

Law Society of Singapore v Quan Chee Seng Michael
[2003] SGHC 140

Case Number : OS 1774/2002
Decision Date : 30 June 2003
Tribunal/Court : High Court
Coram : Chao Hick Tin JA; Lai Siu Chiu J; Yong Pung How CJ
Counsel Name(s) : Suresh Surenthiraraj for the Law Society; Howard Cheam for the Law Society; Respondent in person (absent)
Parties : Law Society of Singapore — Quan Chee Seng Michael

Legal Profession – Show cause action – Whether respondent guilty of grossly improper conduct in the discharge of his professional duty under Legal Profession Act s83(2)(b) – Whether respondent has contravened any provisions of the Legal Profession Act warranting disciplinary action s 83(2)(j) of the Act – Appropriate penalty – Legal Profession Act (Cap 161) ss 83(1), 83(2)(b) & 83(2)(j)

1 This was an application by the Law Society of Singapore (the Law Society) to make absolute an order to show cause under s 98 of the Legal Profession Act Cap 161 (the Act), pursuant to the determination of a Disciplinary Committee, that cause of sufficient gravity existed for disciplinary action to be taken against Michael Quan Chee Seng (Quan) under s 83(1) of the Act. Having considered the submissions of counsel, we held that the Disciplinary Committee was justified in making its determination and ordered that Quan be struck off the rolls. We now give our reasons.

Background

2 Quan was a solicitor of some 13 years' standing, having been admitted to the Bar on 11 April 1990. At all material times, he was practising as a partner in the firm of Michael Quan & Kenneth Lee.

3 Disciplinary proceedings were initiated as a result of a complaint made to the Law Society by one Haslinda Bte Abdul Rahman and her husband, Haron Bin Raja Ibrahim (the Complainants). Quan had acted for the Complainants in the sale of their HDB flat. The Complainants alleged that Quan had failed to protect their interests as his clients and had wrongfully disbursed the proceeds of sale of their flat.

The facts

4 In early 1999, the Complainants sought to sell their HDB flat as they were in need of cash. However, due to HDB restrictions, they would only be allowed to sell their flat one and a half years later. They saw and responded to, an advertisement of a housing agent, one Corin Tan Poh Tee (Corin), who claimed that she was able to help them obtain loans, pending the sale of their flat.

5 Corin referred the Complainants to Assets Credit Pte Ltd (Assets), a licensed moneylender, who agreed to grant them a loan. However, the Complainants were informed that they would have to engage a private lawyer to facilitate the transaction; Corin then introduced them to Quan.

6 In February 1999, the Complainants met Quan at his office and signed a Letter of Authority which 'irrevocably' authorised Quan to act for them in the sale of the flat and to collect the proceeds on their behalf. The Complainants said that they were made to sign several other documents on this occasion but were given neither copies of the same nor any explanation as to the purpose of those documents.

7 Subsequently, the Complainants borrowed further sums from Assets as well as from Corin, pending the sale of their flat. In September 1999, Assets entered a caveat against their flat and the Complainants went to Quan's office to execute a consent form for the caveat.

8 The flat was eventually sold in June 2000 for a sum of \$293,000 of which a balance of \$138,895.16 was due to the Complainants. Corin informed them that they were to go down to Quan's office on 21 June 2000 in order to complete the sale and receive the proceeds. When they arrived, Quan had already withdrawn the entire sum of \$138,895.16 in cash from their client's account. A representative from Assets, one Low Siew Hong (Low), and Corin were also present.

9 The Complainants testified that Quan then made payments of about \$62,000 to Low and some \$24,000 to Corin. He also deducted a sum of \$1,500 for his costs and disbursements, and the remaining balance of about \$52,000 was handed over to the Complainants. Quan then asked the Complainants to execute two documents wherein they acknowledged the receipt of a cash cheque for the entire sum of \$138,895.16.

