**IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

**[1993] SGHC 20**

OS 856/1992

Between

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# GROUNDS OF DECISION

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Legal Profession

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# Re Han Ngiap Juan

## [1993] SGHC 20

OS 856/1992
Goh Joon Seng J; Karthigesu J; Yong Pung How CJ
30 January 1993

1 Han Ngiap Juan (`the respondent`) was admitted as an advocate and solicitor in 1973. Following his admission he was employed briefly as a legal officer at the Legal Aid Bureau, and then in two companies. In 1983 he set up practice on his own account, under the name and style `NJ Han`, of which firm he was at all material times, and continues to be, the sole proprietor.

2 In May 1988, that is to say some five years after he commenced private practice, the respondent was instructed by Tan Siong Kern (`Mr Tan`) on behalf of Wee Tiong Co Pte Ltd (`the complainant`), to act for them in the purchase of a property known as No 85 Amoy Street, Singapore (`the property`), for a sum of $250,000. The complainant was subsequently substituted as the purchaser. The respondent proceeded to act in the purchase of the property on behalf of Mr Tan, and later on behalf of the complainant, as instructed. The respondent rendered a bill for his services to the complainant amounting to $19,997.85, inclusive of disbursements, on 23 June 1988, well before completion, which occurred sometime in September 1988. Out of this sum, the fee charged for acting in the purchase of the property was $6,725 (`the conveyancing fee`) and

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a sum of $3,000 was charged for the filing of an application for lapsing of caution (`the application fee`). The bill was paid in full by the complainant.

3 By a letter dated 26 September 1990 the complainant made a complaint about the respondent on various matters, including the bill dated 23 June 1988. The present proceedings arose out of the conveyancing fee and the application fee charged in this bill. The charge against the respondent was in the following terms:

> *You, Han Ngiap Juan, are charged that on or about 23 June 1988 you did charge Wee Tiong Co Pte Ltd, purchaser of the property known as No 85 Amoy Street, Singapore (hereafter referred to as `the said property`) a sum of:*
>
> (a) $6,725 for acting in the purchase of the said property when the correct amount should be $1,975; and
>
> (b) $3,000 for filing an application for lapsing of caution in respect of the said property when the correct amount should be $100
>
> *which sums were far in excess of and disproportionate to what you were entitled to charge for the services you rendered and such overcharging by you amounts to grossly improper conduct in the discharge of your professional duty within the meaning of s 83(2)(b) of the Legal Profession Act (Cap 161).*

4 The fact of overcharging and the amount by which each item was overcharged were not in dispute. The respondent admitted them in his first letter of explanation to the inquiry committee dated 26 November 1990.

5 A solicitor`s remuneration for conveyancing business is governed by a scale set out in the First Schedule to the Legal Profession (Solicitors` Remuneration) Order and the scale fee which was properly chargeable by the respondent for acting in the purchase of the property was $1,975. The respondent admitted that the conveyancing fee, which amounted to $6,725, should not have exceeded $1,975. There is no scale charge for the filing of an

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application for lapsing of caution. However, the Law Society asserted and the respondent admitted that the fee properly chargeable was $100, as against the $3,000 charged by the respondent.

6 Soon after the complaint was lodged the respondent gave the complainant credit for the total amount overcharged. The respondent contended that, although his conduct in overcharging was open to criticism, he was not guilty of grossly improper conduct within the meaning of s 83(2)(b) of the Legal Profession Act, such that there existed cause of sufficient gravity for disciplinary action against him.

7 Until the day before the hearing before the disciplinary committee commenced, the respondent`s explanations in letters to the inquiry committee and in his defence filed on 15 May 1992, after the inquiry committee had investigated the matter, were:

> (i) that he had had no conveyancing experience prior to commencing practice in 1983;
>
> (ii) that when he rendered the bill in question in 1988 he had had limited experience with conveyancing bills;
>
> (iii) that his firm was a sole proprietorship, and that his staff at the material time had comprised one clerk;
>
> (iv) that for the purpose of drawing up the bill in question he had procured a specimen bill from another firm of solicitors;
>
> (v) that he had left the preparation of the bill to his clerk, and that he had accepted as correct the bill so prepared.

