

IN THE COURT OF THREE JUDGES OF THE REPUBLIC OF SINGAPORE

[2016] SGHC 250

Originating Summons No 4 of 2015

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

And

In the matter of Leong Pek Gan, an Advocate
and Solicitor of the Supreme Court of the
Republic of Singapore

Between

THE LAW SOCIETY OF SINGAPORE

... Applicant

And

LEONG PEK GAN

... Respondent

FOUNDATIONS OF DECISION

[Legal Profession] — [Disciplinary Proceedings]

[Legal Profession] — [Professional Conduct] — [Breach]

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Law Society of Singapore

v

Leong Pek Gan

[2016] SGHC 250

Court of Three Judges — Originating Summons No 4 of 2015
Chao Hick Tin JA, Andrew Phang Boon Leong JA and Judith Prakash JA
3 October 2016

7 November 2016

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

Introduction

1 In this originating summons, the Law Society of Singapore (“the Law Society”) applied for the respondent (“the Respondent”), an advocate and solicitor of more than 30 years’ standing, to show cause as to why she should not be dealt with under s 83(1) of the Legal Profession Act (Cap 161, 2009 Rev Ed) (“the LPA”).

2 In our written judgment dated 19 August 2016 (in *Law Society of Singapore v Leong Pek Gan* [2016] SGHC 165), we found that due cause for disciplinary action had been shown, and directed the parties (at [101]) to submit written arguments on the issue of the appropriate sanction to be

imposed on the Respondent. On 3 October 2016, we heard the parties and ordered the Respondent to be suspended for a period of two-and-a-half years with effect from 1 December 2016. We now set out the grounds of our decision.

Brief facts

3 To provide some context to our decision, we shall first set out in brief the salient background facts. The Respondent was engaged to act for the parties on both sides of a transaction (“the Transaction”) which was, on its face, for the sale and purchase of a property (“the Property”). The Transaction was structured as follows. The owners of the Property (“the Vendors”) would grant the intended purchaser (“the Purchaser”) an option, exercisable anytime within six months, to purchase the Property at a price of \$651,000 (“the Option”). At the same time, the Vendors would grant a power of attorney (“the POA”) in favour of one Benson Ho (“Ho”), the managing director and a shareholder of the Purchaser. The POA conferred on Ho broad powers to deal with the Property and was stated to be “irrevocable until the Property is sold and all monies paid to [Ho]”.

4 A complaint against the Respondent was lodged with the Law Society, the essence of which was that she had acted for the parties on both sides of an unlicensed moneylending transaction and had preferred the interests of the moneylender (*viz*, the Purchaser) in the process. Four charges were brought against the Respondent, namely: (a) failing to advise the Vendors of the potential conflict of interests arising from her acting for them as well as for the Purchaser/Ho in respect of the Transaction, and of her duty as an advocate and solicitor in the event that such conflict materialised; (b) preferring the interests of the Purchaser/Ho over those of the Vendors; (c) tendering advice to the

parties when she knew or had reasonable grounds to believe that they were requesting the advice to advance an illegal purpose; and (d) failing to report the Transaction, which she knew or had reasonable grounds to suspect involved unlicensed moneylending in contravention of the Moneylenders Act (Cap 188, 2010 Rev Ed) (“the MLA”), a form of criminal conduct reportable under s 39(1) of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap 65A, 2000 Rev Ed) (“the CDSA”).

5 We found that all the aforesaid charges were established beyond reasonable doubt. In particular, we were satisfied that the Transaction involved unlicensed moneylending in contravention of the MLA. Although the Transaction itself was cast in the form of a sale and purchase of real property, the overwhelming evidence made it clear that it was nothing more than a thinly disguised loan that was secured by the Option and the POA. The Purchaser was thus presumed to be a moneylender under s 3 of the MLA, and we found that the presumption had not been rebutted. We were also satisfied that the Respondent knew or at least had reasonable grounds to believe that the Transaction involved unlicensed moneylending, given the glaring red flags that were present. It followed from this that we held, in addition, that the Respondent had failed to report the Transaction, which she knew or had reasonable grounds to suspect involved a form of criminal conduct caught by s 39(1) of the CDSA. We turn now to explain our reasons for the sanction that we imposed on the Respondent.

The parties' submissions on the appropriate sanction to be imposed on the Respondent

6 Section 83(1) of the LPA, which sets out the sanctions that may be imposed on advocates and solicitors against whom due cause for disciplinary action has been shown, reads as follows:

Power to strike off roll, etc.

83.—(1) All advocates and solicitors shall be subject to the control of the Supreme Court and shall be liable on due cause shown —

- (a) to be struck off the roll;
- (b) to be suspended from practice for a period not exceeding 5 years;
- (c) to pay a penalty of not more than \$100,000;
- (d) to be censured; or
- (e) to suffer the punishment referred to in paragraph (c) in addition to the punishment referred to in paragraph (b) or (d).

