Law Society of Singapore v Junaini bin Manin
[2004] SGHC 200

Case Number : OS 493/2004, NM 40/2004

Decision Date : 07 September 2004

Tribunal/Court : High Court

Coram : Chao Hick Tin JA; Tay Yong Kwang J; Yong Pung How CJ

Counsel Name(s) : Daniel John (John, Tan and Chan) for applicant; Respondent absent

Parties : Law Society of Singapore — Junaini bin Manin

Legal Profession – Show cause action – Advocate and solicitor convicted of criminal breach of trust under s 409 Penal Code (Cap 224, 1985 Rev Ed) – Appropriate order to be made – Sections 83(1), 98(5) Legal Profession Act (Cap 161, 2001 Rev Ed), s 409 Penal Code (Cap 224, 1985 Rev Ed)

7 September 2004

Tay Yong Kwang J (delivering the judgment of the court):

1 This is an application by motion made by the Law Society of Singapore ("the Law Society") to a court of three judges to make absolute an order to show cause under s 98(5) of the Legal Profession Act (Cap 161, 2001 Rev Ed) ("the LPA"). It involves another sad case of the court having to impose the ultimate professional sanction on an advocate and solicitor.

The facts

2 Junaini bin Manin ("the respondent"), 46 years old, is an advocate and solicitor of the Supreme Court of Singapore of some 18 years' standing, having been called to the Bar on 10 December 1986. He joined the firm of M/s Wong Khalis & Partners and became one of its partners in 1990. In 1995, he formed the partnership of M/s Junaini & Jailani with another advocate and solicitor. In 1999, he left the partnership and became the sole proprietor of M/s Junaini & Co.

3 On 9 June 2003, Suratemin bin Ali ("Suratemin"), one of the respondent's clients, lodged a police report alleging that the respondent had misappropriated a sum of $789,200, representing the proceeds of sale of a house which belonged to the said client's late mother. Following this, police reports were also lodged by four other clients alleging misappropriation of their money by the respondent. On 28 August 2003, the respondent was arrested and remanded.

4 Between August 2003 and January 2004, the Public Prosecutor preferred 13 charges of criminal breach of trust under s 409 of the Penal Code (Cap 224, 1985 Rev Ed) against the respondent but subsequently proceeded on only five of these charges. On 25 February 2004, the respondent pleaded guilty in a district court to those five charges and agreed to have the other eight charges taken into consideration for sentencing. He was sentenced by the district court to a total of seven years' imprisonment with the commencement of the sentences backdated to the date of remand, said to be 25 August 2003. However, the Statement of Facts (reproduced by the district judge in his grounds of decision) supporting the charges stated the date of arrest and remand as 28 August 2003. Nonetheless, nothing in the application before us turns on this apparent discrepancy in the dates.

5 We now set out briefly the facts relating to the said five charges.

Facts relating to the first charge

6 The complainant was Suratemin, who was the legal administrator and one of the beneficiaries to the estate of his late mother. On 6 March 1989, Suratemin and the other beneficiaries entered into a joint venture agreement to develop the plot of land that formed part of their late mother's estate. This joint venture agreement was later assigned to Heng Properties Pte Ltd ("HPPL"). A civil suit over payment eventually arose between the beneficiaries and HPPL.

7 Sometime in 1991, Suratemin engaged the respondent to settle the dispute. The respondent was then in the firm of Wong Khalis & Junaini. When the respondent left that firm, he continued representing Suratemin. The matter was later settled out of court. On 6 December 1996, the respondent received a cheque for $789,200 from HPPL's solicitor made in favour of his firm. He deposited this cheque into the firm's client account. However, he did not disburse the money to Suratemin or the other beneficiaries. Instead, he issued a cheque for $729,200 from the client account and deposited it into his personal account.

8 On those facts, the respondent pleaded guilty to the following charge:

> You, Junaini Bin Manin, Male 46 years, NRIC No: S1266992-E, are charged that you, between the 6th day of December 1996 and the 11th day of December 1996 at Junaini & Jailani Advocates & Solicitors, located at No 69 Geylang Serai, Geylang Serai Malay Village, Singapore, being the attorney of one Suratemin Bin Ali and entrusted with certain property, to wit, $789,200, being the agreed settlement fee arising from an Originating Summon no 633 of 1995 against Heng Properties, did commit criminal breach of trust, to wit, by dishonestly misappropriating a sum of $729,200 and converting it to your own use and you have thereby committed an offence punishable under Section 409 of the Penal Code, Chapter 224.