8 In view of these proffered explanations, counsel for the Law Society asked for production of the specimen bill, the name and address of the respondent`s clerk at the material time, inspection of the respondent`s records of files opened from the time he started practice to the time the bill in question

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was rendered on 23 June 1988, and inspection of his conveyancing bills for the same period before the disciplinary committee hearing. The respondent`s solicitors replied that the specimen bill had been destroyed after it was copied from; they gave the name and address of the clerk, and declined the request for inspection of documents on the basis that counsel for the Law Society was not entitled to such inspection. Counsel for the Law Society then put the respondent`s solicitors on notice that the documents requested for inspection should be brought to the disciplinary committee hearing to avoid any delay in the hearing in case the disciplinary committee should agree that such documents be produced for inspection and/or verification.

9 On 29 June 1992, the day before the commencement of the hearing before the disciplinary committee on 30 June 1992, the respondent`s solicitors wrote to counsel for the Law Society to give a different reason for the overcharge of the conveyancing fee, viz that the conveyancing fee was based on a valuation report exhibited in an affidavit in Originating Summons No 699 of 1987, in which the mortgagee of the property claimed possession of the property and the complainant`s director, Mr Tan, was the second defendant. The valuation in the report was $1,025,000. The significance of this was that the conveyancing fee charged by the respondent was the same as that chargeable for a property bought at $1m.

10 On the first day of the hearing on 30 June 1992, this letter was tendered to the disciplinary committee and counsel for the respondent confirmed the stand taken therein. Counsel for the Law Society informed the disciplinary committee that he had been invited only that morning to look at a list of files opened by the respondent. The list was not among the documents before the disciplinary committee and had not previously been produced or offered for inspection. No witness was called for the Law Society, whose counsel made his

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submissions on the facts then known, relying for his case on the respondent`s admissions of overcharging and the explanations proffered by the respondent to the Law Society and largely repeated in the defence filed.

11 The respondent`s counsel made a submission of no case to answer. The disciplinary committee ruled that there was a case for the respondent to answer and adjourned the hearing to 14 July 1992. On 14 July 1992 the respondent gave evidence. He also submitted a list of his cases from the time he started practice to around the time of the bill dated 23 June 1988 together with copies of his conveyancing bills for the same period. The thrust of the respondent`s evidence is stated below.

12 **On the conveyancing fee**

13 The respondent admitted to having worked out the two figures in the bill himself; they had not been derived from the specimen bill, and his clerk had simply typed out what he had written. When he was asked why his defence had stated that he had relied on the specimen bill, he said that he had relied on it for other items, although he must have known by the time his defence was filed that the other items were not part of the charge against him. As regards his reliance on his clerk, the respondent said that there was no contradiction between (a) his explanation to the inquiry committee and his defence and (b) his explanation to the disciplinary committee.

14 Although the respondent knew that he was obliged to charge the conveyancing fee according to scale, he had based it on the valuation report, which stuck in his mind because he had read the originating summons file in great detail in anticipation of that action proceeding. Up to the time of the bill dated 23 June 1988, he had done about 30 conveyancing transactions, of which

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nine or ten were aborted transactions. In these transactions the respondent had also seen valuation reports, yet his bills had not been based on those valuation reports but on the actual purchase consideration. The complainant`s transaction was the respondent`s only conveyancing transaction involving what he thought was $1m. The respondent considered the complainant`s transaction to be more than usually difficult as it was a mortgagee`s sale.

15 The respondent`s explanation to the disciplinary committee was not proffered to the inquiry committee or stated in his defence because earlier on he had been unable to recall how he had arrived at the conveyancing fee; also at that time he was preoccupied with two other aspects of the complaint against him.