...

7 In determining the appropriate sanction to impose on an errant solicitor, it is helpful to bear in mind that there are three objectives of disciplinary action in this regard, namely: (a) punishment of the errant solicitor for his misconduct; (b) deterrence against similar defaults by other like-minded solicitors in future; and (c) protection of public confidence in the administration of justice: see, for example, the decision of this court in *Law Society of Singapore v Manjit Singh s/o Kirpal Singh and another* [2015] 3 SLR 829 at [76]. Members of the legal profession must bear in mind that transgressions of their professional obligations not only attract personal consequences, but may also have much broader repercussions on the profession as a whole. In *Law Society of Singapore v Chiong Chin May Selena*

[2005] 4 SLR(R) 320, a decision of this court, V K Rajah J (as he then was) described what is at stake with his usual acuity: the collective standing and reputation of the legal profession hinges primarily on the public perception of, and the confidence reposed in, its members, and the profession cannot afford to compromise its standing and reputation (at [39]).

8 The Law Society referred to two precedents in which, so it submitted, a two-year suspension was imposed: *Law Society of Singapore v Vardan Vasantha Lakshmi* [2007] 1 SLR(R) 240 (“*Vasantha*”) and *The Law Society of Singapore v Yoong Tat Choy Joseph* [1993] SGDSC 9 (“*Joseph Yoong*”). It sought a minimum three-year suspension in respect of the Respondent on the basis that the present case contained factors that were significantly more aggravating than those in these two precedents. We note that the Law Society also raised the possibility of striking the Respondent off the roll on the basis that she had been shown to have fallen below the required standards of integrity, probity and trustworthiness.

9 On the other hand, the Respondent accepted that “a period of suspension will be an element of her punishment”, and urged the court to exercise leniency and impose a minimum sentence. She highlighted the following as mitigating circumstances: (a) her long unblemished record in her practice as an advocate and solicitor; and (b) the circumstances in which her wrongdoings took place. The Respondent also argued that she was less culpable than the solicitor in *Law Society of Singapore v Tan Phuay Khiang* [2007] 3 SLR(R) 477 (“*Tan Phuay Khiang*”) and, on this basis, submitted that the sentence imposed on her should accordingly be more lenient than the two-year suspension which was imposed in that case.

Our decision

10 We were of the view that a term of suspension from practice was in order in the present case. Where a solicitor is shown to have fallen below the required standards of integrity, probity and trustworthiness even though he has not acted dishonestly, the minimum punishment is a term of suspension from practice unless the case is “very unusual and venial”: see the decision of this court in *Law Society of Singapore v Arjan Chotrani Bisham* [2001] 1 SLR(R) 231 at [39]. In the present case, we were satisfied that the Respondent had fallen short of the requisite standards of integrity, probity and trustworthiness that are expected of members of the legal profession. She was oblivious to the potential conflict of interests that could arise from her concurrent representation of the Vendors as well as the Purchaser/Ho. Her advice to the Vendors was woefully inadequate, and she appeared to be indifferent to their interests. Even when she thought that the Transaction (in her own words) “seemed strange”, she ignored the glaring red flags and proceeded without probing further. We were thus satisfied that a term of suspension from practice should be imposed on her.

11 Turning now to the precedents on the appropriate length of the suspension term, we begin with this court’s decision in *Vasantha*. In that case, the vendors, an elderly and largely illiterate couple, were looking to sell their flat and purchase another one. They were cash-strapped and needed money to make the down payment for the purchase of the new flat. They were introduced to a property agent who agreed to provide them with a loan of \$50,000 in exchange for being appointed the exclusive property agent in the sale. The property agent recommended to the vendors the services of the respondent solicitor, to whom he regularly referred legal work. Significantly,

the respondent did not disclose to the vendors her relationship with the property agent, and executed the documents relating to the sale and the loan without adequately advising the vendors. The respondent was found to have placed herself in a situation of conflict of interests in which she had preferred her own interests as well as the property agent's interests over those of her clients. While there was no evidence of dishonesty on the respondent's part, there was an absence of diligence as well as a significant degree of indifference towards the interests of her clients. The respondent was ordered to be suspended from practice for two years.

12 We turn next to the decision of the Disciplinary Committee of the Law Society in *Joseph Yoong*, the facts of which are set out in our earlier judgment on liability dated 19 August 2016 (see above at [2]). In that case, the respondent, a solicitor of six years' standing, was found guilty of facilitating an illegal moneylending transaction by preparing documents that he knew or ought reasonably to have known constituted the security for the transaction. Notably, the transaction in *Joseph Yoong* was structured in the form of a sale and purchase of property, and bore many similarities to the Transaction in the present case. First, even though completion was not to take place for six months, there was a big upfront payment to the vendor that amounted to almost 25% of the stated purchase price. Secondly, the money was to be paid to the vendor in circumstances of utmost urgency without passing through the hands of a stakeholder. The respondent asked no questions, recorded no instructions and kept no attendance notes (at [121]). He was found to be sufficiently experienced to appreciate that the transaction was highly unusual, given the numerous red flags (at [120]), and was accordingly convicted of facilitating an illegal moneylending transaction.