10 The Complainants realised, some months later, that they had been charged interest at an excessive rate by Assets and Corin; the loans to them had been disbursed at various rates of interest ranging from 8% to 20% per month. These rates exceeded what was stated in the signed promissory notes (which stated that the loans were granted at an interest rate of 18% per annum) and breached the limits allowed under the Moneylenders Act (Cap 188). The Complainants then lodged complaints against Quan, Assets and Corin with various agencies including the Law Society.

Proceedings before the Disciplinary Committee

The charges

11 Pursuant to the complaint lodged by the complainants, the Law Society formulated four (4) charges against Quan before the Disciplinary Committee as follows:-

First charge

That you, Michael Quan Chee Seng, are charged with grossly improper conduct in the discharge of your professional duties within the meaning of Section 83(2)(b) of the Legal Profession Act (Cap 161) in that in or about the period February 1999 to June 2000, you procured an undated signed receipt from your clients, Mdm Haslinda binte Abdul Rahman and Mr Haron bin Raja Ibrahim, in respect of a cash cheque no. 091711 for the sum of \$138,895.16 notwithstanding that the said cash cheque was never given to the said clients.

Second charge

That you, Michael Quan Chee Seng, are charged with grossly improper conduct in the discharge of your professional duties within the meaning of Section 83(2)(b) of the Legal Profession Act (Cap 161) in that in or about the period February 1999 to June 2000, you procured the execution by your clients, Mdm Haslinda binte Abdul Rahman and Mr Haron bin Raja Ibrahim of an undated document entitled Annex A: Balance Sale Proceeds Received by Haron bin Raja Ibrahim and Haslinda binte Abdul Rahman ("The Vendor") wherein the said clients purported to, inter alia, acknowledge the receipt of a DBS cheque for the sum of \$138,895.16 payable to cash notwithstanding that the said cash cheque was never given to the said clients.

Third charge

That you, Michael Quan Chee Seng, are charged that on or about 21 June 2000, while acting as solicitor for Mdm Haslinda binte Abdul Rahman and Mr Haron bin Raja Ibrahim, withdrew the sum of \$138,895.16 from your firm's client account by encashing a cash cheque at a bank at Liat Towers, for the purpose, inter alia, of making payment to Assets Credit Pte Ltd and Corin Tan without the authority of said Mdm. Haslinda Binte Abdul Rahman and Mr Haron bin Raja Ibrahim, in contravention of Rules 7(1) and 8 of the Legal Profession (Solicitors' Accounts) Rules within the meaning of Section 83(2)(j) of the Legal Profession Act (Cap 161).

Fourth charge

That you, Michael Quan Chee Seng are charged that on or about the period February 1999 to June 2000, during the course of your retainer as solicitor for Mdm. Haslinda binte Abdul Rahman and Mr Haron bin Raja Ibrahim, you failed to advance the said clients' interests unaffected by the interest of any other person, by acting in the interests of Assets Credit Pte Ltd and Corin Tan, in contravention of Rule 25(b) of the Legal Profession (Professional Conduct) Rules within the meaning of Section 83(2)(j) of the Legal Profession Act (Cap 161)

The Law Society's submissions

12 Based on the testimony of the Complainants, the Law Society advanced its case on the basis that Quan's actions were part of a ploy to disguise the excessive rates of interest charged to the Complainants. It was submitted by their counsel that Quan had arranged for payments to be made in cash so that there would be no evidence of the amounts paid to Assets and Corin. This was to make it harder for the Complainants to later dispute the interest rates levied as there would have been no independent documentary record of the actual amounts paid over.

13 Counsel for the Law Society (Mr Suressh) further submitted that Quan had failed to safeguard the interests of the Complainants. Instead, he had discharged his duties in a manner that indicated that he was more concerned about securing repayments to Assets and Corin. In support of this argument, Mr Suressh noted the following:

- (i) Quan drafted a Letter of Authority one year before the flat was sold, which made the Complainants irrevocably appoint Quan to act for them and authorised him to collect the sale proceeds on their behalf;
- (ii) Quan failed to advise his clients on the legal implications of executing a caveat over their flat even though Assets had neither a legal nor equitable interest in the flat; and
- (iii) Quan failed to advise his clients on the dangers of handling large amounts of cash or that it was illegal under the Moneylenders Act (Cap 188) to repay moneylenders in cash for sums over and above \$10.

