IN THE COURT OF THREE JUDGES OF THE REPUBLIC OF SINGAPORE

[2022] SGHC 185

Originating Summons No 1 of 2022

Between

Law Society of Singapore

… *Applicant*

And

Ooi Oon Tat

… *Respondent*

GROUNDS OF DECISION

[Legal Profession — Disciplinary proceedings]

Law Society of Singapore
v
Ooi Oon Tat

[2022] SGHC 185

Court of Three Judges — Originating Summons No 1 of 2022
Sundaresh Menon CJ, Andrew Phang Boon Leong JCA and Steven Chong JCA
1 July 2022

3 August 2022

Sundaresh Menon CJ (delivering the judgment of the court):

Introduction

1 C3J/OS 1/2022 ("OS 1") was an application by the Law Society of Singapore for the respondent, Mr Ooi Oon Tat, to be sanctioned under s 83(1) of the Legal Profession Act (Cap 161, 2009 Rev Ed) ("LPA"). Three charges were brought against the respondent ("the Charges") in relation to his conduct of DC/DC 2679/2015 ("DC 2679"), a personal injury claim filed by Mr Lim See Meng ("complainant") arising from an accident on 12 November 2012. In essence, the respondent was charged with having failed to (i) keep the complainant reasonably informed of the progress of DC 2679, (ii) act with reasonable diligence, (iii) provide timely advice in relation to DC 2679, and (iv) follow the instructions given by the complainant.

2 To put it very bluntly, we found this to be a deplorable case of a solicitor who was in grave dereliction of duty to his client. The complainant had obtained an interlocutory judgment against the defendant in DC 2679. This was entered by consent on 25 November 2015 with liability fixed at 100% and damages to be assessed. However, what appeared to be a complete victory in favour of the complainant was transformed into a complete defeat as a result of the respondent's gross mismanagement of DC 2679. After judgment had been entered, the defendant in DC 2679 sought discovery of certain documents pertaining to the assessment. The complainant duly provided various documents to the respondent. Yet, despite numerous opportunities for the respondent to act on the discovery sought by the defendant and to disclose the documents the complainant had handed to him, the respondent inexplicably failed to do so. He persisted in this failure even after the defendant obtained court orders for the production of those documents. This ultimately resulted in DC 2679 being struck off and by then, it was not possible to recommence a fresh action because it was time-barred.

3 In *The Law Society of Singapore v Ooi Oon Tat* [2021] SGDT 13, the disciplinary tribunal ("DT") held that the Charges against the respondent were made out on the evidence. It described the respondent's conduct as a "contumelious and repeated failure" to keep his client informed of the state of progress of his suit. It also observed that the respondent's "inaction and lackadaisical conduct [was] seen over a prolonged period between August 2016 and January 2017, when there were several occasions [where] the Discovery Request, the Discovery Order and finally the Unless Order could have been complied with". The DT concluded that the respondent's conduct brought dishonour to the profession and fell below the standards expected of an advocate and solicitor.

4 Before us, the respondent did not challenge the DT's findings and conceded that due cause was made out. In our judgment, the respondent's misconduct reflected a fundamental breach of a solicitor's basic duty to carry out the representation of his client in a competent way. A solicitor's breaches of his duties to the court and to his client are among the most serious failings, and in this case, it was a grave breach with real consequences for his client.

5 Having heard the parties and considered their submissions, we were satisfied that there was due cause for the respondent to be sanctioned and ordered that the respondent be suspended for a term of five years with immediate effect. We gave brief reasons for our decision at the time. In this judgment, we set out our reasons in detail.

Facts

6 The respondent was admitted to the roll of advocates and solicitors of the Supreme Court of Singapore in August 1989. At the material time in 2016, he was a solicitor of some 27 years' standing.

7 On 19 March 2016, the complainant engaged M/s Judy Cheng & Co ("J&C") to act for him in relation to MC/MC 228/2014 ("MC 288") and DC 2679, which were claims filed by him in relation to two accidents that took place on 9 March 2012 and 12 November 2012 respectively. The complainant knew the then sole proprietor of J&C, Ms Cheng Su Yin Judy ("Ms Cheng"), and gave instructions to her. Shortly thereafter, from April 2016, Ms Cheng decided not to renew her practising certificate. The respondent then became the sole proprietor of J&C and took over the conduct of MC 288 and DC 2679.

8 DC 2679 had been commenced by the complainant's former solicitors on 9 September 2015. The complainant obtained interlocutory judgment with

liability fixed at 100% against the defendant in DC 2679 on 25 November 2015. The respondent was engaged primarily to see to the assessment of damages stage of DC 2679. On 17 March 2016, the solicitors for the defendant in DC 2679, United Legal Alliance LLC ("ULA"), served a list of requests on the complainant seeking to determine, among other things, whether the complainant had been involved in any other road accidents apart from the accident on 12 November 2012.

9 On 2 May 2016, the respondent filed a Notice of Change of Solicitor to formally take over the carriage of DC 2679 from the complainant's former solicitors. On 15 June 2016, ULA made a discovery request by letter for the following documents ("Discovery Request"):

(a) Medical report of the complainant issued by Sata Comm Health dated 28 June 2012.

(b) Medical report of the complainant issued by Dr Benedict Peng of Island Orthopaedic Consultants Pte Ltd dated 29 August 2012.