Facts relating to the second charge

9 Sometime around April 2001, Zahrah bte Jaafar ("Zahrah") engaged the respondent for the sale of her late father's property. The respondent received the sale proceeds of $1,200,002.20 from the buyer's solicitors between 23 April 2001 and 30 October 2001, *via* cheques and cashier's orders made in favour of his firm's client account. Subsequently, between November and December 2001, the respondent disbursed $1,030,524.90 to Zahrah and eight other beneficiaries, $15,000 to his firm's account as his legal fees and $12,360 as commission to the housing broker. However, the respondent did not disburse the balance sum of $142,117.30 to the beneficiaries. He dishonestly misappropriated this sum between 23 April 2001 and 29 January 2002.

10 The charge against the respondent read as follows:

> You, Junaini Bin Manin, Male 46 years, NRIC No: S1266992-E, are charged that you, between the 23rd April 2001 and 29th January 2002, in Singapore, being a practising advocate and solicitor and the sole proprietor of Messrs Junaini & Co, and entrusted in the way of your business as an agent with dominion over property, namely a sum of $142,117.30, entrusted to you by your client Zahrah Bte Jaafar, did dishonestly misappropriate the said sum by converting it to your own use and you have thereby committed an offence of Criminal Breach of Trust As An Agent, punishable under Section 409 of the Penal Code, Chapter 224.

Facts relating to the third charge

11 Sometime in early 2003, Haji Syed Sultanul Aidin bin Abdul Mutaif ("Haji Syed") engaged the respondent for the sale of his property. Between 10 March 2003 and 10 May 2003, the respondent received a total of $220,331.24 from the buyer's solicitors. The respondent deposited this sum into his firm's account. He later issued a cheque for $130,000 to Haji Syed, a cheque for $3,267 being his legal fees and another cheque for $260 to the solicitor representing the mortgagee bank.

12 However, the respondent did not disburse the balance sum of $86,804.24 to Haji Syed but instead dishonestly misappropriated this sum. The charge brought against him was framed in the following terms:

> You, Junaini Bin Manin, Male 46 years, NRIC No: S1266992-E, are charged that you, between the 28th day of May 2003 and the 4th day of June 2003, in Singapore, being a practising advocate and solicitor and the sole proprietor of Messrs Junaini & Co, and entrusted in the way of your business as an agent with dominion over property, namely a sum of $86,804.24, entrusted to you by your client Haji Syed Sultanul Aidin Bin Abdul Mutaif, did dishonestly misappropriate the said sum by converting it to your own use and you have thereby committed an offence of Criminal Breach of Trust As An Agent, punishable under Section 409 of the Penal Code, Chapter 224.

Facts relating to the fourth charge

13 Sometime in September 2000, Leong Lai Chan ("Leong") engaged the respondent for her divorce proceedings against her ex-husband and for the completion of the sale of her matrimonial flat. Eventually, the solicitors acting for the buyer of the flat issued the final payment of $367,043.39 for the property *via* a cashier's order and a cheque made in favour of Junaini & Co.

14 The respondent deposited this amount into his firm's account. He later issued a cheque for $50,000 to Leong and disbursed a sum of $15,000 being his legal fees. However, he did not disburse the balance of $302,043.39 to Leong and her ex-husband but instead dishonestly misappropriated it. For this, the charge against him read as follows:

> You, Junaini Bin Manin, Male 46 years, NRIC No: S1266992-E, are charged that you, between the 18th day of February 2003 and the 30th day of June 2003, in Singapore, being a practising advocate and solicitor and the sole proprietor of Messrs Junaini & Co and entrusted in the way of your business as an agent with dominion over property, namely a sum of $302,043.39, entrusted to you by your clients namely Leong Lai Chan and Wong Fook Theem, did dishonestly misappropriate the said sum by converting it to your own use and you have thereby committed an offence of Criminal Breach of Trust As An Agent, punishable under Section 409 of the Penal Code, Chapter 224.