The defence

14 In relation to the first two charges, Quan acknowledged that the two documents indicating that the Complainants had received a cheque for the full sum of \$138, 895.16 was somewhat 'misleading'. However, counsel for Quan (Mr Jeffrey Beh) pointed out that Quan had never sought to deny that the proceeds were handed over in cash. As such, Mr Beh argued Quan did not procure these documents in order to create an impression that the defendants had received a cheque. Mr Beh submitted that Quan was guilty only of careless drafting and the 'misrepresentation' in the document was merely a technical oversight, not to be equated with professional misconduct of any

severity.

15 In relation to the third charge, Quan's defence was that it was the Complainants themselves who had requested that the payments be made in cash. As such, he was fully authorised to make the withdrawals from their client's account. As to the fourth charge, Quan denied knowledge of the details of the loan transaction between the Complainants and Assets. Quan saw his duty to the Complainants as being limited to that of the sale of their flat. Consequently, there was no duty on him to check the terms of the loan. He testified that on the day the Complainants attended at his office to collect the proceeds of sale, he had passed the full balance of the proceeds in cash to the Complainants. He then left the room and denied all knowledge of what transpired thereafter between the Complainants and their lenders. In support of this, he had Corin and Low testify on his behalf; both corroborating his version of events.

Findings of the Disciplinary Committee

16 The Disciplinary Committee found the Complainants to be 'honest witnesses' who 'testified with sincerity'. While there were some inconsistencies in the Complainants' evidence (largely relating to the precise amounts borrowed, as well as the exact dates on which certain documents were signed), the Disciplinary Committee found that it did not affect their credibility, given that their case was based largely on their recollection of events rather than documentary records. Further, due to the length of time involved, it was not unusual that there were slight differences in recollection.

17 As such, the Disciplinary Committee preferred the Complainants' version of events over that of Quan. Though Quan had two supporting witnesses, the Disciplinary Committee noted that it was in Corin's and Low's interests to corroborate Quan's version of events. Otherwise, it would be tantamount to admitting that they had received money in excess of what was legally due to them; this affected the reliability of their testimony.

18 Moreover, Corin had admitted to having earlier lied to the Institute of Estate Agents when they had queried her on a related complaint. In her response to the Institute, Corin had denied knowing who Assets were and maintained that she was not present at Quan's office when the Complainants received the balance of the sale proceeds. This incident was a further ground for questioning her credibility.

19 We will come to the precise findings of the Disciplinary Committee later in the judgment. Suffice it to say at this point that the Disciplinary Committee accepted the testimony of the Complainants and convicted Quan on all four (4) charges. Accordingly, the Disciplinary Committee determined that cause of sufficient gravity existed for disciplinary action to be taken against him.

The present application

20 In the show cause proceedings before this Court, Quan had discharged Mr Beh as his counsel and meant to represent himself. However, he not only failed to submit any written arguments but was also absent from the hearing. This Court proceeded with the case in his absence in accordance with Order 35, Rule 1 of the Rules of Court.

21 On behalf of the Law Society, Mr Suresh basically advanced the same case as was brought before the Disciplinary Committee. As such, the main issue before the Court was whether the Disciplinary Committee had erred in its findings.

Whether the Disciplinary Committee erred in preferring the Complainants' evidence

22 Since the Complainants and Quan clearly had conflicting versions of what happened, the first issue that concerned the Court was whether the Disciplinary Committee had erred in preferring the Complainants' evidence over that of Quan and his witnesses. In this respect, it is trite law that as regards the credibility of witnesses, a Court which has not had the advantage of observing those witnesses would be slow to disturb the assessment of the judge below, unless he was plainly wrong: see *Clark v Edinburgh & District Tramways Co Ltd* [1919] SC (HL) 35, applied by the Singapore Court in *Peh Eng Leng v Pek Eng Leong* [1996] 2 SLR 305.

