Law Society of Singapore *v* CNH

[2021] SGHC 212

Case Number	: Originating Summons No 3 of 2021 (Summons No 1 of 2021)
Decision Date	: 15 September 2021
Tribunal/Court	: Court of Three Judges
Coram	: Sundaresh Menon CJ; Andrew Phang Boon Leong JCA; Tay Yong Kwang JCA
Counsel Name(s)	: Ramesh s/o Selvaraj and Afzal Ali (Allen & Gledhill LLP) for the applicant; The respondent absent.
Parties	: The Law Society of Singapore — CNH

Legal Profession – Disciplinary procedures

Civil Procedure – Service

15 September 2021

Sundaresh Menon CJ (delivering the grounds of decision of the court):

1 The respondent is a solicitor who committed sexual offences against his colleague while he was a legal associate at a local law firm (the "Firm"). He pleaded guilty to and was convicted of two offences under s 509 of the Penal Code (Cap 224, 2008 Rev Ed) for insulting the modesty of his colleague. Subsequently, a disciplinary tribunal ("DT") was convened 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 of Singapore (the "Law Society") then brought proceedings to establish that pursuant to s 83(2)(*h*) of the LPA, the respondent was guilty of such misconduct unbefitting an advocate and solicitor as an officer of the Supreme Court or as a member of an honourable profession, and for the respondent to show cause as to why he ought not to be made to suffer one or more of the punishments provided for in s 83(1) of the LPA (the "Show Cause Proceedings").

2 Arising out of the Show Cause Proceedings, the Law Society made the present application pursuant to s 98(2) of the LPA for an order for substituted service of a copy of the Originating Summons filed to commence the Show Cause Proceedings and the supporting affidavit filed therein (the "Documents") by posting a copy of the same together with the order for substituted service at the respondent's last known address. At the conclusion of the hearing, we allowed the Law Society's application. We now provide the full grounds for our decision.

Factual background

3 The respondent was admitted to the roll of advocates and solicitors on 27 August 2016 and was in the employ of the Firm as a legal associate at the material time.

4 On 8 June 2020, the respondent pleaded guilty to and was convicted of sexual offences committed against a female colleague when he was a legal associate with the Firm in 2017. According to his mitigation plea filed for the purposes of sentencing, the respondent had become employed in Indonesia as an in-house counsel of a listed company from January 2020 onwards. The respondent was sentenced to four weeks' imprisonment.

5 On 16 June 2020, pursuant to s 85(3) of the LPA, the Law Society received information referred to it by the Attorney-General touching upon the respondent's conduct, together with the Attorney-

General's request that the matter be referred to a DT. On 1 September 2020, the Law Society wrote to the Chief Justice for a DT to be appointed. On 3 September 2020, the Chief Justice appointed the DT to investigate and hear the matter against the respondent.

6 On 2 October 2020, the Law Society sought to serve a list of the documents that it intended to rely on in the hearing before the DT at the respondent's last known residential address (the "Premises"). This information was obtained by the Law Society from the respondent's application made on 19 December 2017 for a Practising Certificate for Practice in a Singapore Law Practice for the year ending 31 March 2018, as well as a similar application made on 3 April 2019 for the year ending 31 March 2020. Both applications were made pursuant to s 25 of the LPA and filed with the Registrar of the Supreme Court. So too, were the Premises reflected as the respondent's residential address in a Notice of Charge of Particulars (the "Notice") filed sometime in 2017, informing that he had ceased practice with the Firm with effect from 16 November 2017. When service was sought to be effected, the respondent was not present at the Premises. Instead, an elderly couple informed the process server that they were the respondent's parents, that the respondent was away from Singapore, and that they did not know when he would return. They accepted the list of documents and the accompanying cover letter but refused to sign the acknowledgment.

7 On 23 November 2020, the hearing before the DT was held. The respondent was neither present nor represented when his matter was heard by the DT. The DT was satisfied that the documents relied on by the Law Society in the DT proceedings had been duly served on the respondent pursuant to r 6 of the Legal Profession (Disciplinary Tribunal) Rules (2010 Rev Ed) and had been brought to his knowledge and attention. On the Law Society's application, the DT accordingly proceeded with the hearing in the absence of the respondent.

