Wee Soon Kim Anthony v The Law Society of Singapore (No 4)
[2002] SGCA 24

Case Number : CA 600151/2001

Decision Date : 07 May 2002

Tribunal/Court : Court of Appeal

Coram : Chao Hick Tin JA; Tan Lee Meng J; Yong Pung How CJ

Counsel Name(s) : Appellant in person; Yang Lih Shyng and Candice Kwok (Khattar Wong & Partners) for the respondent

Parties : Wee Soon Kim Anthony — The Law Society of Singapore (No 4)

Legal Profession – Disciplinary procedures – Complaint against two solicitors for preparing affidavit containing false statement – Inquiry committee considering written explanation of solicitors and hearing deponent – Inquiry committee recommending dismissal of complaint – Complainant seeking appointment of disciplinary committee – Role of inquiry committee – Whether inquiry committee should refer complaint to disciplinary committee – Whether conflict of evidence precludes inquiry committee from making finding – Whether inquiry committee can hear from any person – ss 85(6D), 86(5), 86(6) & 86(7) Legal Profession Act (Cap 161, 2000 Ed)

Legal Profession – Professional conduct – Breach – Complaint against two solicitors for preparing affidavit containing false statement – Whether prima facie case of professional misconduct established – Whether duty of solicitor to verify instructions of client – Whether solicitors know of falsehood

order to come to this conclusion, the IC would have to make a value judgment on whether the complaint is made out, including determining issues of fact, and that the misconduct is minor (see 30).

(5) How an IC should carry out its task depends on the nature of the complaint and the circumstances of the case. As far as procedure is concerned, the IC must at all times act fairly. It must hear from the solicitor under investigation unless the IC is able to determine without more that the complaint is frivolous and should be dismissed. It is also entitled to hear from any person who may be able to shed light on the matter. However, it should not seek to make findings on disputed material facts if the complaint is serious and warrants a reference to a Disciplinary Committee (see 31).

Case(s) referred to

Anthony Wee Soon Kim v The Law Society of Singapore [1988] 3 MLJ 9 (folld)
Tang Liang Hong v Lee Kuan Yew [1998] 1 SLR 97 (folld)
Re an Advocate and Solicitor [1962] MLJ 125 (refd)
Re James Gray Exp. The Incorporated Law Society [1869] 20 LT 730 (refd)
Seet Melvin v Law Society of Singapore [1995] 2 SLR 323 (refd)
Subbiah Pillai v Wong Meng Meng [2001] 3 SLR 544 (distd)
Wee Soon Kim Anthony v Law Society of Singapore [2001] 4 SLR 25 (distd)
Whitehouse Holdings Pte Ltd v Law Society of Singapore [1994] 2 SLR 476 (distd)

Legislation referred to

Legal Profession Act (Cap 161) ss 85(6D), 86(5), 86(6), 86(7)

Judgment

GROUNDS OF DECISION

1. This was an appeal against the decision of Woo Bih Li JC who refused an application by the appellant (Mr Wee) to have a complaint, which he lodged with the Law Society of Singapore (the Law Society), referred to a Disciplinary Committee (DC) under Part VII of the Legal Profession Act (the Act). Having heard Mr Wee, who appeared in person (being himself an advocate and solicitor but who has ceased practising), and the counsel for the Law Society, we dismissed the appeal with costs. These grounds are released as arguments were raised by Mr Wee touching on the role of the Inquiry Committee (IC) appointed to investigate the complaint.

Background

2. This was the third occasion an appeal had come before this court arising from a letter of complaint dated 8 August 1999 lodged by Mr Wee against two advocates and solicitors, Mr Davinder Singh SC and Mr Hri Kumar. We will hereinafter refer to them as Mr Singh and Mr Kumar respectively or as "the two solicitors" collectively.

3. Upon receipt of the complaint letter, the Council of the Law Society (the Council) summarily determined that it did not contain information of misconduct warranting a reference to an IC. The complaint letter set out four incidents where the two solicitors had prepared affidavits on behalf of clients in legal proceedings which contained falsehoods. Being dissatisfied with the decision of the Council, Mr Wee applied to the High Court to compel the Law Society to have the complaint letter referred to an IC for investigation. The High Court, having considered the four alleged incidents of misconduct set out in the complaint letter, directed that only one of the incidents need be referred to an IC. On Mr Wee's further appeal, this Court ruled that once a complaint related to the conduct of an advocate and solicitor, the Council was required under s 85(1) of the Act to refer it to an IC, through the Chairman of the Inquiry Panel. That decision was reported in [2001] 2 SLR 145.