23 Having due regard to this principle, we were not able to say that the Disciplinary Committee was plainly wrong in accepting the Complainants' evidence in preference to that of Quan. The Disciplinary Committee was justified in considering that Quan's supporting witnesses (Corin and Low) were not disinterested witnesses. As such, they were entitled to prefer the Complainants' version of events and this Court proceeded to determine whether the charges were made out on the basis of those facts.

First and Second Charges

24 Addressing the first two charges together, we agreed with the Disciplinary Committee that the misrepresentation in the documents was not merely negligent but was something more sinister altogether. Though we were well aware that Quan never denied that the proceeds had been given in cash, we were of the opinion that the greater misrepresentation lay not in the form of how the proceeds were given to but in the amounts received by, the Complainants.

25 The documents purported to show that Quan had handed over the entire sum of \$138,895.16 to the Complainants. Having accepted the Complainants' evidence that this was not the case as deductions had been made by Quan for his costs as well as for repayment to their two (2) lenders, the Disciplinary Committee rightly saw the documents to be an inaccurate record of the amounts received by the Complainants.

Whether the misrepresentation was deliberate

26 Looking at the documents in the context of the entire transaction, we accepted the Law Society's submission that the 'misrepresentation' contained in the documents was not as innocent as Quan had sought to make out. On the evidence, we found that Quan had intentionally obtained such an acknowledgement from the Complainants in order to give the impression that he had handed over the full sum to the Complainants. We noted that in his cross-examination before the Disciplinary Committee, Quan relied on these same acknowledgements to support his story that he had handed over the whole proceeds in cash to the Complainants before leaving the room. This not only 'let him off the hook' in relation to the payments made to Assets and Corin, but also made it difficult for the Complainants to prove the exact amount they had received. His conduct was grossly improper, if not fraudulent, and the charges were clearly made out.

Third Charge

27 The third charge alleged that Quan had contravened Rules 7(1) and 8 of the Legal Profession [Solicitors' Accounts] Rules (the Rules). The relevant part of the Rules read as follows:

Moneys which may be drawn from client account

7. --(1) There may be drawn from a client account --

(a) in the case of client's money --

(i) money properly required for a payment to or on behalf of the client;

.....

(iii) money drawn on the client's authority;

(iv) money properly required for or towards payment of the solicitor's costs where a bill of costs or other written intimation of the amount of the costs incurred has been delivered to the client and the client has been notified that money held for him will be applied towards or in satisfaction of such costs;

.....

Money from client account -- how drawn

8. --(1) Except as provided under rule 7, no money shall be drawn from a client account unless the Council upon an application made to it by the solicitor specifically authorises in writing such withdrawal.

(2) No money shall be drawn from a client account under rule 7 (1) (a) (ii) or (iv), (c) or (d) except by --

(a) a cheque drawn in favour of the solicitor; or

(b) a transfer to a bank account in the name of the solicitor not being a client account.

(3) No money shall be drawn from a client account under rule 7 (1) (c) or (d) by a cash cheque.

Whether the Complainants authorised the withdrawals

28 The crux of the matter under the third charge was whether the Complainants had instructed Quan to pay them the proceeds in cash. In this respect, we found it unlikely that the Complainants would have requested for the full balance of \$138,895.16 to be paid in cash. This was a sizeable amount of money and it was clear that the Complainants were uncomfortable with holding such a huge sum in cash. This can be seen from the fact (undisputed) that upon receiving the proceeds, the Complainants immediately deposited the cash in their bank account.

29 Furthermore, even if we accept that the Complainants had issued such instructions to receive the proceeds in cash, we found it highly unusual that Quan did not see the need to enquire further or advise against such an atypical request. Instead, Quan's evidence under cross-examination before the Disciplinary Committee was that it never occurred to him that he should be concerned about the security of such a transaction so long as the clients had given their instructions. In these circumstances, we agreed with the Disciplinary Committee that it was far more likely that Quan himself had decided to pay the proceeds in cash.

