

Law Society of Singapore v Lim Cheong Peng
[2006] SGHC 145

Case Number : OS 672/2006, SUM 1808/2006
Decision Date : 21 August 2006
Tribunal/Court : High Court
Coram : Chan Sek Keong CJ; Andrew Phang Boon Leong JA; Tan Lee Meng J
Counsel Name(s) : Jimmy Yap (Jimmy Yap & Co) for the applicant; C R Rajah SC (Tan Rajah & Cheah), Gregory Vijayendran and Chua Sui Tong (Wong Partnership) for the respondent
Parties : Law Society of Singapore — Lim Cheong Peng

Legal Profession – Professional conduct – Grossly improper conduct – Complaint lodged with Law Society against advocate and solicitor – Complaint alleging advocate and solicitor falsely attesting bills of sale and guarantees – Complainants' testimonies only available direct evidence of events at hearing before Disciplinary Committee – Disciplinary Committee finding advocate and solicitor guilty of grossly improper conduct – Whether Disciplinary Committee erring in making various inferential findings

21 August 2006

Judgment reserved.

Tan Lee Meng J (delivering the judgment of the court):

1 This case concerns an application under s 98 of the Legal Profession Act (Cap 161, 2001 Rev Ed) ("the Act") for the respondent, Mr Lim Cheong Peng, an advocate and solicitor of 13 years' standing and a partner of M/s Timothy Ong Lim & Partners, to show cause why he should not be dealt with under s 83 of the Act for grossly improper conduct.

Background

2 The present proceedings stem from a complaint to the Law Society of Singapore ("the Law Society") in December 2001 against the respondent by Mdm Lim Tok Wah ("Mdm Lim") and her husband, Mr Lim Then Hock ("Mr Lim"), who are both referred to as "the complainants" in this judgment. In essence, their complaint was that the respondent falsely attested that bills of sale and guarantees had been executed by them in his presence when they were not.

3 Mdm Lim is the sole proprietor of Goldsun Motor Vehicle Charter & Rental, which is in the motor vehicle rental business. In June 2000, Mdm Lim required a loan to pay for the renewal of the Certificates of Entitlement ("COE") for her motor vehicles. She approached Tai Thong Lee Trading (Pte) Ltd ("TTL Leasing"), which is in the business of granting loans for the renewal of COEs. These loans are secured by bills of sale relating to the motor vehicles and by personal guarantees. In addition to charging its clients interest on the loans, TTL Leasing requires them to pay an additional sum of \$500 for each vehicle in respect of which a loan has been given for the extension of its COE.

4 From June to August 2000, Mdm Lim went several times to TTL Leasing's office to borrow a total sum of \$279,888, which was secured by 33 bills of sale executed by her with respect to her motor vehicles. Mr Lim guaranteed the repayment of the loans extended to his wife.

5 Under s 10 of the Bills of Sale Act (Cap 24, 1985 Rev Ed), a bill of sale must be attested by an advocate and solicitor of the Supreme Court and registered. For convenience, TTL Leasing had a

standing arrangement with the respondent for the purpose of complying with s 10 of the said Act. Out of the \$500 that TTL Leasing collected from its clients for each motor vehicle in respect of which a loan was given, the respondent was paid \$50. The respondent attested that he witnessed the execution of 33 bills of sale by Mdm Lim and that he gave the requisite explanation of the effect thereof to her. He also signed the guarantee papers, stating that he witnessed the execution of the same by Mr Lim.

6 Subsequently, disputes arose between Mdm Lim and TTL Leasing and in June 2001, TTL Leasing seized Mdm Lim's vehicles after she failed to effect instalment payments on time. According to Mdm Lim, she decided to stop paying the instalments after she discovered that TTL Leasing had cheated her by inflating the COE charges for her vehicles. The complainants sought legal advice on their position *vis-à-vis* TTL Leasing from their lawyers, who advised them that the bills of sale would be unenforceable unless they were executed before an advocate and solicitor of the Supreme Court. Both the complainants then claimed through their lawyers in a letter to TTL Leasing on 27 July 2001 that the respondent was not present when the relevant bills of sale were executed. They wanted the respondent to confirm that this was the case. As such, on 29 August 2001, the complainants barged into the respondent's office without an appointment to question him. They brought with them a tape recorder and secretly taped their conversation in the hope that the respondent might admit that he was not present when the bills of sale in question were executed. However, the respondent made no such admission and this led the complainants to call the police to come to the respondent's office. When the police arrived, the respondent informed them that the complainants had a problem with TTL Leasing.