16 The respondent acknowledged that the items in the bill for the conveyancing fee, the application fee and the stamp fee were calculated on three different bases:

> (i) the conveyancing fee was based on his recollection of the value stated in the valuation report, ie $1m (the actual valuation was $1,025,000);
>
> (ii) the application fee was based on the total amount that the owner had borrowed from the mortgagee, ie US$1.8m;
>
> (iii) the stamp fee was based on the actual purchase consideration of $250,000.

17 The respondent said that he had been doing too many things at the same time and that he had learned his lesson.

18 **On the application fee**

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19 The application fee in the bill was based on the Sixth Schedule of the Legal Profession (Solicitors` Remuneration) Order, the same basis for the application fees charged in his other bills. The sum of $3,000 was loosely based on the value of the property. This in turn was based on the amount that the owner could borrow from the mortgagee, ie US$1.8m. In this sense the respondent considered that the value of the property was more than the values of his other conveyancing transactions. Thus he came up with the figure of $3,000, this being more than his usual charge of $500 for such an application.

20 The reason why the respondent`s explanation for the application fee was not found in his defence (or for that matter in his explanation to the inquiry committee) was because he was not asked about it and he had only remembered the affidavit with the valuation report just before 30 June 1992. The respondent had asked around to ascertain the correct amount for the application fee but was told that there was no scale. He was not aware of the normal practice.

21 The disciplinary committee regarded the respondent`s evidence as preposterous and had no difficulty in deciding that he was an untruthful witness. The disciplinary committee concluded beyond reasonable doubt, on the basis of its assessment of his evidence, that the respondent had knowingly and wilfully overcharged the complainant, and that the amounts of the two items in question were so exorbitant or excessive that in charging them the respondent was guilty of grossly improper conduct in the discharge of his professional duty. The respondent`s evidence, far from exculpating him, in the disciplinary committee`s view reinforced the case for the Law Society, because on the respondent`s own evidence, he had known that he was obliged to charge the conveyancing fee according to scale; contrary to his evidence, he must have known what the consideration for the purchase was because it formed the basis for calculating the stamp fee included in his bill. The disciplinary committee

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concluded that cause of sufficient gravity existed for disciplinary action against the respondent.

22 The respondent`s main contentions before us were that there was no finding of dishonesty, fraud or deceit on his part by the disciplinary committee. As such, his admittedly improper act of overcharging the complainant was not `grossly improper conduct` within the meaning of s 83(2)(b) of the Legal Profession Act.

23 Counsel for the respondent applied to us to have the reports of the inquiry committee admitted in evidence on the ground that he wished to challenge the disciplinary committee`s finding that the respondent`s earlier explanations to the inquiry committee and in his defence were at variance with his evidence to the disciplinary committee. He submitted that the valuation report merely amplified those earlier explanations instead of replacing or contradicting them. He said that the respondent had not explicitly suggested earlier that his clerk had inserted the relevant figures, and there was nothing inconsistent in the respondent later telling the disciplinary committee that the figures were his.

24 We disallowed the application. Paragraph 4 of his defence read as follows:

> *The respondent who at the material time had limited experience with conveyancing bills used a specimen of a bill from another firm for the basis of drafting his bill in the current transaction. He then left the draft to be drawn up by his clerk. He relied on his clerk and accepted the bill as correct. The respondent, however, accepts responsibility for the said bill.*

25 We do not see how the valuation report, which was not mentioned at all until the letter of 29 June 1992, can be said to be part of the same explanation;

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nor can there be any merit in the submission that the respondent had not said that his clerk had inserted the relevant figures - if he had not meant to convey that meaning there would have been no point in mentioning the clerk at all, or in `accepting responsibility` for the bill. Moreover, if the respondent`s oral explanation to the inquiry committee had indeed supported these submissions, then such explanation would no doubt have been incorporated in the defence, which was filed subsequent to the inquiry committee`s investigation, and it was not in fact so incorporated.