8 On 8 February 2021, the DT found that the respondent's conduct against his colleague established cause of sufficient gravity for disciplinary action under s 83(2)(*h*) of the LPA.

9 On 8 March 2021, the Law Society commenced the Show Cause Proceedings.

10 Leading up to and even after the present application for substituted service was filed on 16 April 2021, the Law Society had unsuccessfully attempted to effect personal service of the Documents on the respondent on the following occasions at the Premises:

(a) on 10 March 2021, at around 8.45pm;

(b) on 11 March 2021, at around 7.00pm;

(c) on 15 March 2021, at around 10.50am and 11.20am;

(d) on 15 March 2021, at around 11.20am; and

(e) on 18 August 2021, at around 7.30pm and 8.30pm.

On the first four occasions, the process server attended the Premises with a copy of the Documents and rang the doorbell several times, but there was no response. On the fifth occasion, the process server rang the doorbell at the Premises and the door was opened by an elderly man, who, upon seeing the process server, abruptly slammed the door shut. Based on photographs that another process server had taken on a prior occasion, this process server attested that this was the same elderly man who had answered the door on 2 October 2020 and who identified himself as the respondent's father (see [6] above). The process server's subsequent attempts to ring the doorbell

met with no response. The Law Society states that it has no further information about the present whereabouts of the respondent.

Analysis

11 The key issue to be determined was thus whether substituted service should be granted in the present case, notwithstanding indications that the respondent had been out of jurisdiction at the time the Show Cause Proceedings were commenced.

Jurisdiction in disciplinary proceedings

12 We begin with some brief observations on the jurisdiction of the High Court, and in particular, in respect of disciplinary proceedings.

13 The jurisdiction of the General Division of the High Court to adjudicate a civil matter is provided for in s 16 of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) ("SCJA"):

> **Civil jurisdiction — general**
>
> **16.**—(1) The General Division shall have jurisdiction to hear and try any action in personam where —
>
> (*a*) the defendant is served with a writ of summons or any other originating process —
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> (i) in Singapore in the manner prescribed by the Rules of Court or Family Justice Rules; or
>
> (ii) outside Singapore in the circumstances authorised by and in the manner prescribed by the Rules of Court or Family Justice Rules; or
>
> (*b*) the defendant submits to the jurisdiction of the General Division.
>
> (2) Without prejudice to the generality of subsection (1), the General Division shall have such jurisdiction as is vested in it by any other written law.

14 What is clear is that apart from instances where a defendant voluntarily submits to the jurisdiction of the General Division, and leaving aside the more specific ambit of s 16(2) of the SCJA, the General Division only has jurisdiction to hear a civil claim *in personam* if the defendant is duly served with a writ or originating process in the manner prescribed by law. This remains the case irrespective of whether the service of a writ or originating process is effected within Singapore or outside Singapore, as s 16(1)(*a*) makes clear. In other words, the touchstone of *in personam* civil jurisdiction is, generally speaking, that of service. And O 10 r 1(1) of the Rules of Court (2014 Rev Ed) (the "Rules") stipulates that a writ must generally be served personally on each defendant. This serves to ensure as far as possible that the defendant has knowledge of the commencement of legal proceedings against him. With such knowledge, the defendant may make an informed decision as to how he will exercise his legal rights and carry out his legal obligations. Among other things, he may decide to contest the propriety of service which in turn may affect the jurisdiction of the court. He may also decide whether he will contest the proceedings. It has been noted that it would be "unfair to order judgment in default of appearance in cases where the defendant did not even know that there were legal proceedings brought against him" (*Consistel Pte Ltd and another v Farooq Nasir and another* [2009] 3 SLR(R) 665 ("*Consistel*") at [33]). In this context, the Rules stipulate a hierarchy of

service processes, such that where a defendant is out of jurisdiction at the time of the issuance of a writ or originating process, the plaintiff is required first to seek leave to serve the writ out of jurisdiction before resorting to substituted service (see *Consistel* at [30]–[34]).