7 On 6 November 2001, the complainants wrote to the Chairman of the Monetary Authority of Singapore and alleged that TTL Leasing had cheated them of \$2,000 in relation to Land Transport Authority fees and that the latter had repossessed their vehicles.

8 On 6 December 2001, the complainants wrote their first letter to the Law Society, asking how they could recover the legal fees that they had paid to TTL Leasing. After finding out that the Law Society could not assist them in the recovery of their money from TTL Leasing, they finally lodged a complaint against the respondent in an undated letter sent on 31 January 2002. After investigating the matter, the Law Society was satisfied that there was sufficient cause for the respondent to appear before its Disciplinary Committee ("DC").

The Disciplinary Committee's decision

9 At the hearing before the DC, the charges against the respondent that are relevant to the present proceedings were as follows:

Charge No. 1

That you, Lim Cheong Peng, an Advocate and Solicitor of the Supreme Court of the Republic of Singapore, are guilty of grossly improper conduct in the discharge of your professional duty within the meaning of Section 83(2)(b) of the Legal Profession Act (Chapter 161) in that you, in or around the period of 29 June to 30 August 2000, purported to attest to the execution of certain Bills of Sale by a Mdm Lim Tok Wah in favour of a company known as TTL Leasing and explain to her the effect of the Bills of Sale when you did not in fact do so.

Amended Charge No. 2

That you, Lim Cheong Peng, an Advocate and Solicitor of the Supreme Court of the Republic of

Singapore, are guilty of grossly improper conduct in the discharge of your professional duty within the meaning of Section 83(2)(b) of the Legal Profession Act (Chapter 161) in that you, in or around the period of 29 June to 30 August 2000, purported to witness the execution of certain Letters of Guarantee by a Mr Lim Then Hock in favour of a company known as TTL Leasing when you did not in fact do so.

10 The respondent admitted that he could not confirm whether or not he attended to the complainants as the events took place five years ago. However, he said that he must have attended to them as he had a Standard Operating Procedure ("SOP") for the execution of bills of sale, which he adhered to without exception. Under his SOP, once TTL Leasing had approved a client's application, he would be called upon to attest the execution of the relevant bill of sale either at his office or at TTL Leasing's office. When attending to the execution of a bill of sale, he would go through the terms of the bill with the borrower and would thus be present when the bill was executed.

11 After a three-day hearing, the DC was satisfied that Mdm Lim and Mr Lim had executed the bills of sale and guarantees in the respondent's absence. The DC found the respondent guilty of grossly improper conduct within the meaning of s 83(2)(b) of the Legal Profession Act and decided that there was sufficient cause for disciplinary action against him under the Legal Profession Act.

The court's view

12 At the outset, it is worth reiterating that the Law Society bears the legal burden of proving its case beyond reasonable doubt. The position was put as follows in *Re an Advocate and Solicitor* [1978–1979] SLR 240 at 249, [21], by A P Rajah J:

A charge under [the Legal Profession Act] is a serious charge and if found proved could attract the punishment of disbarment. It is settled law that the degree of proof required is the same as in criminal cases ...

13 As the only direct evidence to support the Law Society's case against the respondent was that of the complainants, their credibility should be carefully scrutinised. We are mindful of the fact that an appellate court does not lightly interfere with findings of fact by a lower court or a disciplinary committee unless their conclusions are clearly against the weight of evidence. As such, where a trial judge has had to decide which of two conflicting versions of events is true, the appellate court will not, without more, overrule the trial judge. This has been stressed in innumerable decisions. For instance in *Lim Ah Poh v PP* [1992] 1 SLR 713 at 719, [32], F A Chua J, who delivered the judgment of the Court of Appeal, said:

An appellate court will not disturb findings of fact unless they are clearly reached against the weight of the evidence. In examining the evidence, an appellate court has always to bear in mind that it has neither seen nor heard the witnesses and has to pay due regard to the trial judges' findings and their reasons therefor.