26 Counsel for the respondent also submitted that the disciplinary committee ought not to have drawn an adverse inference from the respondent`s previous refusal to produce his file register and conveyancing bills, for voluntary production of these would have been in breach of solicitor-client confidentiality. However, it was always open to the respondent to insist that his client`s details be blanked out on the copies of his file register and conveyancing bills made for the purposes of this case. This was what was in fact done during the hearing before the disciplinary committee itself. In any event it does not appear that the disciplinary committee regarded the respondent`s reluctance to produce these documents as being seminal to its decision.

27 We turn to the respondent`s submissions on law. Counsel for the respondent attempted the submission that `grossly improper conduct` was not merely conduct dishonourable to the respondent as a man or dishonourable in his profession, but we were unable to accept this, for the test has already been adopted in this jurisdiction - see, for example, ***Re David Marshall*** .1

28 It was also strongly urged by counsel for the respondent that the lack of deceit was fatal to the case against the respondent. In ***Rajasooria v Disciplinary Committee*** ,2 the appellant prepared a substitute document on which he pasted

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the signatures of shareholders who had signed the original document. What he did was obvious to the eye, and he said that he had done it in good faith. Subsequently the appellant told the company`s solicitors that he had made the substitute document this way on the advice of the Registrar of Companies and, when asked to confirm it, failed to reply. He later admitted that he had not in fact acted on the registrar`s advice. The complaint against him was then in two parts: (1) that he had cut the signatures from the original document and pasted them on the new or amended document (complaint No 1) and (2) that he had informed the company`s solicitors that he had done this on the advice of the Registrar of Companies when this was not in fact the case (complaint No 2). As to complaint No 1, the court of three judges held that even if the appellant had no intention to deceive, the document was a false and unsafe document and might have deceived others, and the manner of its creation constituted grossly improper conduct on the part of an advocate and solicitor. On appeal to the Privy Council, Lord Cohen said in the Board`s judgment that counsel for the appellant

> *... argued with force that once the disciplinary committee had found that there was no intention to deceive it necessarily followed that the Supreme Court could not properly find that there was grossly improper conduct. He relied on the passage already cited from the judgment of Lord Esher in* ***In re Cooke*** *(1889) 5 TLR 407, 408. He suggested that the appellant could not be said to have done anything dishonourable to him as a man if he did what he did without any intention to deceive. Their Lordships, however, agree with Pretheroe CJ that for an advocate and solicitor knowingly and deliberately to submit a false document intending it to be acted upon, is dishonourable both to himself and to his profession. This in itself involves an element of `deceit`. The committee no doubt meant that the appellant believed his clients would have signed the new requisition if given the opportunity. Their Lordships do not read into Lord Esher`s words a statement that a finding that intention to deceive is always an essential element in grossly improper conduct. It is to be observed that in* ***Allinson v General Council of Medical Education and Registration*** *[1894] 1 QB 750, 760, dealing with the case of a medical man, Lord Esher approved the test suggested by Lopes LJ as follows: `If it is shown that a medical man, in the pursuit of his profession, has done*

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> *something with regard to it which would be reasonably regarded as disgraceful or dishonourable by his professional brethren of good repute and competence` then it is open to the General Medical Council to say that he has been guilty of `infamous conduct in a professional respect.*

29 The passage is not without its difficulties but on the whole it appears to us to be a general statement of principle that an intention to deceive is not necessarily always an element of grossly improper conduct, even though in ***Rajasooria*** `s case2 itself, the Board was of the view that some element of deceit was involved, and the statement of principle might therefore be obiter. Even so, we are in full agreement with this statement of principle.

