at the time of the relevant events.

2 The events which give rise to the present proceedings took place on 4 July 2013. Those events centre around what transpired between the respondent and the victim in a hotel room on the second floor of the VIP Hotel ("the Hotel") located at 5 Balmoral Crescent, Singapore. The respondent accepts that he was accompanied by the victim to the Hotel on that day. He contends that at that time, he was working on a claim for a client who had been injured in an accident at the Hotel and who was bringing a claim against the Hotel. The accident in question had occurred in the public reception area of the Hotel. However, the

respondent asserts that he booked a room on the second floor in order to understand the layout of the Hotel and the room. This was to enable him to prepare his client for cross-examination. We pause to say that this assertion makes no sense; and the respondent has not been able to explain to us, in a credible way, why it would ever have been reasonable or necessary to book a room on the *second* floor in order to prepare for cross-examination in connection with the accident that took place in the public reception area of the *ground* floor.

3 In any case, the respondent maintains that while surveying the second floor, a member of the staff appeared and he then persuaded the victim to go into the room with him to avoid any suspicion. Central to the respondent's case is his contention that there was no physical contact between him and the victim during the period they were both in the room. They were allegedly in the room for a while and then left. This is a point of significance to which we will return.

4 The victim's version of events is to the contrary. She contends that she was asked by the respondent to accompany him to the Hotel. The respondent suggested that they get a room to avoid suspicion whilst they surveyed the property. He then entered the room with the victim but proceeded to outrage her modesty by grabbing her, trying to hug and kiss her, kissing her, rubbing his body against her and doing various other acts. He also repeatedly suggested that they have an affair. They left the Hotel after that interlude in the room and returned to the office. According to the victim, she confided in her co-worker, Mindy, on all that had happened later that same evening. She was not challenged on this in cross-examination.

5 The gravamen of the charges, which were brought, in the alternative, under: (a) s 83(2)(*b*) of the Legal Profession Act (Cap 161, 2009 Rev Ed)

("LPA"); (b) s 83(2)(*b*) of the LPA read with r 53A of the Legal Profession (Professional Conduct) Rules (Cap 161, R 1, 2010 Rev Ed) and s 71 of the LPA; and (c) s 83(2)(*h*) of the LPA, centres on what transpired in the time that the respondent and the victim were in the room together. But the respondent also places much reliance on events after that. In particular, he relies on the fact that the victim did not immediately make a scene at the Hotel but accompanied him back to the office and subsequently even expressed her willingness to continue working in the firm though for somebody else other than the respondent; it was only when this was not acceded to that she then made her complaints public. On this basis, the respondent contends that this was a case of a person who was disappointed in her job aspirations and who took it out on him.

6 Before we consider some other facts that are relevant, we pause to make one observation. In his submissions before us, the respondent took issue with the fact that his arguments to this effect had not been considered by the disciplinary tribunal ("the DT"). With respect, this is mistaken because the DT did consider this at [28(e)] of its report in *The Law Society of Singapore v Ismail bin Atan* [2016] SGDT 11, but it also rejected it. Prior to dealing with the DT's grounds for rejecting the defence advanced by the respondent, it is necessary to mention a few other facts.

7 First, on 10 July 2013, the victim resigned from the firm after her complaint to the management and her request for a transfer were not acceded to. She sent the respondent her resignation letter by email, copying the email to most of the rest of the staff in the firm. The letter was in these terms:

> …
>
> It is with regret that I herewith tender my resignation as litigation secretary effective immediately due to intolerable sexual harassment committed by you on July 4th 2013 at about

> 1245 to 1400 at VIP Hotel under the pretense of investigating Pamela's case.
>
> You have wrongfully restrained, confined and forced me to kiss and hug you which is so damn F disgusting. Due to that, I no longer feel safe when you are around and there is no guarantee that you will not commit the same sexual harassment again. You have also caused me to suffer post traumatic disorder, eating disorder and change me completely.
>
> It is appalling that you, a trusted boss and experienced lawyer, would use Salem Ibrahim LLC's revenues for the purpose of procuring crime under the guise of Salem Ibrahim LLC's legal business. I, therefore, refuse to work in a hostile environment and where I can easily smell your foul stench.
>
> There is no reason exists to justify your attempt to rape me. I hope one day someone will do the same to your daughter so you would understand how I suffer through all this. That day, you try to persuade me with your promises and say "If I do not tell my husband, he will never know", but he knows because he will straight away detect any change in me. He is my husband, an exceptional man, carefully chosen by me. Not the husband of your type who goes behind your wife back doing all this. He put so much effort to make my life wonderful and you just ruin it. You will definitely pay for what you did. Tell your wife what you have done, if not I will tell her myself.
>
> With little professionalism that left in you, please make sure my salary for July is paid accordingly and I warn you not to come near me ever again or I will report the matter to the Police and complain to the Law Society of Singapore.
>
> Thank you, Mr Ismail, for the hell that you have put me through.
>
> …
>
> P/s: Please go to the Geylang Red Light District to satisfy your sexual gratification. You have no right to let your sexual gratification to ruin others life.