14 Different considerations arise in the case of inferences of fact that are drawn by the lower court from the circumstances of the case. It is clear that an appellate court is just as competent as the court below in the drawing of such inferences: see *Yap Giau Beng Terence v PP* [1998] 3 SLR 656 at [24]. In the present case, the DC made a number of mistakes in its inferential findings which led it to disbelieve the respondent's case.

15 In this case, there are three broad areas in which the DC had erred in its findings, resulting in it disbelieving the evidence of the respondent and his witnesses. The first is that the evidence of

Mdm Lim was consistent with that of her husband. This is not borne out by their testimony. The second is that the complainants' evidence that they had signed the bills of sale in the respondent's absence was corroborated by a witness. This is only true if the evidence of the witness was credible, but it was not. The third area is that the DC disbelieved the evidence of the respondent and his witnesses for the wrong reasons.

Inconsistencies in the complainants' evidence

16 With respect to the issue of consistency, the inconsistencies in the complainants' evidence were as follows:

- (a) Mdm Lim claimed that she did not read the bills of sale and that she could not remember whether her name was printed therein or in the warrants to act. Yet she claimed to be able to remember that the respondent's name and the dates were not stated in the documents that she signed.
- (b) Mdm Lim claimed that on her first visit to TTL Leasing's office, she went without her husband. However, Mr Lim said that he accompanied her on her first visit.
- (c) Mdm Lim testified that she did not remember anything about her motor vehicles being used as security for the loans advanced by TTL Leasing but Mr Lim said that he told her that the said vehicles would be used as security for the loans.
- (d) Mdm Lim claimed that the loans had been disbursed by TTL Leasing by way of a cheque. However, Mr Lim stated that no cheque had been given to them because TTL Leasing applied to the Land Transport Authority for the renewal of the COEs directly. Although these contradictions cast doubt on the complainants' recollection of key events surrounding the execution of the bills of sale and the corresponding guarantees, none of them were referred to by the DC in its report, which concluded that the complainants' evidence was "consistent".
- (e) Mr Lim claimed that his lawyers had never advised him that the bills of sale were invalid if they were not executed before an advocate and solicitor and that he had gone to the respondent's office for the purpose of seeking his assistance in resolving the dispute with TTL Leasing. This was patently untrue because he had stated in his affidavit that he and his wife decided to meet the respondent "in the hope that [the respondent] would admit that [Mdm Lim] did not sign the documents before him" and added that "it was for this reason that I decided to secretly tape the conversation with the [respondent] at that meeting". In any case, by that time, Mr Lim's lawyers had already stated in a letter dated 27 July 2001 that their clients took the position that the bills of sale and guarantees executed on 20 June 2000 had not been signed in the presence of the respondent.

Complainants' evidence was not corroborated by evidence of their witness

17 Reference must next be made to the evidence of the complainants' only witness, one Mdm LGN, which had been introduced to refute the respondent's claim that he had consistently followed an SOP in transactions involving bills of sale, which was that the clients had to be present when he attested to their execution of the bills of sale. Mdm LGN, a former employee of Mdm Lim, currently operates her own vehicle lending business. A former client of TTL Leasing, she testified that she had executed bills of sale, which had been allegedly attested to by the respondent, even though the latter was not present when she executed the same. The DC concluded that she "substantially corroborated" the complainants' evidence. We disagreed because much of her evidence was suspect.

Like the complainants, she claimed that she had never seen the respondent before. Yet her own former employee, one Mr Tan Ah Thu, who guaranteed the loans given to her by TTL Leasing, testified that he had accompanied her on no less than five occasions to TTL Leasing's office and that the respondent was present on all these occasions. Strangely enough, Mdm LGN could not even recall the name of her own guarantor.

18 Apart from her unhelpful evidence, Mdm LGN could not be regarded as an independent witness for despite her initial denials, she confirmed that she had a long-standing extramarital affair with Mr Lim. She is presently married to Mr Lim's nephew, one Mr Chen Ruining. When all these are viewed in the context of her testimony, we could not see how she could have corroborated the complainants' evidence.