4. In the meantime, the Council acted on the order of the High Court. An IC was duly constituted to look into that one incident of alleged misconduct (hereinafter referred to as "the complaint"), and, after due inquiry, recommended that the complaint be dismissed. This recommendation was endorsed by the Council. Being dissatisfied, Mr Wee again applied to the High Court (OS 1575/2000), pursuant to s 96(1) of the Act, for an order to compel the Law Society to apply to the Chief Justice that a DC be appointed to hear into the complaint. However, before OS 1575/2000 was heard, the two solicitors applied to intervene in those proceedings. This request of the two solicitors was acceded to by the Assistant Registrar, which decision was affirmed by the High Court. It was in relation to this order allowing the two solicitors to intervene that Mr Wee again appealed. This Court allowed the appeal and held that it was not proper in such a proceeding to permit the two solicitors to intervene (see [2001] 4 SL R 25).

5. The present appeal was in relation to Woo JC's refusal to make the order prayed for in OS 1575/2000.

6. The substance of the complaint was as follows. Mr Wee and his family (wife and son) were customers of the bank, UBS (AG) [UBS]. Disputes arose between them and this resulted in UBS closing the three accounts which Mr Wee and his family had with the bank. UBS took out legal proceedings (OS 546/99) seeking directions as to the disposal of certain assets held by UBS in relation to the three accounts because Mr Wee refused to give any instruction in relation thereto. The two solicitors acted for UBS in that proceeding, which was eventually settled at the door-steps of the court. It was a few months later that Mr Wee wrote the complaint letter.

7. The complaint which the IC was tasked to inquire into related to the following sentence which appeared in an affidavit filed by an officer of UBS, Ms Shirreen Sin (Shirreen) in OS 546/99:-

> "… The account opening forms for all the three accounts were prepared by (UBS) in Singapore and executed by (Mr Wee and his wife and son) in Singapore." (hereinafter referred to as the "disputed sentence")

8. Mr Wee alleged that the disputed sentence was false because not all of the three account opening documents were prepared and executed in Singapore. He said that the opening forms relating to one account (No. 207038), dated 26 August 1997, were prepared and witnessed by one Sheila Wong of UBS (Hong Kong) in Hong Kong. To substantiate this, Mr Wee produced his passport to show that he was in Hong Kong from 24 August to 11 September 1997.

9. Mr Wee thus concluded that the two solicitors had misconducted themselves in that they –

> (a) had knowingly prepared an affidavit which contained a false allegation; and/or
>
> (b) had otherwise permitted Shirreen to perjure herself in a court of law.

Explanation of the two solicitors

10. It was first pointed out to the IC that at no time during the course of the proceedings in OS 546/99 did Mr Wee ever complain that the disputed sentence was false.

11. The affidavit in question was prepared by Mr Kumar in consultation with Shirreen and another Mr Mathias Lee, a Legal Officer of UBS. Upon enquiry by Mr Kumar, Shirreen informed the former that the account opening forms of all three accounts were executed in Singapore.

12. In this regard, Shirreen made two statements which were tendered to the IC. Counsel for the two solicitors also informed the IC that both Shirreen and Mathias Lee, who were then no longer in the employ of UBS, were available to be questioned by the IC. After deliberation, the IC felt that it would suffice to examine only Shirreen. She duly appeared and gave an account of the matter. She re-affirmed what she stated in her two statements. She recalled having visited Mr Wee at his residence at No. 38 Jalan Arnap and he signed all three sets of the forms in her presence. A copy of a letter from Mr Wee’s Hong Kong’s solicitors dated 14 December 1998 was also tendered to the IC, where in 2 it was stated that all three accounts were arranged by Shirreen for Mr Wee.

Findings of the IC

13. The IC noted that in the circumstances its task was to determine whether a *prima facie* case of misconduct had been made out against the two solicitors. It examined the relevant case law on the duty of an advocate and solicitor in relation to the instructions of clients, including *Wee Soon Kim Anthony v The Law Society of Singapore* [1988] 3 MLJ 9 and *Tang Liang Hong v Lee Kuan Yew* [1998] 1 SLR 97, and came, *inter alia,* to the following conclusions:-

> "(i) It is not part of an advocate and solicitor’s duty to believe or disbelieve his client’s information, unless:-

(a) he himself has personal knowledge of the matter; or

(b) his client's statements are inherently incredible; or

(c) his client's statements are logically impossible;

even then, his duty does not go beyond advising the client of the folly of making incredible or illogical statements.

(ii) It is not part of an advocate's duty on every occasion to verify the truth or otherwise of what his client has deposed in his affidavit."