8 The respondent has not brought any action against the victim for the publication of this email.

9 Second, the victim lodged a police report on 16 July 2013 against the respondent which culminated in proceedings being brought against him for outrage of modesty under s 354(1) of the Penal Code (Cap 224, 2008 Rev Ed).

Subsequent to that, representations were made on the respondent's behalf to the Public Prosecutor, in the course of which the respondent offered to pay compensation and to apologise in return for having the offence compounded. This was initially rejected by the Public Prosecutor.

10 Sometime before the trial was to take place, it transpired that the victim, who had by then moved to Kuala Lumpur, could not return to Singapore to give evidence as she had just given birth. The Public Prosecutor then revisited the offer of composition and, in due course, the respondent furnished a letter of apology in these terms:

> …
>
> Dear [the victim's name redacted],
>
> …
>
> I unreservedly apologise for the events of 4 July 2013 at the VIP Hotel; and for causing trauma and stress to you.
>
> In particular, I apologise for the unwarranted physical contact that I imposed on you without your consent in the room of the VIP Hotel.
>
> …

11 The matter was duly compounded and the Attorney-General then lodged the present complaint to the applicant.

12 The DT was troubled by the fact that the respondent's explanation for taking the room on the second floor made no sense at all given the facts that were relevant to the case he was allegedly working on. The DT was also favourably struck by the victim's evidence, which it accepted. The DT also noted that the victim's story was directly corroborated by the respondent's letter of apology, which also completely contradicted the respondent's present position that nothing had transpired between them in the room. We share those

concerns of the DT. We find it unfathomable that if the respondent was truly, as he claims, an innocent victim of a major fraud perpetrated on him by a jealous and destructive colleague, he would sit idly by despite the inflammatory tone of the email and, worse, sign a letter of apology and issue it to the Public Prosecutor saying that he was sorry for the "unwarranted physical contact" that he had imposed on the victim without her consent. To put it bluntly, the letter was an admission by the respondent that what the victim said was essentially true and, while not necessarily conclusive in and of itself, it would bear substantial weight absent a compelling explanation. No such explanation has been forthcoming.

13 The respondent said that he had taken the advice of his counsel in the criminal proceedings. Perhaps his agreement to composition was driven by the need to avoid the even more serious consequences of a conviction. But the letter of apology which was forthcoming from the respondent, and which was meant to make amends with the victim, leaves him with a mountain to climb in these proceedings.

14 The respondent's main contention is that the victim's conduct immediately after the incident was more consistent with his version of events than with hers. We do not agree.

15 First, the victim's evidence that she told everything to Mindy on the very day of the incident was not even challenged in cross-examination. This is material because the respondent's contention is that the victim went public with these allegations only because her attempt to get a transfer within the firm failed. But well before any of this, and very shortly after the incident, the victim had already conveyed the essence of her complaint to a co-worker.

16 Second, the victim was subjected to a grave outrage of her modesty by a senior colleague who was her direct boss. It is unsurprising, in our judgment, that she took refuge first in her co-worker, Mindy, and soon thereafter in her husband. It is also unsurprising that her initial endeavour when she raised the issue with management was to find a way to preserve her job by seeking an alternative position within the firm, before giving up because there was no response to her efforts.

17 Having regard to all the evidence, we are satisfied that the DT was correct to convict the respondent of the charges brought.

18 We turn then to the question of the appropriate sanction in this case. We begin with the observation that the respondent's conduct was egregious. He had abused a junior colleague after leading her to a confined space under the pretext of carrying out work on a case. He had also abused the dominance he exercised over her by virtue of the position he held in the firm and then engaged in conduct that constituted a serious criminal offence upon her person. Furthermore, the offence appears to have been premeditated with a considerable degree of planning, and involved multiple unsolicited advances. Additionally, the respondent was a senior lawyer, having been in practice for about 16 years at the material time, and it is well established that the more senior an advocate and solicitor, the more damage he does to the integrity (and therefore the standing) of the legal profession (*Law Society of Singapore v Nathan Edmund* [1998] 2 SLR(R) 905 at [33]). We also note that the respondent exhibited no remorse whatsoever before either the DT or this court, choosing to maintain his innocence despite the strong objective evidence to the contrary. It is also disturbing that he cast various aspersions on the victim and sought to portray her as a jealous and destructive colleague hell-bent on perpetrating a major fraud in her unfounded quest for vindication. While the respondent's conduct perhaps

did not involve dishonesty, in our judgment, it belies a defect of character that is so serious that it renders the respondent unfit to be a member of this honourable profession.