(c) Medical reports in relation to the complainant's accident on 29 July 2014.

(d) All relevant documents pertaining to any claim(s) and / or legal proceeding(s) commenced by the complainant in relation to the accident on 26 June 2013, if any.

(e) All relevant documents pertaining to any claim(s) and / or legal proceeding(s) commenced by the complainant in relation to the accident on 29 July 2014, if any.

(f) All relevant documents pertaining to MC Suit No 21307 / 2010 including but not limited to the following: (i) copies of the pleadings; (ii) copies of all affidavit(s) of evidence-in-chief ("AEIC"), if any; (iii) copies of the interlocutory judgement and final judgement, if any; and (iv) all other relevant documents.

(g) Pertaining to MC 228, (a) copies of the pleadings; (b) copies of all AEIC(s), if any; (c) copies of the interlocutory judgement and final judgement, if any; (d) all other relevant documents in relation to the suit; and the particulars / information relating to the personal injury claim that the complainant intends to consolidate with DC 2679.

(h) The complainant's Central Provident Fund ("CPF") statements for the period from 1 January 2012 to present.

(i) The complainant's Inland Revenue Authority of Singapore ("IRAS") notice of assessment for the years 2011 to 2016.

(j) Documents substantiating the complainant's claim for loss of future earnings or earning capacity of $15,000.00.

(k) Documents substantiating the complainants' claim for transport expenses of $800.00; and

(l) Other documents in support of the complainant's claim.

In the same letter, ULA also requested that the complainant provide a signed clinical abstract form and a copy of his NRIC to allow ULA to write to all hospitals on the complainant's pre-existing injuries prior to the accident on 12 November 2012.

10 On the same day, Ms Cheng, who was assisting the respondent with DC 2679, sent the Discovery Request to the complainant by way of email (with the respondent on copy) stating "[w]e will let you know if we cannot find the documents in our file and the documents we need from you". At the time, the respondent was already in possession of documents that had been handed over by the complainant's former solicitors, at least some of which would have been relevant to the Discovery Request.

11 On 27 June 2016, the complainant attended at the respondent's office and provided the respondent with his CPF statements for the period from January 2012 to May 2016, his IRAS notices of assessments for the financial years from 2010 to 2015 and the signed clinical abstract form, to enable the respondent to reply, at least in part, to the Discovery Request. On 30 June 2016, the complainant followed up with an email to the respondent pertaining to the Discovery Request stating:

> Dear Sir/Mdm
>
> 1) *Kindly refer to the letter from m/s United Legal Alliance dated 15th June 2016.*
>
> 2) *As a reminder, i have delivered the CPF Statements, IR8A and clinical abstract application form which has been signed by me and delivered over to yourself & Mr Ooi Oon Tat dated 27th June 2016.*
>
> 3) *I will appreciate if you could cc me a copy of your reply letter to United Legal Alliance and also cc copy of the affidavit to consolidate DC Suit No. 2679 of 2015 and MC Suit No. 228 of 2014 for my reference.*
>
> I hereby appreciate if you can kindly expedite my matters asap.
>
> Thank You.

12 As the respondent did not respond to the Discovery Request, ULA sent another letter on 17 August 2016 requesting that the same be complied with by 19 August 2016 failing which ULA would file the necessary application. The

respondent replied to this email on 19 August 2016 stating that "[w]e are reviewing the matter and will let you have whatever possible documents by the following Monday/Tuesday". However, the respondent did not provide any of the documents set out in the Discovery Request even by then.

13 On 29 August 2016, ULA took out DC/SUM 2793/2016 ("SUM 2793"), an application for discovery seeking most of the documents in the Discovery Request. On 4 October 2016, the District Court granted the orders sought in SUM 2793. By DC/ORC 3529/2016, the complainant was ordered to produce, among other things, the documents requested in SUM 2793 by 28 October 2016 and to pay costs fixed at $400 for SUM 2793 (the "Discovery Order"). Although the respondent attended the hearing of SUM 2793, he did not take any steps to comply with the Discovery Order. He also did not inform the complainant that an application had been made or that an order had ensued against the complainant.

14 On 31 October 2016, ULA sent a letter to the respondent noting that it had not heard from him. ULA stated that the respondent should disclose the required documents on or before 7 November 2016 failing which it would proceed to file the necessary application.

15 On 8 November 2016, ULA took out DC/SUM 3586/2016 ("SUM 3586"), an application for an order that DC 2679 be struck out unless the Discovery Order was complied with. On 13 December 2016, the District Court granted the orders sought. By DC/ORC 94/2017, the complainant was ordered to comply with the Discovery Order by 10 January 2017 failing which DC 2679 would be struck out and the complainant was to pay costs fixed at $300 ("Unless Order"). Again, while the respondent attended the hearing of SUM 3586, he failed to comply with the Discovery Order. He also did not

inform the complainant either that such an application had been made or that an order in these terms had been issued against the complainant.

16 As the Unless Order was not complied with, DC 2679 was struck out on 20 January 2017. The complainant's case was that he had not received any update from the respondent in relation to the Discovery Request or any advice in relation to the progress of DC 2679 after he sent the 30 June 2016 email (above at [11]). As he was dissatisfied with the manner in which the respondent had been handling DC 2679, he approached Mr Lee Cheong Hoh ("Mr Lee") from M/s Cheonghoh Law Corporation to take over the conduct of DC 2679. Mr Lee subsequently informed the complainant that DC 2679 had been struck out and eventually declined to take over conduct of DC 2679 on 8 February 2017 because he was not comfortable with the organisation of the documents handed over by the respondent in relation to DC 2679.