30 In ***Abdul Rahim Rajudin*** `s case,3 the charges against the respondent involved, inter alia, a bill of costs rendered to a client for putting through various property transactions. The disciplinary committee found that the costs and commission charged were grossly excessive, findings with which the court of three judges agreed, saying at p 296:

> *The committee made two findings in respect of the bill: (i) the bill was an excessive bill in respect of the commission of approximately $69,000 admitted by the respondent to be included therein, and (ii) the bill was an excessive bill in respect of the sum of $30,000 for work done after June 1980. On the first finding we agree with the committee; as we have said, the amount was grossly excessive. On the second finding we also agree that it was an excessive bill in respect of $30,000 as costs for the work done by the respondent. In no way can this amount be justified. ... We agree with the committee`s view that the bill was an extraordinary document and the amount charged was a gross overcharge and was totally unjustified. Solicitors rendering exorbitant or excessive bills, ie bills for sums totally out of all proportion to work done by them, lay themselves open to disciplinary action. But the question is: did the sending of this bill by the respondent to Peter Chaw amount to grossly improper conduct in the discharge of his professional duty? The bill was sent on 3 April 1981 after the respondent had ceased to be Peter Chaw`s solicitor. Peter Chaw was then advised by Mr Kirpal Singh. No pressure was brought to bear or could be said to be brought to bear on Peter Chaw to pay the bill. Peter Chaw refused to pay the bill and, in our view, rightly. The respondent then*

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> *instituted Suit No 1675 of 1982 against Peter Chaw claiming for the amount under the bill; the latter responded by taking out Originating Summons No 448 of 1982 seeking an order for taxation of the bill. Neither of the matters had proceeded further because Peter Chaw was subsequently adjudicated a bankrupt. Although we do not think that in the circumstances the respondent was justified in rendering the bill for $150,000, we are of the opinion that it was improper conduct which fell short of `grossly improper conduct` in the discharge of his professional duty within the meaning of s 80(2)(b) of the Act.*

31 Clearly the mere fact of overcharging may in law amount to grossly improper conduct - whether or not it does depends on the individual circumstances of each case and deceit is a separate consideration altogether. In ***Re Abdul Rahim Rajudin*** ,3 the court appears to have been much influenced by the fact that when the bill was sent, the respondent was not representing the person to whom it was sent and was thus not in a position to bring to bear any pressure on that person. The fact that the respondent`s action against that erstwhile client for his fees was halted by that person`s bankruptcy seems to us to be less important, having been purely fortuitous. In the present case, the respondent sent the bill dated 23 June 1988 while he was still representing the complainant. He was in a position to bring pressure to bear and the complainant should have been able to trust that any bill rendered by its own solicitor would be fair and reasonable.

32 In ***Lau Liat Meng***

33 `s case,4 the respondent was found to have billed his client for fees far in excess of and disproportionate to what he was entitled to charge for the services he had rendered. On the first day of the hearing before the disciplinary committee, he produced a time sheet which the disciplinary committee subsequently found to be false. The court of three judges, in setting out the facts, said at p 206:

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> *In the opinion of the disciplinary committee, whether the entries in the time sheet were made contemporaneously as contended by the respondent, or whether they were made up only recently for the purpose of the inquiry, was of course important, but it was of much greater importance whether the amount of time stated in the time sheet to have been spent on each attendance was accurately stated.*

34 On this crucial issue, it was the disciplinary committee`s finding that the respondent had, in several instances, grossly exaggerated the time appearing in the time sheet.

35 The disciplinary committee found that on the time sheet the time stated as having been devoted to certain items was unrealistic and unjustifiable and that the fees quoted for other items were absolutely ridiculous. The court of three judges then went on at p 207:

> *The disciplinary committee had in mind, on the other hand, the evidence of Chang that the longest time she spent on any occasion with the respondent discussing the affairs of her late husband was about 15 minutes. Even if it had been longer it could not have been that much longer. ...*

36 The disciplinary committee having found that the time recorded in respect of some attendances was grossly exaggerated, was of the view that the time sheet was accordingly false and totally unreliable.