Facts relating to the fifth charge

15 Sometime in 1998, Surianah bte Ahmad ("Surianah") engaged the respondent to act for the estate of her late nephew. Following her nephew's death, her nephew's employers applied for and obtained a sum of $100,000 from the insurance company involved under the workmen's compensation scheme. Two cheques, one for $20.19 (being the *pro rata* salary of the said deceased nephew) and the other for $100,000, were then issued by the employers in favour of Junaini & Co. These cheques were deposited in the firm's client account.

16 However, the respondent did not disburse the money to Surianah but instead dishonestly misappropriated the money. For this, the charge against him was:

> You, Junaini Bin Manin, Male 46 years, NRIC No: S1266992-E, are charged that you, between 12th August 1998 and 22nd April 1999, in Singapore, being a practising advocate and solicitor and the sole proprietor of Messrs Junaini & Co, and entrusted in the way of your business as an agent with dominion over property, namely a sum of $100,020.19, entrusted to you by your client Surianah Bte Ahmad, did dishonestly misappropriate the said sum by converting it to your own use and you have thereby committed an offence of Criminal Breach of Trust As An Agent, punishable under Section 409 of the Penal Code, Chapter 224.

17 The respondent dishonestly misappropriated a total of $1,360,185.12 in the commission of the five offences set out above. If the amounts stated in the other eight charges are taken into consideration, the total that the respondent misappropriated would be $1,682,929.55. There were altogether 12 clients who fell victim to the defalcation. The respondent used the misappropriated money to pay for his housing loan, his vehicle loans in respect of three cars, credit card bills and other personal expenses. There was no restitution made by the respondent.

18 The district judge sentenced the respondent to the following terms of imprisonment:

First charge	-	four years and six months
Second charge	-	two years
Third charge	-	18 months
Fourth charge	-	two years and six months
Fifth charge	-	two years

He ordered the imprisonment terms for the first and the fourth charges to run consecutively, resulting in a total term of seven years.

The show cause proceedings

19 As the respondent was convicted of an offence involving dishonesty, the Law Society, in accordance with s 94A of the LPA, made an application under s 98 of the LPA for the respondent to show cause why he should not be dealt with under the provisions of s 83 of the LPA. The order to show cause was made on 6 May 2004 and the Law Society subsequently took out this motion on 11 May 2004 to make the said order absolute.

20 The respondent, currently serving sentence, was served personally in Changi Prison on 17 May 2004 with a copy each of the affidavit filed in support of this originating summons, the Order of Court dated 6 May 2004 and the motion filed on 11 May 2004. By a reply slip dated 25 June 2004 addressed to the solicitors for the Law Society, the respondent confirmed that he did not wish to be heard by the court of three judges and that the hearing could proceed in his absence.

21 Section 83(6) of the LPA makes it clear that a court of three judges must accept the respondent's conviction as final and conclusive. In *Law Society of Singapore v Loh Wai Mun Daniel*

[2004] 2 SLR 261, Yong Pung How CJ, in delivering the judgment of the court, said:

> 6 The respondent was not represented, nor was he present to make any submissions before us on this point. Nevertheless, by virtue of the fact that this court must accept his criminal convictions as final and conclusive: *Law Society of Singapore v Wong Sin Yee* [2003] 3 SLR 209, there was little that could have been said in this respect. Given that the offence involved dishonesty committed in his capacity as advocate and solicitor, that, in itself, was sufficient for this court to determine that due cause had been shown under s 83(2)(a) of the LPA, which provides as follows:
>
> > Such due cause may be shown by proof that an advocate and solicitor has been convicted of a criminal offence, implying a defect of character which makes him unfit for his profession.
>
> 7 As such, the sole issue that concerned this court was the determination of the appropriate order to be made under s 83(1) of the LPA.
>
> **Appropriate order to be made**
>
> 8 Where a solicitor has been convicted of a criminal offence involving fraud or dishonesty, the court has almost invariably, no matter how strong the mitigating factors, chosen to strike a solicitor off the roll: *Law Society of Singapore v Ravindra Samuel* [1999] 1 SLR 696.
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> 9 In this case, we saw no reason to depart from the norm. This appeared to us to be a typical case of a solicitor who could not be trusted to keep his paws out of the honey pot.