17 The complainant then confirmed with Ms Cheng that DC 2679 had indeed been struck out, and met the respondent at the respondent's office sometime in February 2017 when the respondent informed him that he would try to solve the problem and reinstate DC 2679.

18 As the complainant did not receive any further updates, he went to the respondent's office on 20 February 2017 to speak to him. However, the respondent was not in his office. The complainant then sent an email to the respondent recording the fact that he had gone to the respondent's office that morning and that the respondent was not in office. The complainant further requested that the respondent "let [him] know the progress & status to reinstate [DC 2679] ASAP" and to reply to his email at the soonest.

19 DC 2679 was never restored, and no attempts were in fact made by the respondent to do so. As we noted earlier at [2], the complainant's claim for personal injury for the accident which took place on 12 November 2012 was time-barred at the time DC 2679 was struck out on 20 January 2017.

20 On 22 March 2019, the complainant filed DC/DC 873/2019 ("DC 873") against the respondent arising from the latter's negligence in his handling of DC 2679. On 9 January 2020, at the hearing of the complainant's summary judgment application against the respondent in DC 873, the respondent appeared in person. The District Court entered interlocutory judgment against the respondent for damages and costs to be assessed, and judgment for certain liquidated sums. The respondent's appeal was dismissed by the High Court on 3 March 2020.

21 On 14 September 2021, the District Court adjudged the respondent liable to pay the complainant damages of $72,879.03 with costs fixed at $15,000 and disbursements to be agreed or taxed. At the hearing before us, the respondent confirmed that he had not yet satisfied any part of the judgment.

The Charges

22 The complainant lodged a complaint against the respondent on 18 June 2020. Following this, the applicant preferred the Charges against the respondent on 29 April 2021. The first charge was amended by consent on 1 November 2021 during the disciplinary proceedings. We reproduce the Charges as follows:

First Charge (Amended)

> *[The respondent is] charged that whilst acting for [the complainant] in [DC 2679], [he was] aware of information that would reasonably affect [the complainant's] interests in [DC 2679], which included:-*

~~(1) The letter from United Legal Alliance LLC ("ULA") to Judy Cheng & Co ("J&C") dated 17 August 2016;~~

(1) DC/SUM 2793/2016 dated 29 August 2016;

(2) DC/ORC 3529/2016 dated 4 October 2016;

(3) The letter from ULA to J&C dated 31 October 2016;

(4) DC/SUM 3586/2016 dated 8 November 2016;

(5) DC/ORC 94/2017 dated 13 December 2016; and/or

(6) That [DC 2679] was struck out on 20 January 2017,

but failed to reasonably inform [the complainant] of such information and/or the progress of [DC 2679] in breach of Rule 5(2)(b) and/or Rule 5(2)(e) of the Legal Profession (Professional Conduct) Rules 2015 (S 706/2015) and as such, [the respondent is] guilty of improper conduct or practice as an advocate and solicitor within the meaning of section 83(2)(b)(i) of the Legal Profession Act (Chapter 161).

Alternatively, [the respondent is] charged that whilst acting for [the complainant] in [DC 2679], [he was] aware of information that would reasonably affect [the complainant's] interests in [DC 2679], which included:-

(1) The letter from ULA to J&C dated 17 August 2016;

(2) DC/SUM 2793/2016 dated 29 August 2016;

(3) DC/ORC 3529/2016 dated 4 October 2016;

(4) The letter from ULA to J&C dated 31 October 2016;

(5) DC/SUM 3586/2016 dated 8 November 2016;

(6) DC/ORC 94/2017 dated 13 December 2016; and/or

(7) That [DC 2679] was struck out on 20 January 2017,

but failed to reasonably inform [the complainant] of such information and/or the progress of [DC 2679], such acts amounting to conduct unbefitting an advocate and solicitor in the discharge of [his] professional duty as an officer of the Supreme Court or as a member of an honourable profession within the meaning of section 83(2)(h) of the Legal Profession Act (Chapter 161).

Second Charge

[The respondent is] charged that whilst acting for [the complainant] in [DC 2679], [he] failed to:- (a) act with reasonable diligence and competence in the provision of legal services; (b)

provide timely advice; and/or (c) use all legal means to advance [the complainant's] interests to the extent that [he] may reasonably be expected to do so in relation, but not limited to:-

(1) The letter from United Legal Alliance LLC ("ULA") to Judy Cheng & Co ("J&C") dated 15 June 2016;

(2) The letter from ULA to J&C dated 17 August 2016;

(3) DC/SUM 2793/2016 dated 29 August 2016;

(4) DC/ORC 3529/2016 dated 4 October 2016;

(5) The letter from ULA to J&C dated 31 October 2016;

(6) DC/SUM 3586/2016 dated 8 November 2016;

(7) DC/ORC 94/2017 dated 13 December 2016; and/or

(8) The striking out of [DC 2679] on 20 January 2017,

in breach of Rule 5(2)(c), Rule 5(2)(h) and/or Rule 5(2)(j) of the Legal Profession (Professional Conduct) Rules 2015 (S 706/2015) and as such, he is guilty of improper conduct or practice as an advocate and solicitor within the meaning of section 83(2)(b)(i) of the Legal Profession Act (Chapter 161).