15 The court's jurisdiction in respect of disciplinary proceedings is somewhat different. Because the disciplinary jurisdiction of the court does not concern *in personam* actions, in other words, actions that involve the determination of the rights and obligations of parties as against one another, it does not come within the civil jurisdiction that is set out in s 16(1) of the SCJA (*Iskandar bin Rahmat v Law Society of Singapore* [2021] 1 SLR 874 ("*Iskandar*") at [73]). Rather, even though an application to the court regarding disciplinary proceedings under Part VII of the LPA must be served on other parties and is part of the civil jurisdiction, it is not concerned with the adjudication of private rights and liabilities *inter se*, which is the hallmark of an *in personam* action (*Iskandar* at [73]). As the Court of Appeal further held in *Iskandar*, the term "disciplinary jurisdiction" is *descriptive* of the body of law that is being dealt with, in that it merely describes an aspect of the court's jurisdiction that nonetheless falls within the civil jurisdiction of the High Court pursuant to s 16(2) of the SCJA (at [70]). Put differently, the "disciplinary jurisdiction" is not *normatively* distinct from the civil jurisdiction of the court, but is a particular species of that jurisdiction, with its statutory source being the LPA, this being "written law" within the meaning of s 16(2) of the SCJA.

16 In addition, the LPA, which provides the statutory foundation for the court's civil jurisdiction in disciplinary proceedings, also makes it clear that advocates and solicitors are officers of the court: see s 82(1) of the LPA, which concerns the jurisdiction of the Supreme Court over solicitors and Legal Service Officers, and states that "[a]ny person duly admitted as an advocate and solicitor and any Legal Service Officer shall be an *officer of the Supreme Court*" [emphasis added]. This point has also been emphasised in numerous decisions (see for example, *Law Society of Singapore v Udeh Kumar s/o Sethuraju and another matter* [2017] 4 SLR 1369 at [109] and *Law Society of Singapore v Ong Cheong Wei* [2018] 3 SLR 937 at [12]).

17 Being an officer of the court "presupposes and connotes that those so appointed have obligations and responsibilities in upholding the legal framework" (*Public Trustee and another v By Products Traders Pte Ltd and others* [2005] 3 SLR(R) 449 at [26]). But there is another related and more fundamental point. Being an officer of the court, and having the attendant privileges conferred under s 29(1) of the LPA such as the right of audience, comes with the attendant professional obligations and duties incumbent on an advocate and solicitor. This, by extension, renders an advocate and solicitor "subject to the control of the court" (*Law Society of Singapore v Ang Boon Kong Lawrence* [1992] 3 SLR(R) 825 at [13]). Such control is provided for in, among other provisions, ss 82A and 83 of the LPA and it takes the form of an advocate and solicitor's liability to be struck off the rolls, suspended from practice, required to pay a penalty or censured, if due cause is shown. Hence, under the LPA, which has been enacted to regulate advocates and solicitors, the court is conferred supervisory powers over its own officers; such officers being registered on the roll that is maintained by the Registrar of the Supreme Court in accordance with s 16(1) of the LPA. These provisions collectively point to the unique status of advocates and solicitors as officers of the court, which is what gives rise to the court's broad disciplinary jurisdiction over them. Perhaps the foremost manifestation of this status and consequently of being subject to the control of the court is the process under s 98 of the LPA, pursuant to which an errant solicitor may be required to show cause, such as in the present case. In such proceedings, the court exercises its supervisory control over its officers by determining the propriety of a solicitor's conduct and meting out the appropriate sanction when due cause is shown.