22 In that case, Loh Wai Mun Daniel, an advocate and solicitor of about 11 years' standing, pleaded guilty to four counts of criminal breach of trust under s 409 of the Penal Code and consented to have four other such counts taken into consideration for the purpose of sentencing. In all, a sum of $881,887.68 was misappropriated between 1997 and 2001. He was sentenced to a total of four and a half years' imprisonment.

23 In *Law Society of Singapore v Ezekiel Caleb Charles James* [2004] 2 SLR 256 ("*Ezekiel's* case"), heard by the same court of three judges and on the same day as *Law Society of Singapore v Loh Wai Mun Daniel*, an advocate and solicitor of 20 years' standing was convicted, upon his plea of guilt, on one count of criminal breach of trust under s 406 of the Penal Code. Three other such counts were taken into consideration for the purpose of sentencing. He had made unauthorised withdrawals totalling $128,000 from the law firm's omnibus clients' account and paid the money to the Public Trustee in order to conceal his negligence in settling a suit in excess of the mandate given to him by his client. He eventually made full restitution of the money taken by him in this manner. He was sentenced to two weeks in prison. While appreciating that he "did not set out to defraud his clients and that his folly derived mainly from his negligence in settling a suit without mandate" (at [11]), the court nevertheless ordered him to be struck off the roll.

24 These recent cases demonstrate that dishonesty committed in the capacity of an advocate and solicitor is tantamount to professional suicide. It did not appear to matter that the convictions in the two instances cited above were under two provisions of the criminal law with very pronounced differences in the possible maximum punishments. Section 406 of the Penal Code stipulates a maximum term of imprisonment of three years or a fine or both while s 409 of the same code allows the court to impose imprisonment for life or for a term of up to ten years, together with a fine. It also did not seem

to matter that the actual imprisonment sentences meted out differed significantly in length reflecting the respective severity of the offences, the amounts embezzled and the personal circumstances of the advocates and solicitors in the cases in question.

25 The settled position in such cases of proven dishonesty is, therefore, that mitigating factors do not tilt the balance towards the more lenient sanctions of suspension from practice for up to five years and of censure provided in s 83(1) of the LPA except where they are consistent with the objectives of preserving the good name of the legal profession and of the protection of the public (*Ezekiel's* case at [10]).

26 These were the mitigating factors that we could glean from the district judge's grounds of decision: the respondent was a first offender; he was the principal breadwinner for his two families (a 17-year-old son from his first marriage and a four-year-old son and a three-year-old daughter from the second marriage); he pleaded guilty at the first instance and had co-operated with the police; he had lost nearly half a million dollars in bad investments and had committed the offences out of sheer desperation; he was remorseful and had returned from Australia to face the music; his failure to make restitution was not a deliberate ploy on his part but was due to impecuniosity; and he had made social contributions to the community.

27 These factors have hardly any relation to the objectives mentioned earlier. "The demands of life cannot be an excuse for dishonesty" (*Ezekiel's* case at [14]). Further, he was certainly no first offender in the sense of having used his clients' funds on an isolated occasion only. The defalcation took place over a period of about seven years involving 12 clients. The respondent embezzled a huge sum of money and there is no prospect of him paying back the same or any significant part thereof to his clients. He squandered most of it on his extravagant ways, even maintaining three cars. Therefore, even if we were to draw distinctions between cases of dishonesty in the discharge of functions as an advocate and solicitor, the respondent's case would have qualified for the "worst case scenario" category anyway.

Conclusion

28 For the foregoing reasons, we were compelled to conclude that the respondent was clearly unfit for the legal profession and should not be allowed to remain on the roll of advocates and solicitors. We therefore ordered that the show cause order against the respondent be made absolute and that he be struck off the roll.

29 Counsel for the Law Society asked that the respondent be ordered to pay the costs of these proceedings but added that he was not optimistic that the Law Society would ever recover those costs. For this reason, he requested us to fix the costs at any amount we deem fit as taxation of costs would only be a further drain on the Law Society's funds.

30 Costs of such proceedings are in the discretion of the court (s 103(3) of the LPA). Even though this matter is probably academic, nonetheless, as a small token of mercy for the respondent, we ordered only $3,000 as the amount of costs payable by him.

Respondent struck off the roll and ordered to pay costs to the applicant.