Whether the payments were properly required to be made to or on behalf of the Complainants

30 We then considered whether the proceeds had been drawn out within the scope of the Rules because they were payments properly required to be made to or on behalf of the Complainants. We found that the Disciplinary Committee was correct to conclude that the payments in cash to Assets and Corin were not *properly required* as payments on behalf of the Complainants since the Moneylenders Act (Cap 188) prohibits moneylenders from accepting cash in repayment of sums above

\$10. As such, the payments fell outside the scope of Rule 7(1)(i). The Court noted that Quan also took a portion of the cash proceeds as payments for his fees and disbursements. This was contrary to Rule 8 of the Rules which require all payment for lawyer's fees out of the client's account to be made by way of a cheque drawn in favour of the solicitor.

31 As such, we agreed with the Disciplinary Committee that save for the \$52,000 that was paid over to the Complainants, the withdrawal of the proceeds could not be said to be *properly* required for payment to or on behalf of the Complainants, and constituted an unauthorised withdrawal from the client's account. The Court noted that the charge itself referred to the full sum of \$138,895.16 withdrawn rather than the amounts which were wrongly paid over to Assets and Corin. However, we nevertheless found that the third charge was substantially made out.

Fourth Charge

32 The fourth charge essentially alleged that Quan acted in the interests of Assets and Corin rather than that of his clients. The Disciplinary Committee found that Quan had been primarily concerned with ensuring that Assets and Corin would be paid from the proceeds of sale rather than seeking to protect the Complainants' interests. On the evidence, we found this to be a cogent inference.

33 We rejected Quan's argument before the Disciplinary Committee, that he was concerned only with the sale of the flat and not the loan, when the two transactions were so intimately connected. In fact, Assets had mandated the use of a private lawyer as a condition for the loan. In the circumstances, it was not open to Quan to argue that he had no responsibility to the Complainants as regards the loan. Even if we accepted his retainer as being only limited to the sale of the flat, Quan still bore the responsibility of providing accurate completion accounts of the amount the Complainants received from the proceeds of sale. His failure to do so was reckless at best and we agreed with the Disciplinary Committee that the evidence was indicative of the fact that he was acting with the interests of the lenders in mind, rather than that of the Complainants. Consequently, this charge was also made out.

The appropriate penalty

34 We then turned to the issue of the appropriate penalty. Under s 83(1) of the Act, the penalty that may be imposed ranges from censure to suspension up to five (5) years to striking-off. The considerations to bear in mind when deciding the appropriate penalty were amply set out in *Law Society of Singapore v Ravindra Samuel* [1999] 1 SLR 696 where the Court, in deciding whether to opt for suspension or striking-off, made the following observation:-

(1) where a solicitor has acted dishonestly, the court will order that he be struck off the roll of solicitors;

(2) if a solicitor is not shown to have acted dishonestly, but is shown to have fallen below the required standards of integrity, probity and trustworthiness, he will nonetheless be struck off the roll of solicitors, as opposed to merely being suspended, if his lapse is such as to indicate that he lacks the qualities of character and trustworthiness which are the necessary attributes of a person entrusted with the responsibilities of a legal practitioner.

35 In this case, we found that Quan had acted in a deplorable manner. He took the unusual step of paying his clients and their lenders large sums in cash without any documentation to evidence the amounts paid, and then proceeded to obtain acknowledgements from his clients that they had

received the full sum when this was not so. His actions demonstrated a total disregard for the interests of the Complainants which conduct fell far below the standards of integrity required of a member of the Bar.

36 On the evidence, we found that Quan's actions stemmed not from gross incompetence but were done deliberately as part of a scheme to ensure the absence of documentary evidence as to the precise amounts paid to Assets and Corin, in order to disguise the fact that the Complainants were being charged excessive interest. Instead of protecting those he was meant to serve, Quan took advantage of their ignorance. His involvement in such a scheme was clearly dishonest and a striking-off was warranted. Accordingly we made the order. We further ordered Quan to bear the costs of the Law Society in these proceedings.

Order accordingly.