Insufficient weight given to evidence of the respondent and his witnesses

19 As for the respondent's evidence, we noted that there were gaps in his evidence. However, his evidence should not have been given short shrift by the DC, which noted that of the \$50 paid to him for each transaction, he only earned \$30 because \$20 were required for stamp fees. The DC concluded that it was not convinced that "a solicitor would be prepared to take time to attend out of office to attest the execution of bills of sale for which he also assumes the responsibility of an advocate and solicitor under section 10(2) of the Bills of Sale Act, all for \$30". However, on each occasion, there were several bills of sale which required attestation and there was thus a much larger sum to be earned for attending to clients at TTL Leasing's office. For instance, on 31 July 2000, Mdm Lim executed 17 bills of sale. At \$30 per bill, the respondent earned \$510 from her transactions on that day.

20 It was surprising that the DC also did not consider in a favourable light the evidence of the respondent's two witnesses. With respect to the evidence of Mdm LGN's mechanic, Mr Tang Ah Thu ("Mr Tang"), who contradicted her evidence that the respondent was not present when she executed bills of sale, the DC found that he had contradicted the respondent's evidence that he would attend at TTL Leasing's office only if the number of borrowers was large. As the respondent's counsel, Mr Chelva Rajah SC, rightly pointed out, it was possible that Mr Tang and Mdm LGN could have come to TTL Leasing's office at the tail end of one of the attestation sessions. If so, the number of borrowers would not be large at that moment. As such, Mr Tang's evidence did not necessarily contradict the respondent's evidence that he would attend at TTL Leasing's office only if the number of borrowers was large.

21 The respondent's other witness, Mr Tan Cheng Leng ("Mr Tan"), a former client of TTL Leasing, confirmed that when he went to TTL Leasing's office on two occasions, he executed bills of sale in the presence of the respondent. He added that there was another occasion when another lawyer attested to his execution of bills of sale. While his evidence cannot prove that the respondent was present when Mdm Lim executed the bills of sale with respect to her vehicles, he attempted to support the respondent's claim that, as a matter of practice, he would be present at the attestation of the bills in order to explain the effect of the bills and to witness the execution of the same. It is pertinent to note that both he and Mdm Lim executed bills of sale on the same day on 31 July 2000. In fact, Mdm Lim executed 17 bills of sale on that day. Although it is possible that the respondent could have left after witnessing Mr Tan's execution of bills of sale in favour of TTL Leasing, we find that his evidence creates reasonable doubt as to whether the DC was entitled to find that the respondent might not have found it worthwhile to attest to the execution of the bills of sale in person because he only earned \$30 for each execution at TTL Leasing's office.

22 The DC explained at para 24 of its report why it did not believe Mr Tan as follows:

If [Tan] had found TCL-1 just a few days before his affidavit of 1 August 2005, how could he have identified in TCL-2 dated 16 April 2002 that TCL-1 were the documents he executed on 31 July 2000. We are therefore of the view that [Tan]’s affidavit was contrived by the Respondent with the assistance of TTL who would have copies of TCL-1 because of [Tan]’s unwitting admission in his affidavit that his bills of sale were attested by “*a man I now know as Mr Lim Cheong Peng.*” [emphasis in original]

23 In our view, the circumstances do not suggest that this evidence was contrived. TCL-2 was a form sent out by TTL Leasing to several of its customers after the complainants had complained to the Law Society about the respondent. It was to ascertain whether or not the particular customer recalled that the respondent was present during the execution of the customer’s bills of sale. Admittedly, Mr Tan had not yet located the copies of the bills of sale that he had executed, which are found in TCL-1, when he filled up the form exhibited in TCL-2. However, this does not mean that his recollection of the respondent’s presence at the execution of his own bills of sale was unreliable. The DC should not have placed so much emphasis on the words “by a man I now know as Mr Lim Cheong Peng”. When the Law Society’s counsel cross-examined him on this, his response was “I only know him as a lawyer and he is Mr Lim. My English is no good”. A reasonable reading of Mr Tan’s affidavit is that upon being informed of the respondent’s full name, he was then able to confirm that the full name of the lawyer who witnessed the execution of his bills of sale is Lim Cheong Peng. We accept the submission of the respondent’s counsel that what Mr Tan was trying to convey to us was that the respondent’s name simply did not register in his mind when he signed the bill of sale. This is to be expected. Accordingly, the inference of contrivance was not made out.

Conclusion

24 In summary, the reasons given by the DC for disbelieving the respondent and his witnesses were not supported by the evidence. In the circumstances, there was insufficient evidence for the DC to hold that the charges against the respondent had been proved beyond reasonable doubt. As such, we make no order on the application.

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