18 In our judgment, and following from what has been set out above, it is clear that the court's jurisdiction over advocates and solicitors for the purpose of disciplinary proceedings is not founded on

service, as is the case for *in personam* civil jurisdiction, but rather on the *very status* of a person as an advocate and solicitor and hence, an officer of the court pursuant to the provisions of the LPA. The relevance of service to the court's disciplinary jurisdiction is thus different from its centrality in founding the court's *in personam* civil jurisdiction over a defendant. The latter arises under s 16(1) of the SCJA by the act of service of originating process, but this does not apply to cases falling within s 16(2) because the court in those cases has jurisdiction conferred by statute and service is concerned primarily with bringing notice of the proceedings to the defendant. In the particular context of the disciplinary jurisdiction, the court's interest is to retain flexibility over the process by which it can *effectively* act against its officers while balancing the interests of justice. The court's concern with service is therefore to ensure that the respondent does or should reasonably have notice of the proceedings, in keeping with the expectations of natural justice.

The statutory provisions on service

19 In that light we turn to consider the relevant statutory provisions. In the context of an application to the Court of Three Judges for a solicitor to suffer one of the punishments listed in s 83(1) of the LPA, s 98(1) prescribes that such an application be made by originating summons. In this regard, ss 98(2) and 98(3) of the LPA touch on the methods of service for such an originating process:

> **Application for order that solicitor be struck off roll, etc**
>
> **98.—** …
>
> (2) If the advocate and solicitor or regulated foreign lawyer named in the application under subsection (1) is believed to be outside Singapore, an application may be made by summons in the same proceedings for directions as to service.
>
> (3) If the advocate and solicitor or regulated foreign lawyer named in the application under subsection (1) is or is believed to be within Singapore, the provisions of the Rules of Court for service of writs of summons shall apply to the service of the application.
>
> …
>
> (10) Subject to this section, the Rules Committee may make rules for regulating and prescribing the procedure and practice to be followed in connection with proceedings under this section and under sections 100 and 102, and in the absence of any rule dealing with any point of procedure or practice, the Rules of Court may be followed as nearly as the circumstances permit.

20 It will be apparent that s 98 of the LPA draws a distinction between instances in which a solicitor is "believed to be out of Singapore" and instances in which a solicitor "is or is believed to be within Singapore". In the latter instance, s 98(3) provides that the provisions of the Rules for service of writs shall apply to the service of the application. This means that in the context of a solicitor within jurisdiction, the default requirement is *personal* service. In contrast, where a solicitor is believed to be out of jurisdiction, pursuant to s 98(2), an application may be made *for directions as to service*.

21 Three points are noteworthy.

22 First, unlike s 98(3) of the LPA, s 98(2) makes no express reference to the provisions of the Rules, which suggests that a different approach that is not circumscribed by the strictures of the

Rules may be warranted for service in cases where a solicitor is believed to be outside Singapore.

23 Second, s 98(2) of the LPA provides only that an application may be made "for directions as to service" instead of for "leave to serve out of jurisdiction". In our view, this suggests that the hierarchy of service processes laid out in *Consistel* requiring leave to serve out of jurisdiction before substituted service may appropriately be granted is neither readily transposable to nor applicable in the context of disciplinary proceedings. *Consistel* was, after all, a case involving the *in personam* civil jurisdiction of the High Court that concerned allegations of breaches of contract and fiduciary duty. And as we have stated above, disciplinary proceedings are not concerned with the adjudication of private rights and liabilities *inter se* and the disciplinary jurisdiction is not constituted by service. Indeed, a strict application of the rule in *Consistel* could lead to undesirable consequences, as in the case of errant solicitors who are out of jurisdiction, do not engage with the disciplinary proceedings for whatever reason and do not inform the Law Society of their whereabouts. This could hinder the court's ability to exercise control over its officers and to deal with them appropriately. This would not serve the interests of justice. We are bolstered in our analysis by the fact that the overall tenor of O 11 r 1 of the Rules, which prescribes the cases in which service out of Singapore is permissible (see *Siemens AG v Holdrich Investment Ltd* [2010] 3 SLR 1007 at [2] and *Zoom Communications Ltd v Broadcast Solutions Pte Ltd* [2014] 4 SLR 500 at [26]), is concerned with claims invoking the *in personam* civil jurisdiction of the court, such as claims for damages of a breach of contract, or a claim to enforce a judgment or an arbitral award. Such is not the case for disciplinary proceedings within the civil jurisdiction of the court.