37 Before the court of three judges, it was argued for the respondent that the charge against him was defective as it did not allege dishonesty or deceit on his part. To this the court said at pp 208-209:

> *In our opinion, the law applicable to this case is straightforward. In considering whether all the elements of the charge have been proved, the first question is whether the reduced fee of $22,454.60 was far in excess of and disproportionate to what the respondent was entitled to charge for the services which he rendered. The next question is whether such overcharging, if proved, amounts to grossly improper conduct in the discharge of his professional duty. On the evidence, the disciplinary*

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> *committee had no difficulty in answering both questions and finding that the charge had been proved beyond reasonable doubt.*

38 It is settled law that solicitors rendering exorbitant or excessive bills lay themselves open to disciplinary action (see ***Re Abdul Rahim Rajudin*** [1989] 1 MLJ 289 ), for they have abused the trust and confidence reposed in them. Complaints about exorbitant or excessive bills arise because in each case a client is unpleasantly surprised by the size of a bill in relation to the value of the subject matter or the amount of work done, and is unhappy about it. In the present case, a bill for $23,000 in relation to a $68,394 estate could not have been expected to be received with equanimity by a lay client. In the circumstances, there was a duty on the part of the respondent to explain and justify it. In the result, this turned on the accuracy of the time sheet, which he claimed at the eleventh hour that he had kept, and which the disciplinary committee found to be false.

39 The court of three judges held that the disciplinary committee`s findings were completely justified and that the charge had been proved beyond reasonable doubt - the respondent was suspended for three months.

40 Obviously not every case of overcharging will constitute grossly improper conduct. Inevitably there will be some diversity of opinion as to what would or would not be correct in each case, and where the line ought to be drawn. The passages quoted from ***Lau Liat Meng*** `s case4 indicate clearly that the extent to which a client is overcharged is a very strong factor against an advocate and solicitor accused of overcharging amounting to grossly improper conduct under s 83(2)(b) of the Legal Profession Act, and this must be so whether or not there is any allegation of dishonesty or deceit. In our view, while this may not be a conclusive factor, it is a very material one, and the more a

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client is overcharged, the harder it will be for the advocate and solicitor concerned to persuade the court that the explanation he gives does justify the overcharge. In short, a really egregious overcharge is not to be vindicated merely by asserting the lack of dishonesty or deceit, when the reason given in explanation of such an overcharge is patently insupportable.

41 In the present case, the main justification for the conveyancing fee charged was the valuation report the respondent asserted he had relied on, but this report was prepared in 1980 for purposes totally unrelated to the transaction in 1988 with which we are now concerned. Furthermore, in previous conveyancing transactions the respondent had always used the purchase consideration, and not a valuation report, to calculate his conveyancing fee.

42 As for the application fee, it was allegedly based on the account of the owner`s total debts owed to the mortgagee, but this account contained on its face items of debt not described as having any necessary or exclusive connection with the property in question. Moreover, in previous conveyancing transactions the respondent had charged a flat fee of $500 regardless of the purchase consideration of the property.

43 In our opinion, for the respondent to state in ***exculpation*** of his conduct that he had calculated three items in one bill for one transaction on three different bases; that precisely the very two items he is accused of overcharging for are anomalous by his own standard bases of calculation, not to say the norm adopted by other solicitors; and that of these two items, both bases of calculation were obviously not connected with the conveyancing transaction in question, was simply outrageous. Accordingly we decided that the disciplinary committee`s findings were correct, and that the order nisi should be made absolute.

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44 In determining the appropriate penalty to be imposed on the respondent, we took into account both the fact that he refunded to the complainant after the complaint was lodged and also the manner in which he conducted himself in these proceedings. In the circumstances we ordered that he should be suspended for three months and that he should pay the costs before this court and before the disciplinary committee.

45 **Outcome:**

Goh Joon Seng J
Karthigesu J
Yong Pung How CJ

Woo Bih Li (Bih Li & Lee) for the Law Society
B Mohan Singh (B Mohan Singh & Co) for the respondent

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