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Law Society of Singapore

v

Ong Cheong Wei

[2017] SGHC 293

Court of Three Judges — Originating Summons No 5 of 2017
Sundaresh Menon CJ, Andrew Phang Boon Leong JA and Judith Prakash JA

Legal Profession — Disciplinary Proceedings

Legal Profession — Professional Conduct — Breach

9 November 2017

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

1 The respondent is a solicitor who made false declarations of his income over a period of time to evade tax. He pleaded guilty to and was convicted of two offences under s 96(1)(b) of the Income Tax Act (Cap 134, 2004 Rev Ed; 2008 Rev Ed) (“ITA”). The Law Society of Singapore (“Law Society”) convened a Disciplinary Tribunal (“DT”) under the Legal Profession Act (Cap 161, 2009 Rev Ed) (“LPA”), which found that there was cause of sufficient gravity to refer the matter to this court. The Law Society then brought proceedings to establish that pursuant to s 83(2)(a) of the LPA, the convictions implied a defect of character that made him unfit for the profession.

2 The Respondent did not contest the charge and the only question before us is whether he should be struck off the roll of advocates and solicitors. For the reasons that follow, we are satisfied that he should be struck off.

The offences and the charge

3 The respondent's conviction was for two charges of wilful tax evasion under s 96(1)(b) of the ITA. Specifically, he had, wilfully and with the intent to evade tax, made false entries in his income tax returns by misstating the income he had earned from his law firm (a sole proprietorship) for the years of assessment 2007 and 2008. The respondent pleaded guilty to the charges under the ITA and was sentenced to four weeks' imprisonment. He was also ordered to pay a fine of \$118,341.78, being three times the amount of the tax he had evaded.

4 The charge against the respondent now is one under s 83(2)(a) of the LPA, on the basis that these convictions implied a defect of character making the respondent unfit for the profession.

5 The respondent chose not to participate in the proceedings before us, but in reaching our decision, we take into account the arguments which he had raised before the DT as well as certain authorities which counsel for the Law Society, Mr Daniel John, has brought to our attention in fairness to the respondent.

Our decision

6 The main issues are whether the respondent's offences demonstrated dishonesty and whether striking off is the appropriate penalty. We are of the

firm view that the offences did demonstrate dishonesty and that striking off is necessary, for two reasons.

7 First, it is the settled jurisprudence of this court that a solicitor who has been dishonest will almost invariably be struck off: *Bolton v Law Society* [1994] 1 WLR 512 at 518, cited with approval by this court in numerous cases including the recent case of *Law Society of Singapore v Udeh Kumar s/o Sethuraju and another matter* [2017] SGHC 141 (“*SK Kumar*”) at [101]. If there is any exception to this principle, it would be extremely rare, and there is nothing in the present case to take it out of that principle. As Yong Pung How CJ observed in *Chng Gim Huat v Public Prosecutor* [2000] 2 SLR(R) 360 at [107], an offence of wilful tax evasion is akin to an offence of cheating or defrauding the Inland Revenue Authority of Singapore. It is clear to us that a lawyer who is convicted of such an offence cannot be allowed to practice.

8 This situation should not be confused with that in *Re Lim Chor Pee* [1990] 2 SLR(R) 117 (“*Lim Chor Pee*”), a case which also involved tax evasion, but in which the respondent solicitor was not struck off. There, the respondent solicitor had been charged with two sets of offences. The first set was for making incorrect tax returns “without reasonable excuse”, to which he pleaded guilty. The court rightly observed, at [15], that these were not offences necessarily involving dishonestly; negligence would suffice. The second set of offences did necessarily involve dishonesty, as they were offences of wilful tax evasion and criminal breach of trust. Crucially, the respondent solicitor was not convicted of the latter set of offences: the wilful tax evasion charges were compounded and the criminal breach of trust charges were withdrawn. The court found, at [55]–[57], that the composition of the tax offences did not amount to an admission of guilt. The court also scrutinised the underlying facts

of the case and concluded that it had not been sufficiently proven that the respondent solicitor had intended to defraud or deceive the authorities. Thus, dishonesty was absent on the facts of *Lim Chor Pee*. This is not the case here.