Alternatively, [the respondent is] charged that whilst acting for [the complainant] in [DC 2679], [he] failed to:- (a) act with reasonable diligence and competence in the provision of legal services; (b) provide timely advice; and/or (c) use all legal means to advance [the complainant's] interests to the extent that [he] may reasonably be expected to do so in relation, but not limited to:-

(1) The letter from ULA to J&C dated 15 June 2016;

(2) The letter from ULA to J&C dated 17 August 2016;

(3) DC/SUM 2793/2016 dated 29 August 2016;

(4) DC/ORC 3529/2016 dated 4 October 2016;

(5) The letter from ULA to J&C dated 31 October 2016;

(6) DC/SUM 3586/2016 dated 8 November 2016;

(7) DC/ORC 94/2017 dated 13 December 2016; and/or

(8) The striking out of [DC 2679] on 20 January 2017,

such acts amounting to conduct unbefitting an advocate and solicitor in the discharge of [his] professional duty as an officer of the Supreme Court or as a member of an honourable profession within the meaning of section 83(2)(h) of the Legal Profession Act (Chapter 161).

Third Charge

> *[The respondent is] charged that whilst acting for [the complainant] in [DC 2679], [he] had failed to follow the lawful, proper and reasonable instructions that [the complainant] was competent to give, which included failing to follow [the complainant's] instructions in his email to [the Respondent] dated 30 June 2016 in breach of Rule 5(2)(i) of the Legal Profession (Professional Conduct) Rules 2015 (S 706/2015) and as such, you are guilty of improper conduct or practice as an advocate and solicitor within the meaning of section 83(2)(b)(i) of the Legal Profession Act (Chapter 161).*
>
> *Alternatively, [the respondent is] charged that whilst acting for [the complainant] in [DC 2679], [he] had failed to follow the lawful, proper and reasonable instructions that [the complainant] was competent to give, which included failing to follow [the complainant's] instructions in his email to [the respondent] dated 30 June 2016, such act(s) amounting to conduct unbefitting an advocate and solicitor in the discharge of [his] professional duty as an officer of the Supreme Court or as a member of an honourable profession within the meaning of section 83(2)(h) of the Legal Profession Act (Chapter 161).*

The DT's decision

23 The DT was appointed on 10 May 2021 and the evidentiary hearing was held on 15 and 16 September 2021. The DT found that the Charges were made out on the evidence and the respondent's conduct amounted to improper conduct or practice as an advocate or solicitor within the meaning of s 83(2)(*b*)(i) of the LPA. As the respondent did not plead guilty, the DT found that the alternative ways in which the Charges were framed as set out above at [22] were also made out. The DT determined that there were obvious causes of sufficient gravity for disciplinary action under s 83 of the LPA on the Charges and ordered costs of $8,000 inclusive of disbursements against the respondent.

24 In relation to the respondent's conduct of his defence before the DT, the DT noted that it was "very surprising" that the respondent failed and/or refused to file his defence, list of documents, and his AEIC, despite several reminders and extensions. The DT expressed its displeasure to the respondent for again

failing to file his defence at a pre-hearing conference on 13 July 2021 and directed that the respective submissions be filed before the evidential hearing. At the hearing, the respondent apologised profusely saying "I really have no good excuse other than I just have difficulty getting the whole out" [*sic*]. The DT also noted that in a former set of disciplinary proceedings against the respondent, *The Law Society of Singapore v Ooi Oon Tat* [2018] SGDT 9 at [4] and [34], the disciplinary tribunal had similarly observed that the respondent "did not comply with any of the timelines and failed to file any defence, provide any documents or evidence" and "[chose] not to comply with the procedures prescribed in the rules which govern disciplinary proceedings or accept the latitude the [disciplinary tribunal] has offered him to properly defend himself given the serious nature of [those proceedings]".

25 Notwithstanding the complete lack of any pleadings or filings, the respondent was allowed to and did cross-examine the complainant at length on issues that the DT noted were "at times difficult to understand and, at other times, clearly irrelevant to the charges" against him. During the hearing, he asserted that:

(a) he had orally informed the complainant of the progress of DC 2679 (meaning the letters from ULA, the applications that were made and the court orders that were issued);

(b) he reached an agreement with the complainant on the reinstatement of DC 2679 sometime in February 2017;

(c) the complainant had a bad case in DC 2679 because the injuries the complainant suffered in the 12 November 2012 accident were similar to the injuries he suffered in the 9 March 2012 accident and the

complainant had given poor testimony in relation to the same in MC 228; and

(d) he could not produce any attendance notes, emails or documents to corroborate his defence because his personal computer allegedly crashed in around July 2018 and he destroyed the hardcopy correspondence file in 2018.