14. The IC, having scrutinised what Shirreen had said, unanimously accepted her statements. The IC observed that she gave her answers in a forthright manner, firm and without prevarication. It was satisfied that she told the truth to the best of her honest recollection. It found that the disputed sentence was inserted in the affidavit in accordance with the clear instructions of clients. It was not the duty of an advocate and solicitor in such a circumstance to go further and check the internal records of the client to ascertain if the statement was indeed true. Thus, the complaint could not stand as the evidence showed that neither Mr Kumar nor Mr Singh knew that the disputed sentence was false. Indeed, Mr Singh was not even present when Mr Kumar received the instructions from Shirreen.

15. For the purpose of determining whether there was a *prima facie* case for the complaint to be referred to a DC, the IC took the approach that it was wholly unnecessary for it, in the circumstances of this case, to resolve the fact in dispute, namely, whether the documents relating to account No. 207038 were executed in Singapore or in Hong Kong. This, however, was not to say that Shirreen was unable to explain the position to the IC. She also clarified why the date stated on the documents relating to the account was different from that on the documents relating to the other two accounts. Effectively, what Shirreen explained was as follows::-

"(a) the fact that 207038's opening forms are dated differently from the other two accounts are (sic) not conclusive because account opening forms are not always dated on the same day that they are signed;

(b) sometimes clients sign and the dates inserted later, this is especially so for foreign accounts where they are sent to that foreign branch to be processed and the foreign branch may then insert the date;

(c) the bank officer who signs on the account opening form may not necessarily have witnessed the signature, the bank officer is only required to verify the customer's signature on the account opening form and the verification may also take place at a later date from that when the customer signed the form."

16. To substantiate points (a) and (b) above, Shirreen produced a Letter of Charge which was executed by Mr Wee in Singapore in her presence dated 3 September 1997. But Mr Wee was in Hong Kong on that date. As regards Shirreen, she was not in Hong Kong on 3 September 1997 and neither was she there during the entire period from 24 August to 11 September 1997.

Issues

17. In challenging the decisions of the IC and the Council before the High Court, Mr Wee raised a host of arguments, and the main ones were these –

> (i) The Council had merely rubber-stamped the recommendation of the IC;
>
> (ii) The IC should have recommended that the complaint be referred to a DC upon it being shown that the disputed sentence was not in line with what appeared on the documents;
>
> (iii) The Chairman of the IC had misunderstood the nature and scope of the duties of an IC;
>
> (iv) It was the duty of an advocate and solicitor in every instance to verify the instructions of his client;
>
> (v) The procedures adopted by the IC to carry out the inquiry were contrary to the rules of natural justice, e.g., failure to inform the complainant that the two solicitors had given their written explanation nor was he given a copy thereof ; no opportunity was given to Mr Wee to comment on the written explanation of the two solicitors ; forwarding all subsequent correspondences from Mr Wee on the complaint to the two solicitors without Mr Wee's permission.
>
> (vi) The IC should have tested the two solicitors' explanation against 'other evidence'.

All these contentions were dismissed by Woo JC as being without merit.

18. Before us, Mr Wee submitted only two issues for determination and, in his words, they were:-

> "(i) The cardinal rule of law that no man is above the law should remain inviolate;
>
> (ii) What is the role of an IC constituted under s 85(6) of the Act."

19. The first issue was really a non-issue, as that is trite law which nobody can or should dispute. It is like a statement on motherhood. It seemed to us clear that he sought to convert a well-established principle of law into an issue because one of the two solicitors, Mr Singh, is a Senior Counsel and a Member of Parliament. While nobody is above the law, it is also trite law that every person is entitled to the equal protection of the law. We would say no more.

The role of an IC

20. The function of an IC, as laid down in s 85(6D) of the Act, is to "inquire into the complaint". The following provisions in section 86 of the Act also indicate what is expected of the IC:-

> "(5) Where an Inquiry Committee is satisfied that there are no grounds for disciplinary action under this Part, it shall report to the Council accordingly and state the reasons for its decision.
>
> (6) Where an Inquiry Committee is of the opinion that an advocate and solicitor should be called upon to answer any allegation made against him, the Inquiry

Committee shall –

> (*a*) post or deliver to the advocate and solicitor concerned –
>
> > (*i*) copies of any complaint or information …; and
> >
> > (*ii*) a notice inviting him to give within such period … any written explanation he may wish to offer and to advise the Inquiry Committee if he wishes to be heard by the Committee;
>
> (*b*) allow the time specified in the notice to elapse;
>
> (*c*) give the advocate and solicitor concerned reasonable opportunity to be heard if he so desires; and
>
> (*d*) give due consideration to any explanation (if any) given by him.