9 Secondly, looking beyond local jurisprudence, a similar position is adopted in other comparable jurisdictions. Solicitors who defrauded the tax authorities have been struck off by the New South Wales Court of Appeal in *New South Wales Bar Association v Hamman* [1999] NSWCA 404 (“*Hamman*”) and *Prothonotary of the Supreme Court of New South Wales v Livanis* [2012] NSWCA 325; by the New Zealand Lawyers and Conveyancers Disciplinary Tribunal in an unreported decision in proceedings against Raeline Marine Kelly, a barrister; and by the Supreme Court of Tennessee in *Board of Professional Responsibility of the Supreme Court of Tennessee v Thomas Ewing Cowan* E2012-00377-SC-R3-BP. We note, in particular, the forceful statement from the court in *Hamman*, at [85], that “[t]he Revenue’ may not have a human face, but ... behind [it] (in the final analysis) are human faces who are ultimately worse off in consequence of fraud.” In short, tax evasion is widely – and rightly – viewed as a form of fraud, and thus as an offence which makes a person unfit to be a member of the legal profession. There is no reason for us to take a different position in relation to lawyers in Singapore.

10 Finally, Mr John has drawn our attention to the fact that in the context of similar offences committed by doctors and engineers, there have been some cases in which the Disciplinary Tribunal of the Singapore Medical Council (“SMCDT”) (in the case of the doctors) and the Professional Engineers Board (“PEB”) and the High Court (in the case of the engineers) have declined to strike off or cancel the registrations of the professionals concerned: see, for instance, the decision of the SMCDT in *Singapore Medical Council v Currie Chiang* (21

November 2013) and the decision of the High Court in *Fong Chee Keong v Professional Engineers Board, Singapore* [2016] 3 SLR 221 (an appeal against a decision by the PEB).

11 Since those professions are not before us in the present case, we do not need to take a final view on the correctness or otherwise of those decisions. We do wish to state that we doubt the correctness of those decisions. As we observed in *Singapore Medical Council v Kwan Kah Yee* [2015] 5 SLR 20, at [49], the leniency which is sometimes shown to errant members of other professions seems inconsistent with the strict approach we take to dishonest lawyers. The time may soon come for us to adopt a more consistent and principled approach to dishonesty by professionals, and thus to bring the approaches into harmony.

12 That, however, is not something we need to decide today. We will turn to it when an appropriate matter comes before us. For present purposes, the correctness or otherwise of the position applicable in relation to the other professions has no bearing on the well-established position in respect of advocates and solicitors. As we observed in *SK Kumar (supra* at [7]), at [104], the zero-tolerance policy in respect of dishonest lawyers is “essentially a function of the special role that advocates and solicitors have as officers of the court to assist in the administration of justice.” It follows from this special role that an obligation of steadfast honesty is woven into the core of a lawyer’s professional identity. Even if it were thought (and it might not in the final analysis be the case) that a dishonest doctor or engineer could sometimes be let off with a suspension, the court simply cannot allow an advocate and solicitor, as an officer of the court, to practise once he has been shown to be dishonest.

Conclusion

13 We therefore strike off the Respondent from the roll of advocates and solicitors and order that he pay the Law Society costs of \$7,000 all-in, inclusive of disbursements.

14 Finally, we wish to express our appreciation to the Law Society and its counsel for their scrupulousness in ensuring that all relevant authorities were brought to our attention in the respondent's absence.

Sundaresh Menon
Chief Justice

Andrew Phang Boon Leong
Judge of Appeal

Judith Prakash
Judge of Appeal

Daniel John and Kevin Cheng (Goodwins Law Corporation) for the
applicant; and
the respondent in person.