26 The DT rejected these contentions. The DT did not find the respondent's defence credible at all. It preferred the "clean and consistent" evidence of the complainant that he had received no updates or advice despite his email reminder on 30 June 2016, until he learnt about DC 2679 being struck out from Mr Lee. The DT found that the complainant was very keen to ensure that DC 2679 was prosecuted properly and expediently as shown by his visit on 27 June 2016 to hand over documents to the respondent and his email reminder on 30 June 2016. The respondent admitted that he had received those documents and the email reminder and had no real answer to why he did not send out the documents in question to fulfil the Discovery Request. He also attended the hearings where the District Court granted the Discovery Order and the Unless Order. Yet, the respondent had done nothing to comply with the orders or even to inform the complainant of the same. When probed on this, the respondent said that he could not think of any reason and that he "suppose[d] you could say it's negligence overlooked" [*sic*].

27 The evidence from the SMS messages and WhatsApp messages between the complainant and the respondent also show that the complainant continued to press the respondent for updates on the progress of DC 2679. While the respondent had rendered some written advice on occasion on other matters, they did not support the respondent's case that he had notified and properly advised

the complainant in relation to the need to comply with the discovery related matters. The DT also found the respondent's explanations, as to why records which might have exculpated him could not be found elsewhere (whether on a server, or in physical files or in carbon copies that might or would have been extended to Ms Cheng), were difficult to believe and riddled with inconsistencies. The DT drew an adverse inference against the respondent and concluded that he had no real defence to the Charges from his failure to file any defence, list of documents, or AEIC despite having been afforded ample opportunities to do so and from his self-serving assertion that he was unable to produce any exculpatory documents because he had lost them in a computer crash. Notably, despite the alleged computer crash, he was able to produce certain documents at the hearing.

28 The DT observed that it must be obvious to every advocate and solicitor that he has an obligation to assist a client to comply with discovery orders especially when an unless order has been made against the client. This is self-evident because failing to comply with an unless order carries very serious consequences. The respondent's failure to take any steps to comply with the Discovery Order and Unless Order – bearing in mind his 27 years of experience at the material time and that he had the documents in his possession all the while – was incomprehensible to the DT.

Our decision

29 Under s 83(2)(*b*)(i) of the LPA, due cause may be shown on proof that an advocate and solicitor has been guilty of fraudulent or grossly improper conduct in the discharge of his or her professional duty or guilty of a breach of any applicable rule of conduct. The central inquiry is whether the conduct of the lawyer is dishonourable to the lawyer as a person or dishonourable in the legal

profession (*Law Society of Singapore v Wong Sin Yee* [2018] 5 SLR 1261 at [23]).

30 As we observed above at [4], the respondent's conduct, while not fraudulent, fundamentally breached a lawyer's basic duty to his client. The respondent clearly breached the letter and spirit of the following subsections of r 5(2) of the Legal Profession (Professional Conduct) Rules 2015 (S 706/2015):

> (2) A legal practitioner must —
>
> …
>
> (*b*) when advising the client, *inform the client of all information known to the legal practitioner that may reasonably affect the interests of the client* in the matter, other than —
>
> (i) any information that the legal practitioner is precluded, by any overriding duty of confidentiality, from disclosing to the client; and
>
> (ii) any information that the client has agreed in writing need not be disclosed to the client;
>
> (*c*) act with *reasonable diligence and competence* in the provision of services to the client;
>
> …
>
> (*e*) keep the client *reasonably informed of the progress* of the client's matter;
>
> …
>
> (*h*) provide *timely advice* to the client;
>
> (*i*) *follow all lawful, proper and reasonable instructions* that the client is competent to give;
>
> (*j*) *use all legal means to advance the client's interests*, to the extent that the legal practitioner may reasonably be expected to do so; …
>
> [emphasis added]

31 The complainant not only proactively furnished the requested documents to the respondent, but also explicitly instructed the respondent to comply with the Discovery Request and copy him in the reply to ULA (see [11]

above). Yet, having received the documents from the complainant, the respondent failed to take any steps to comply with the Discovery Request. It was undisputed that the respondent had every opportunity to disclose the documents. Indeed, he was reminded several times by ULA and was present at the hearings of SUM 2793 and SUM 3586 (see [12]–[16] above). Even after the Discovery Order and Unless Order were made against the complainant, he inexplicably neglected to keep the complainant informed of these developments which obviously had an adverse effect on the complainant's case. We found the respondent's utter disregard for the interests of his client wholly unsatisfactory and unacceptable.

32 Given that the respondent conceded that due cause had been shown for him to be sanctioned, the main issue that arose before us was the appropriate sanction that ought to be imposed.

33 In *Law Society of Singapore v Ravi s/o Madasamy* [2016] 5 SLR 1141 at [31], we noted that the following sentencing considerations were relevant in the context of disciplinary proceedings:

(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/or other like-minded solicitors in the future; and

(d) the punishment of the solicitor who is guilty of misconduct.

34 The applicant did not make a specific submission as regards the appropriate sanction but submitted that the respondent's antecedent, his seniority, the severe consequences of his misconduct on the complainant and his lack of remorse, should all be taken into account. The applicant also submitted that the decision of this court in *Law Society of Singapore v Ezekiel Peter Latimer* [2020] 4 SLR 1171 ("*Ezekiel Peter Latimer*") was similar to the present one and a two-year suspension was imposed there. The respondent, on the other hand, submitted that a fine would be appropriate and sufficient in the circumstances.