24 Third, we consider s 98(10) of the LPA to operate as a gap-filling provision that allows the court to adapt from the Rules as needed, but does not mandate the strict application of the Rules. This flexibility affords the court broad discretion to consider all the relevant circumstances in deciding on applicable processes by which it may act against its own officers. Other provisions in the LPA reflect the same flexibility: see for example, s 187(3) of the LPA that governs service of documents (other than a process of court) and provides that such documents may be sent by post and any document addressed to an advocate and solicitor "at his only or principal address last appearing in the register of practitioners shall be deemed to be properly addressed".

25 This approach is also consistent with our decision in *Law Society of Singapore v Tay Eng Kwee Edwin* [2007] 4 SLR(R) 171, in which the Law Society had applied for the respondent to show cause as to why he ought not to be punished for failing to draw up or maintain books of accounts required by r 11 of the Legal Profession (Solicitors' Accounts) Rules (1999 Rev Ed) for a period of one year. The court, in considering whether the respondent had been properly notified of the show cause proceedings, focussed on the *knowledge* of the respondent and emphasised that he was aware of the proceedings, having prayed for dispensation of service of the documents and for his presence at the proceedings (at [12]–[15]). This underscores the importance of service, not as a prerequisite for establishing jurisdiction over the solicitor, but in order to bring the proceedings to the respondent's notice.

26 To summarise, where a solicitor is or is believed to be within Singapore, the default rule is that service should be effected in accordance with the Rules, as stated in s 98(3) of the LPA. Where a solicitor is believed to be outside of Singapore, directions may be sought as to how service may be effected, pursuant to s 98(2) of the LPA, and in such instances, the court need not be bound by the strictures of the Rules. While the Rules may be followed "as nearly as the circumstances permit", s 98(10) of the LPA ultimately allows the court to retain the necessary discretion to determine the appropriate directions to be given *in the light of all the circumstances* of each particular case, and to balance the interests of justice.

Our decision

Our decision

27 We turn to the facts of the present case. Here, there appeared to us to have been some indication of a deliberate attempt to avoid personal service. This began with the respondent's parents accepting the list of documents for the DT proceedings but refusing to sign the accompanying acknowledgment. On subsequent occasions, the respondent's parents have either not opened the door at the Premises, or have refused to engage with the process server, resorting even to shutting the door once they saw the process server.

28 The Law Society likewise deposed on affidavit that numerous attempts were made to contact the respondent at his personal email address and his personal mobile number, both details having been obtained from the same application documents filed with the Registrar of the Supreme Court as well as from the Notice (see [6] above). These attempts were made prior to the commencement of the proceedings before the DT, as well as after the commencement of the present Show Cause Proceedings. However, all these attempts met with no reply. For example, the Law Society had first sent an email to the respondent's personal email address prior to the commencement of the proceedings before the DT on 24 June 2020, as well as after the conclusion of the proceedings before the DT on 9 February 2021. No response was received to either email. In the case of phone calls to the mobile number, apart from two occasions where there had been no answer, the recipient (who, in fairness, has not been identified as the respondent) had shouted vulgarities and stated that the wrong number had been called. As such, the Law Society had not received any response directly from the respondent both during the proceedings before the DT and after the commencement of the Show Cause Proceedings. The Law Society also confirmed that it had no other information about the respondent's current whereabouts.

29 Viewed collectively, these facts favoured an order for substituted service. In these circumstances, we considered it appropriate to make an order for substituted service of the Documents. Service of the Documents shall be effected by posting a copy of the same together with a copy of the order for substituted service on the front door of the Premises and also by sending the same to the respondent's last known personal email address. Such service will be deemed good and sufficient service on the respondent.

Conclusion

30 For these reasons, we allowed the application in the terms set out at [29] above, with costs of the application to be in the cause.