19 In *Law Society of Singapore v Ravi s/o Madasamy* [2016] 5 SLR 1141 ("*Ravi s/o Madasamy*"), we held (at [31]) that the imposition of sanctions in disciplinary proceedings is guided by the following considerations: (a) the protection of members of the public who are dependent on solicitors in the administration of justice; (b) the upholding of public confidence in the integrity of the legal profession; (c) deterrence against similar defaults by the same solicitor and other solicitors in the future; and (d) the punishment of the solicitor who is guilty of misconduct. There will no doubt be cases where these considerations pull in different directions. In such cases, it is the protection of the public and the upholding of public confidence in the integrity of the legal profession that are paramount (*Ravi s/o Madasamy* at [41]). However, what is significant for present purposes is our observation in *Ravi s/o Madasamy* (at [34]) that in cases where aggravating factors are present, *all* the aforementioned considerations will generally pull in the *same* direction. The present case falls squarely within this description. Given, in particular, our earlier observations (see [18] above), the present case is replete with aggravating factors, on the one hand, and devoid of mitigating circumstances, on the other. More to the point, the aforementioned considerations call unquestionably for nothing less than a serious sanction in the present case.

20 In *Law Society of Singapore v Ravindra Samuel* [1999] 1 SLR(R) 266 ("*Ravindra Samuel*"), Yong Pung How CJ held (at [15]) that:

> The following principles on disciplinary sentencing may be extracted from the above authorities:

> (a) where a solicitor has acted dishonestly, the court will order that he be struck off the roll of solicitors;
>
> (b) if a solicitor is *not shown to have acted dishonestly*, but is shown to have *fallen below the required standards of integrity, probity and trustworthiness*, he will nonetheless be struck off the roll of solicitors, as opposed to merely being suspended, if his lapse is such as to indicate that he ***lacks the qualities of character and trustworthiness which are the necessary attributes of a person entrusted with the responsibilities of a legal practitioner***.

[emphasis added in italics and bold italics]

21 It is obvious from this extract that dishonesty is not some sort of a threshold or prerequisite that must be satisfied before a solicitor is liable to be struck off. Thus, the fact that the present case perhaps did not involve dishonesty is, in and of itself, not determinative. In our judgment, the applicable principle is this: even in cases that do not involve dishonesty, where a solicitor conducts himself in a way that falls below the required standards of integrity, probity and trustworthiness, and *brings grave dishonour to the profession*, he will be liable to be struck off. Indeed, if a solicitor's conduct is so egregious as to bring such dishonour to the profession, it must invariably follow that such conduct indicates that the solicitor "lacks the qualities of character and trustworthiness which are the necessary attributes of a person entrusted with the responsibilities of a legal practitioner". Based on what we have earlier noted (see [18] above), this test is amply satisfied in the present case. The respondent had acted disgracefully and reprehensibly, and we have no qualms in concluding that his conduct has brought grave dishonour to the profession.

22 In the final analysis, the question to be asked is whether the solicitor in question is a fit and proper person to be an advocate and solicitor of the court. In *Ravindra Samuel*, Yong CJ put it this way (at [13]):

> There is therefore a serious responsibility on the court, a duty to itself, to the rest of the profession and to the whole of the community, to be careful not to accredit any person as worthy of public confidence and therefore fit to practise as an advocate and solicitor who cannot satisfactorily establish his right to those credentials. *In the end therefore, the question to be determined is* ***whether the solicitor in question is a fit and proper person to be an advocate and solicitor of the court****, and the orders to be made are to be directed to ensuring that, to the extent that he is not, his practice is restricted.*
>
> [emphasis added in italics and bold italics]

23 We are satisfied in the present circumstances that the respondent is not a fit and proper person to be an advocate and solicitor of the court. Consequently, the orders to be made are to be directed to ensuring that the respondent's practice is restricted, and a censure or a monetary penalty are emphatically out of the question. For the reasons set out at [18]–[21] above, we also do not consider a period of suspension to be a sufficient sanction in the aggravated circumstances of the present case. We accordingly strike the respondent off the roll. The applicant is to have its costs fixed in the sum of $8,000 together with reasonable disbursements to be taxed if not agreed. We also order that the identity of the victim is not to be disclosed.

Sundaresh Menon	Andrew Phang Boon Leong	Steven Chong
Chief Justice	Judge of Appeal	Judge of Appeal

S Suressh and Farrah Joelle Isaac (Eversheds Harry Elias LLP) for the applicant;
The respondent in person.