A fine was not appropriate but neither was striking off

35 In our judgment, the suggestion that a fine was an appropriate sanction in this case reflected an utter failure on the respondent's part to acknowledge the gravity of his misconduct and the degree of harm he had caused his own client. He either had no appreciation of the reality of his situation or he was being disingenuous in suggesting this. The respondent even seemed to suggest that a fine (which would thereby permit him to continue in his law practice) would help him meet his outstanding liabilities. We found it wholly unacceptable that the respondent should suggest that he should be allowed to continue to handle other matters for other clients so that he could raise the money needed to settle his liabilities (which included an unsatisfied judgment to the complainant arising from the respondent's gross failure to carry out his basic duties as the complainant's solicitor) (see [21] above).

36 A fine would be manifestly inadequate in reflecting the egregiousness of the respondent's misconduct. In fact, in the circumstances of this case, it was not outside the realm of possibility for an order of striking off to have been made. It is well-established that 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 (*Law Society of Singapore v Ismail bin Atan* [2017] 5 SLR 746 at [21]).

37 In our recent decision in *Law Society of Singapore v Seow Theng Beng Samuel* [2022] SGHC 112 (at [36]–[41]), we set out the approach to considering whether a striking off order is warranted in cases of misconduct not involving dishonesty or conflicts of interest as follows:

> 41 The approach to considering whether a striking off order is warranted in cases of misconduct not involving dishonesty or conflicts of interest should therefore be as follows:
>
> (a) The first question the court should consider is whether the misconduct in question attests to any character defects rendering the solicitor unfit to be a member of the legal profession (this is similar to the first step of the sentencing framework for dishonesty; see *Chia Choon Yang* at [20]).
>
> > (i) The list of character defects may include a fundamental lack of respect for the law (such as a lawyer who racks up multiple convictions even for relatively more minor offences), volatility or lack of self-control detracting from the ability to discharge one's professional functions (such as in *Law Society of Singapore v Wong Sin Yee* [2003] 3 SLR(R) 209 at [19]), and other predatory instincts (such as in *Ismail bin Atan* at [18]). This is not a closed list, and may be expanded upon, bearing in mind in particular the duties that a solicitor owes to the court, to his clients, to other practitioners and to the general public.
> >
> > (ii) The assessment of whether misconduct demonstrates a character defect rendering a solicitor unfit to be a member of the legal profession depends on the particulars of the misconduct, and the court should consider, taking into account all the circumstances of the misconduct, whether the misconduct stemmed from a lapse of judgment rather than a character defect (*Chia Choon Yang* at [31]; *Andrew Loh* at [75], [84] and [106]; *Thirumurthy* at [4(c)]).
>
> (b) The second separate question the court should consider is whether the solicitor, through his misconduct, has caused

> grave dishonour to the standing of the legal profession (*Ismail bin Atan* at [21]). One example would be where the lawyer is convicted of molesting a victim. In our judgment, the outcome would be unaffected even if the offence were compounded, as happened in *Ismail bin Atan* (at [11]).
>
> (c) If the answer to either of these two questions is "yes", striking off will be the presumptive penalty. While we do not foreclose the possibility that this presumption may be rebutted, we foresee that this would only occur in exceptional cases. Indeed, where mitigating factors are raised to rebut the presumptive penalty of striking off, the solicitor would essentially be arguing that despite being unfit to remain an advocate and solicitor and/or having brought grave dishonour to the legal profession, he should nonetheless be allowed to remain on the rolls. In any event, we reiterate that personal mitigating circumstances that diminish the culpability of the solicitor carry less weight in disciplinary proceedings than they would in criminal proceedings (*Ravi* at [40]–[41]).
>
> (d) If the answer to both these questions is "no", the court should proceed to examine the facts of the case closely to determine whether there are circumstances that nonetheless render a striking off order appropriate (*Chia Choon Yang* at [38]). The court should compare the case with precedents to determine the appropriate sentence, taking into account any aggravating and mitigating factors (as was done in *Law Society of Singapore v Dhanwant Singh* [2020] 4 SLR 736 at [137]–[138]).

38 While we did not consider that the respondent's misconduct in this case attested to a character defect rendering him unfit to be a member of the legal profession, there was no question that his abject failure in his duty to his client had brought dishonour to the standing of the legal profession.

39 We noted that his misconduct bore some similarity to the respondent-solicitor's misconduct in *Law Society of Singapore v Udeh Kumar s/o Sethuraju and another matter* [2017] 4 SLR 1369 ("*Udeh Kumar*"). In *Udeh Kumar* at [111]–[112], the respondent-solicitor was struck out because the charges revealed a gross failure on his part to apprehend even the most fundamental duties of an advocate and solicitor of the court. Some of the charges showed that the respondent-solicitor was recalcitrant in being utterly disrespectful to the

courts over a *prolonged* period of time, with antecedents demonstrating a *persistent pattern* of similar behaviour over the course of several years. He had even been fraudulent or dishonest in dealings with the court on several occasions. We considered that the respondent's conduct in the way he attended to the complainant's claim in DC 2679 was a gross dereliction of his duties. However, bearing in mind that his failure did not rise to the level of establishing a pattern of disregard as was the case in *Udeh Kumar*, we decided against striking the respondent off the roll of advocates and solicitors.

The appropriate sentence was a five-year suspension

40 Having considered the circumstances in the round, we found that an order of suspension of five years was appropriate in the present case for the following reasons.