(7) The report of the Inquiry Committee shall, among other things, deal with the question of the necessity or otherwise of a formal investigation by a Disciplinary Committee and, if in the view of the Inquiry Committee no formal investigation by a Disciplinary Committee is required, the Inquiry Committee shall recommend to the Council –

> (*a*) a penalty sufficient and appropriate to the misconduct committed; or
>
> (*b*) that the complaint be dismissed."

21. While the Act leaves it very much to the IC to determine how it should go about carrying out its task (see *Seet Melvin v Law Society of Singapore* [1995] 2 SLR 323 at 341), it will be seen from s 86(6) that, where the IC is of the opinion that the advocate and solicitor complained against should be called upon to answer any allegation, certain procedures must be followed.

22. The contention of Mr Wee was as follows. The function of an IC is to carry out a preliminary inquiry to ensure that a complaint of professional misconduct against an advocate and solicitor is not frivolous. It acts as a filter. A complaint relating to the preparation of an affidavit for use in legal proceedings and which is false is *prima facie* professional misconduct and is not *ex facie* frivolous, relying in this regard on *Re James Gray Exp. The Incorporated Law Society* [1869] 20 LT 730. Accordingly, such a complaint must be referred to the DC and it should be left to the DC to formally investigate and determine if the alleged misconduct had been made out.

23. But the question was whether a *prima facie* case of professional misconduct had been established against the two solicitors. For the determination of this question, this Court had assumed that the disputed sentence was, in fact, wrong, because if it were not wrong, there was nothing more to be said. It was clear to us that in order to impute fault to the two solicitors, it was necessary to show that they knew at the time the affidavit was prepared for Shirreen to execute

that the disputed sentence was, in fact, false or at least had reasons to believe it was so. There is no general duty on the part of a solicitor that he must verify the instructions of his client. This was laid down in *Anthony Wee Soon Kim v The Law Society of Singapore* [1988] 3 MLJ 9 and *Tang Liang Hong v Lee Kuan Yew* [1998] 1 SLR 97. It would be different if there were compelling reasons or circumstances which required the solicitor to verify what the client had instructed.

24. In the present case, Mr Kumar took instructions from Shirreen, who was then an Associate Director of UBS, holding a responsible position in the bank. There was no reason whatsoever why Mr Kumar should have hesitated to accept what Shirreen told him on a simple matter such as this. Shirreen had appeared before the IC and affirmed, in no uncertain terms, that when Mr Kumar made the enquiry, she told him that the account opening documents relating to all the three accounts of Mr Wee and his family were executed in Singapore. We should hasten to add that she had so instructed Mr Kumar because she honestly recalled that all the documents were in fact executed here notwithstanding that, in one document, the signature of Sheila Wong of UBS (Hong Kong) appeared.

25. In the light of such unequivocal evidence, there was really only one course open to the IC to take, namely, dismissing the complaint. There was no *prima facie* case of professional misconduct established against Mr Kumar or Mr Singh.

26. However, Mr Wee argued that as there was a conflict in the evidence in relation to the place where the documents for account No. 207038 were executed, a *prima facie* case had been established and the IC should not have gone further to consider the explanations of Shirreen and the two solicitors. He submitted that the IC should not have resolved the conflict but, in line with its function of sifting out frivolous complaints, should have recommended that the matter be put before a DC, which was the proper forum to resolve issues of fact involving conflict of evidence.

27. In this regard, Mr Wee relied upon the pronouncements of this Court in two cases. In *Whitehouse Holdings Pte Ltd v Law Society of Singapore* [1994] 2 SLR 476 at 486, this Court stated that "the role of the IC is merely to investigate the complaint. It does not have to make any conclusion on misconduct or whether an offence was committed but simply to consider whether or not there is a *prima facie* case for a formal investigation." In *Subbiah Pillai v Wong Meng Meng* [2001] 3 SLR 544 at 554, the Court stated that under the Act "the function of the IC is only to inquire into complaints, to eliminate frivolous complaints and to ensure that only complaints which have been *prima facie* established will proceed to the DC."

28. Obviously, both these pronouncements must be viewed in the light of the provisions of Part VII of the Act, as well as the context of the issues which confronted the Court in those cases. Under ss 86(5) and (7), the IC can dismiss a complaint or recommend a lesser punishment (a penalty of not more than $5,000) without having it being referred to a DC if the misconduct in question is minor. It is common sense that in order to decide whether a complaint is frivolous or has been *prima facie* established, it would be necessary for the IC to evaluate both the facts and the applicable law. It should be noted that in *Whitehouse Holdings* the Court stated that the IC "does not have to make any conclusion" and not that it "cannot make" any conclusion. The fact that the primary function of the IC, under the scheme of things laid down in Part VII of the Act, is to sift out frivolous complaints, cannot be interpreted to mean that it cannot make any determination, especially as to questions of fact. Such a construction would be absurd. How could an IC sift out frivolous complaints if it cannot decide?