13 In the decision of this court in *Tan Phuay Kiang*, the complainants were referred to the respondent solicitor by a moneylender. As they were unable to make the immediate cash payment for their new flat, their housing agent arranged for them to take a loan from the moneylender. Thereafter, the solicitor prepared and witnessed the execution of a power of attorney appointing a stranger as the complainants' attorney in the proposed sale and subletting of their existing flat. The crux of the charge against the respondent in that case was that he had failed to advance the interests of the complainants wholeheartedly, and had preferred the interests of, *inter alia*, the moneylender. Significantly, the court found that the respondent had been indifferent in discharging his professional duties towards the complainants and had failed to diligently apply his mind to the actual and potential conflicts posed by his self-interest and the interests of the other parties whom he was advising (at [113]). He also appeared to have allowed his personal interest in, *inter alia*, receiving future referrals from the relevant parties to take precedence over the interests of the complainants (at [64]). In these circumstances, the court found that due cause for disciplinary action had been shown and suspended the respondent from practice for a period of two years.

14 In *Law Society of Singapore v Uthayasurian Sidambaram* [2009] 4 SLR(R) 674, four charges were brought against the respondent solicitor for: (a) concurrently acting for multiple parties with a diversity of interests without advising them of the potential conflict of interests; (b) failing to advance and protect the interests of one of his clients; and (c) transferring client account moneys in payment of his legal costs when no bill had been delivered and without notifying the client concerned that the moneys would be applied towards or in satisfaction of such costs. The respondent was found guilty of all of the aforesaid charges. Of particular significance is this court's finding that

the respondent had failed to advise his various clients of the potential or actual conflict of interests after having agreed to act for them, and had shown a disturbing careless disregard in departing from the ordinary standards expected of all solicitors in Singapore. The respondent was ordered to be suspended from practice for one year.

15 In another decision of this court, *Law Society of Singapore v Ng Cher Yeow* [1999] 3 SLR(R) 596, the respondent solicitor acted for both the vendors (a couple who had divorced) and the purchaser in a sale and purchase of property. The purchaser informed the solicitor about an “under the table” arrangement that she had made with one of the vendors (the ex-wife), which was the true reason why the ex-wife did not want to state the actual selling price in the option to purchase. The ex-husband was not made aware of the arrangement. Thereafter, the solicitor prepared two options to purchase, knowing that the transactions documented therein were non-existent, and failed to inform the ex-husband, who was also his client, of the true purchase price of the property. The court accepted that the respondent had not been dishonest in his actions, but nonetheless suspended him from practice for a period of three years.

16 Having considered all the circumstances of the present case, we took the view that the misconduct of the Respondent was comparable to that of the solicitors in the aforementioned cases. The present case went beyond a mere conflict of interests; the Respondent also allowed the interests of the Purchaser/Ho to take precedence over those of the Vendors, and unquestioningly tendered advice for the Transaction even though she knew or had reason to believe that it involved unlicensed moneylending. The fact that the Respondent did not draft the documents to effect the Transaction was

neither here nor there since that did not free her from her responsibility to adequately advise the Vendors of their rights and obligations under those documents, and to be alert to the glaring irregularities in the Transaction. Given that the Respondent is a senior member of the Bar with over 30 years of experience in the area of conveyancing, she should all the more have been keenly aware of the irregularities in the Transaction. In this regard, her vast experience stands in stark contrast to that of the respondent in *Joseph Yoong*, who had (in comparison) only had six years of conveyancing experience at the relevant time.

17 We were also unable to accept the Respondent's suggestion that her misconduct was less serious than that of the solicitor in *Vasantha* since the present case involved sophisticated individuals who were in a position to protect their own interests, whereas *Vasantha* involved clients who were elderly and largely illiterate. The level of sophistication of the client affects the standard of care that a solicitor should be held to: see the High Court decision of *Lie Hendri Rusli v Wong Tan & Molly Lim (a firm)* [2004] 4 SLR(R) 594 at [55]. A solicitor's indifference to his or her clients' interests, notwithstanding their lack of sophistication, is a factor that would ordinarily aggravate his or her culpability. Viewed in this light, the Respondent may be correct in that this particular aggravating factor (in the form of failing to properly advise elderly and largely illiterate clients) was not present on the facts on this case. However, it bears noting that unlike the situation in *Vasantha*, the gravamen of the complaint against the Respondent went beyond the issue of conflict of interests; the Respondent had also tendered advice for a transaction that she knew or had reasonable grounds to believe involved unlicensed moneylending. Looking at the facts of the present case and those of

Vasantha in totality, we were not persuaded that the Respondent's misconduct was less serious than that of the solicitor in *Vasantha*.