41 First, the respondent's dereliction of his duties was inexcusable and wholly unmitigated. Any reasonably competent lawyer would be cognisant of a lawyer's basic duty to keep the client reasonably informed of the developments in the case. As observed by the Court of Appeal in *Mahidon Nichiar bte Mohd Ali and others v Dawood Sultan Kamaldin* [2015] 5 SLR 62 at [156], a solicitor "must maintain a *reasonable level of communication with his client so that the latter is* ***never left in the dark*** *about any significant matter or development*". [emphasis added in italics and bold italics]. The respondent neglected to even *inform* the complainant regarding the court orders made against the complainant, and *completely failed to advise* the complainant on the appropriate course of action to take. The evidence showed that the complainant was quite naturally left in a stressed and anxious state. For instance, in his 20 February 2017 email, the complainant had written "IMMEDIATE ATTENTION !" in

very large font and requested the respondent to "[p]lease also let [him] know the progress & status to reinstate [DC 2679] ASAP" (see [18] above).

42 The fact that the respondent had repeatedly and inexplicably "overlooked" disclosing the required documents pursuant to the Discovery Request, Discovery Order and Unless Order notwithstanding that he had most if not all the documents required fell far short of the standards expected of a reasonably diligent and competent lawyer. In the decision of the High Court in *Lie Hendri Rusli v Wong Tan & Molly Lim (a firm)* [2004] 4 SLR(R) 594 at [42]–[44], V K Rajah JC (as he then was) observed that:

> 42 It is hornbook law that *a solicitor is expected to exercise the care and skill of a reasonably competent solicitor in discharging his duties under the retainer*. In assessing the standard of care to be reasonably expected of a solicitor, the factual backdrop is of paramount importance. Abstract notions of skill and competence often add little to resolving the situation and have to be applied with vigilance when meandering through the undergrowth of facts. …
>
> 43 In reality the so-called reasonably competent solicitor is a mere legal fiction judiciously deployed from time to time to justify risk allocation. The court is ever anxious to maintain and police the standards of the legal profession, which performs a vital role in a society that is predicated, and places a premium, on the rule of law. In the discharge of its duty to uphold the legal system, *the legal profession must seek not only to jealously maintain high standards but to unfailingly remain alert and acutely conscious of the fact that the public perception and the standing of the profession is indivisibly determined by the standards it embraces and observes*. … High standards, however, are not synonymous with impractical standards. Expectations of the profession must be tied to reality. …
>
> 44 The real issue, in any given case, is ***whether the court views the standards applied and skills discharged by the particular solicitor as consistent with the legal profession's presumed responsibilities and obligations to its clients***.
>
> [emphasis in original omitted; emphasis added in italics and bold italics]

43 The respondent must have appreciated that DC 2679 might well be struck out, at least by the hearing of SUM 3586 when ULA sought the Unless Order. The respondent's failure to take steps to comply with the Discovery Order and Unless Order, including by failing to inform the complainant of these developments, was therefore entirely inconsistent with the legal profession's presumed responsibilities and obligations to its clients. When the DT probed the respondent on the reason for his failure to comply with the Discovery Order and Unless Order, the respondent could offer nothing by way of a meaningful response. There were also no mitigating factors to speak of.

44 Second, the respondent's misconduct resulted in very real prejudice to the complainant. It is well-established that actual or potential harm caused to his client by a respondent-solicitor's misconduct is an aggravating factor in sentencing (*Law Society of Singapore v Tan See Leh Jonathan* [2020] 5 SLR 418 at [12]). It cannot be gainsaid that the respondent's actions resulted in grave and severe harm to the complainant since DC 2679 was struck out and the complainant effectively lost his right of action because of the time bar that applied by then. As we foreshadowed earlier at [2], the respondent's inaction transformed what appeared to be a complete victory in favour of the complainant in DC 2679 into a *complete defeat*. By his failure to do anything to act on the complainant's instructions and to produce the documents, the respondent effectively destroyed the complainant's cause of action. The complainant was then left to pursue his claim against the respondent in DC 873 and obtained a judgment against him which we noted, remained unsatisfied.

45 Third, the respondent displayed a troubling lack of remorse throughout the proceedings against him. A respondent-solicitor who vigorously contests the allegations against him in the face of clearly established objective facts (and therefore wastes the court's time without any conceivable purpose) is less likely

to be treated leniently than one who appropriately admits his guilt (*Law Society of Singapore v Tan Buck Chye Dave* [2007] 1 SLR(R) 581 at [27]; *Law Society of Singapore v Chan Chun Hwee Allan* [2018] 4 SLR 859 at [42]).

46 At the disciplinary proceedings before the DT, the respondent chose not to plead guilty. However, the defence he attempted to mount at the hearing was not only ill-conceived in principle, but it was also not supported by a modicum of objective evidence. In fact, the DT appeared to have found that the respondent had lied about certain aspects of his defence or at the very least that he had been less than forthright.

47 Specifically, the respondent made several baseless assertions before the DT, including that he had orally informed the complainant of the progress of DC 2679, that he could not produce any attendance notes, emails or documents to corroborate his defence because his personal computer allegedly crashed in around July 2018 and that the hardcopy correspondence file was destroyed by him in 2018 (see [25] above). The DT did not find those assertions "credible at all" and also found that the documents he did produce did not support his assertions. As regards the alleged computer crash, the DT found that the respondent had no good reason why he did not call the technician who would have attended to the incident to testify on the computer crash and any loss of documents. It found his explanations as to why potentially exculpatory records could not be found elsewhere "difficult to believe and riddled with inconsistencies". The DT also noted that the respondent cast aspersions of improper conduct on the applicant by suggesting that the applicant might not have obtained all relevant evidence from the complainant. The respondent did not dispute those findings before us.