29. Again, although the Court stated in *Wee Soon Kim Anthony v Law Society of Singapore* [2001] 4 SLR 25 at 30 that "it is not the mandate of the Inquiry Committee to come to a firm view as to the merits where there is conflict as to the facts", this pronouncement must similarly be read in the light

of both the provisions of the Act as well as its context. It does not follow from this pronouncement that the IC is, therefore, precluded from coming to any decision at all once a conflict of fact is shown to exist. Where the nature of a complaint is such that, if proven, it would warrant being referred to a DC, and there is a conflict as to facts, then the IC should not normally seek to resolve the conflict and should instead leave it to the DC to decide. But that is not to say that, just because a complainant makes an assertion of material facts which are at variance with those advanced by the respondent solicitor, the IC is thereby precluded from making any determination. If there are objective facts upon which the IC could verify the two opposing versions, the IC would be entitled to make a finding and, if that finding should favour the respondent-solicitor, then the IC should recommend the dismissal of the complaint. Of course, if the IC feels that, in view of the gravity of the complaint and the opposing versions of the material facts, a more formal inquiry by a DC is warranted, then it should recommend that the complaint be referred to the DC.

30. That everything is not as cut and dried as suggested by Mr Wee can be seen from the example of a complaint where the misconduct is minor and where the IC is inclined to recommend, in line with s 86(7), that the matter be dealt with summarily by the Council by the imposition of a penalty without reference to a DC. In the nature of things, for the IC to come to this conclusion, it would have to make a value judgment on at least two aspects: (i) that the complaint is made out, including determining issues of fact, where the evidence is in conflict; and (ii) that the misconduct in question is minor. It is thus not the position that, whenever there is a conflict as to evidence, the IC should always refrain from making a finding and that the matter should be referred to a DC.

31. Therefore, how an IC should carry out its task depends on the nature of the complaint and the circumstances prevailing in the case. The situations that can arise are so varied and diverse that we do not think it appropriate or desirable to lay down any hard and fast rule. As far as procedure is concerned, the IC must, at all times, act fairly: see *Subbiah Pillai* at p.561. It must hear the solicitor who is the subject of the complaint, unless at that stage and without having any explanation from the solicitor, the IC is able to determine that the complaint is frivolous and should be dismissed. In carrying out the inquiry, the IC is entitled to hear from any person whom it thinks is able to shed light on the matter. If the complaint is serious, warranting a reference to a DC, then the IC *should_not* seek to make findings on disputed material facts, but should leave that to the DC. We say "should not" advisedly because such a finding of the IC will not be binding on the DC as the latter is required to carry out its hearing *de novo*.

32. Reverting to the matter in hand, what the IC had decided was that a *prima facie* case on the complaint had not been made out against the two solicitors. The approach taken by Mr Wee ignored the need to establish *mens rea* on the part of the two solicitors. The case of *Re James Gray* (supra) relied upon by Mr Wee at the IC was quite different. There the solicitor knew that what his client stated was false. In the words of Lord Romilly (at p. 731) "here is a gross and manifest falsehood sworn to by Mostran, known to be such by his solicitor, and yet not corrected by him but allowed to be sworn, and the affidavit is actually filed by him". Similarly, in the local case *Re an Advocate and Solicitor* [1962] MLJ 125 where a solicitor prepared an affidavit containing an untrue statement, there was knowledge of the falsehood on his part.

33. The evidence before the IC showed that the two solicitors did not know that the instruction was false (assuming that the disputed sentence was false) and there was nothing to suggest to them that they should verify the sentence. The evidence of Shirreen was very clear. On this question, there could be no input from Mr Wee. It was not a matter within Mr Wee's knowledge. If at all, his conduct in not raising any objection to the disputed sentence during the proceedings of OS 546/99 substantiated the assertion by Shirreen that all the account opening documents were executed in Singapore, or, at the very least his conduct showed that the instruction of Shirreen was not

obviously wrong.

34. In the absence of knowledge of the falsehood on the part of the two solicitors, the complaint could not stand and was, in our judgment, correctly dismissed. The primary role of the IC as a filter must also mean that a solicitor should not be unnecessarily dragged through a DC hearing.

Sgd:

YONG PUNG HOW
CHIEF JUSTICE

Sgd:

CHAO HICK TIN
JUDGE OF APPEAL

Sgd:

TAN LEE MENG
JUDGE

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