18 For the sake of completeness, we should mention that the Law Society, in its earlier submissions on liability, had highlighted the fact that the Respondent had not pleaded guilty, but had instead contested all the charges. We were not inclined to place too much weight on this particular factor as counsel for the Respondent informed us at the outset of his oral submissions to this court that the Respondent had contested the charges not out of a lack of remorse, but because she felt that she had good reason to do so. Counsel also confirmed during the hearing that the Respondent was not denying liability for the first two charges. Indeed, the issues could have been narrowed down had the Respondent pleaded guilty to the first two charges at an earlier stage. That said, we did not think that the Respondent's overall conduct evinced such an utter lack of remorse that it should aggravate the sentence imposed.

Conclusion

19 In determining the term of suspension, we took into account the gravity and the number of charges that the Respondent had been found guilty of, as well as the sanctions imposed in the precedents cited to us. We considered the Respondent's otherwise unblemished record as an advocate and solicitor to be of some mitigating weight. Having regard to all the circumstances, we were satisfied that a term of suspension of two-and-a-half years would sufficiently express the court's disapprobation of the Respondent's conduct and deter like-minded solicitors from similar conduct. We also ordered the Respondent to bear the costs of these proceedings, which are to be taxed if not agreed.

20 In closing, we find it salutary to draw attention to the counsel of caution issued by this court in *Tan Phuay Khiang*:

117 We pause here to make further observations on certain troubling patterns of legal practice that have recently been brought to our attention. *It appears that a practice now prevails among certain firms where substantial work is procured through referrals made by estate agents and/or credit companies.* It is pertinent to note that such a *modus operandi* can land solicitors who sometimes decide to act for two or more of the parties to the transaction (*ie*, the homeowner, moneylender, and housing agent) [in] an ethical quagmire. This is amply illustrated by two recent cases where the solicitors concerned faced disciplinary proceedings as a result of their inability to discharge their duties adequately: [*Vasantha*] ... and *Law Society of Singapore v Ganesan Krishnan* [2003] 2 SLR(R) 251 (“*Ganesan Krishnan*”). Even though the facts of the present case differ from those in [*Vasantha*] and *Ganesan Krishnan*, it serves as a timely reminder to the legal profession that the onus invariably rests on solicitors to ensure that they conscientiously and assiduously discharge their professional duties. The legal profession plays an integral and crucial part in upholding law and order in society. Solicitors, in addition to facilitating access to justice, are expected to competently advise their clients, unhindered by any actual or potential conflict of interests. While there is nothing wrong in accepting and acting on referrals from other clients or friendly parties, it is impermissible for such practices to threaten or result in the compromise or subordination of the interest of the referred party/client, so as to enhance the interest or advantage of the referring party. **We are prepared to affirm that any similar conduct brought to our attention in future may warrant an order for striking off from the solicitors’ rolls.**

118 It is manifestly clear that public confidence in the legal profession has been diminished by other unfortunate cases involving errant lawyers. *Left unchecked, such misconduct will inexorably undermine the dignity of the legal profession and erode the very essence of the solicitor-client relationship, which mandates that a solicitor advance a client’s interests wholeheartedly and unstintingly, unfettered by any other competing and/or conflicting considerations.*

119 ***In summary, these proceedings serve as a clarion call, and emphasise that the paramount duty of a solicitor is to conscientiously advance his clients’ interests and to unwaveringly avoid all manner of***

conflicts of interest, whether potential or actual.

Solicitors would also be well advised to be tirelessly proactive in ensuring that clients understand all the attendant legal risks of every transaction they enter into. One might even be tempted to articulate as a rule of thumb that the less familiar a client appears to be with the nature of a particular transaction, the more compelling the need for the solicitor to ensure that his client has an adequate grasp of all the legal ramifications and attendant risks.

[emphasis added in italics and bold italics]

21 An advocate and solicitor is not a mere legal mercenary; neither is he an unthinking conduit. We hope that our decision in this matter serves as another clarion call to members of the legal profession, who bear a collective responsibility to uphold the values and ideals that the profession stands for. We take this opportunity to affirm *again* that any similar misconduct brought to our attention in future will not be condoned and will be sternly dealt with.

Chao Hick Tin
Judge of Appeal

Andrew Phang Boon Leong
Judge of Appeal

Judith Prakash
Judge of Appeal

Dhillon Dinesh Singh and Wang Jingyi (Allen & Gledhill LLP)
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