48 And before us, while he did not contest that there was due cause for sanctions to be imposed on him, he nevertheless advanced various contentions that seemed to us to detract from the suggestion that he was remorseful for what had happened or understood the gravity of his misconduct. For instance, he appeared to blame the complainant by suggesting that the claim might have been overstated despite the fact that judgment had been entered against the respondent in DC 873 which was brought by the complainant against him. Indeed, as we pointed out during the course of the arguments, it was striking that despite the fact that there was a court judgment establishing the respondent's liability to the complainant, the respondent not only questioned the extent of his liability but had not to date satisfied that judgment. No explanation was offered for this. All these aspects of how the respondent went about conducting his defence were aggravating for a number of reasons. First, they manifest a lack of remorse that in this case seemed to us to amount to the respondent being wholly indifferent to the harm he had caused the complainant. Second, in extending the disciplinary process needlessly by taking baseless positions, the respondent was irresponsibly causing a wastage of public resources. Third, the DT seemed to have taken the view that the respondent lied about certain points and this is intolerable in the context of a solicitor.

49 We also note that the respondent displayed an utter disregard for the disciplinary process. In much the same way he handled DC 2679, the respondent filed no defence, affidavits or written submissions before the DT and before us. This was done in disregard of the procedural timelines for the filing of his defence and case before the DT and this court. As correctly noted by the DT, the respondent exhibited the same wilful conduct in the previous disciplinary proceedings against him (see [24] above). Such behaviour disrespects the disciplinary process, the DT and the court. When we questioned him on this, the respondent said that he had conducted his defence in the

disciplinary proceedings in this way because he was feeling "tired and jaded". Taking this at face value, it plainly established that the public is in especial need of being protected from such a solicitor at this time. Bearing in mind that the protection of the public is a consideration of particular importance (see [33(a)] above), we found that a lengthy suspension was necessary in the circumstances.

50 Finally, we considered the respondent's antecedent and his seniority. Under s 83(5) of the LPA, the court may take into account the past conduct of the person concerned in order to determine what order should be made. The fact that an advocate and solicitor had previously committed a similar disciplinary offence is a significant aggravating factor that the court will consider in determining the appropriate sanction (*Law Society of Singapore v Ng Bock Hoh Dixon* [2012] 1 SLR 348 at [35]). The respondent was previously sanctioned for having failed to deposit client monies into the appropriate account. This was similar in so far as it concerned the respondent's lack of sensitivity to the interests of his clients. On that occasion, we suspended the respondent from practice for one year with effect from 9 September 2019. The respondent was also a senior practitioner of some 27 years' standing at the material time in 2016. It is well-established that the more senior an advocate and solicitor, the more damage he does to the standing of the legal profession by virtue of his misconduct (*Ezekiel Peter Latimer* at [4]).

51 Before we conclude, we deal with one other point. As we noted earlier at [34], the applicant suggested that *Ezekiel Peter Latimer* was an instructive precedent. In *Ezekiel Peter Latimer*, the respondent-solicitor failed to attend a hearing or make proper arrangements to obtain an adjournment of the hearing. This resulted in his client's case being struck out. He also ignored persistent attempts by his client to contact him. He later gave two signed undertakings to the client promising to apply to set-aside the striking out order. However, he

failed to file the application because he did not want to admit his negligence in his supporting affidavit (*Ezekiel Peter Latimer* at [1]); *The Law Society of Singapore v Ezekiel Peter Latimer* [2019] SGDT 4 at [15]).

52 In deciding that a two-year suspension was appropriate, this court considered the prolonged duration and blatant nature of the respondent-solicitor's wrongdoing, his more than 20 years' standing and an antecedent misconduct in which he placed himself in a position of conflict of interest by preferring the interest of one client to another in the course of his concurrent representation of them in criminal proceedings and was suspended for three years (*Ezekiel Peter Latimer* at [4]–[6]). However, in our judgment, *Ezekiel Peter Latimer* was distinguishable from the present case. In that case, there was no suggestion of a perfectly valid *judgment* in the client's favour having been brought to nought by reason of the solicitor's misconduct; nor was there a judgment against the solicitor in favour of the client on account of the solicitor's breach of duty that remained unsatisfied without good reason. The respondent-solicitor there also did not display the same indifference and disregard for the client and the disciplinary process as a whole.

Conclusion

53 For these reasons, we were satisfied that a suspension of five years was appropriate and ordered that the suspension commence with immediate effect.

54 After hearing the parties' submissions on costs, we fixed costs in the aggregate sum of $18,000 in favour of the applicant being the costs for OS 1 and also for C3J/SUM 1/2022, in which we granted the applicant's application to serve the required documents in OS 1 by way of substituted service on 4 April 2022.

Sundaresh Menon
Chief Justice

Andrew Phang Boon Leong
Justice of the Court of Appeal

Steven Chong
Justice of the Court of Appeal

Wong Soon Peng Adrian and Wayne Yeo (Rajah & Tann Singapore LLP) for the applicant;
The respondent in person.