Tan Yeow Khoon and Another v The Law Society of Singapore
[2001] SGHC 129

Case Number : OS 879/2000

Decision Date : 07 June 2001

Tribunal/Court : High Court

Coram : S Rajendran J

Counsel Name(s) : Edmond Pereira And Wee Egk Chong (Edmond Pereira & Partners) for the applicants; Daniel John (John Tan & Chan) for the respondents

Parties : Tan Yeow Khoon; Another — The Law Society of Singapore

Legal Profession – Professional conduct – Complaint against advocate and solicitor – Complaint about misleading the court – Recommendation by Inquiry Committee to dismiss complaint – Respondents accepting recommendation – Application by complainants for order that respondents apply to Chief Justice for appointment of a disciplinary committee – Whether complainant has right of hearing at Inquiry Committee's proceedings – Whether findings of Inquiry Committee in error – s 96(1) Legal Profession Act (Cap 161, 2000 Ed)

Legal Profession – Duties – Client – Duty of solicitor to client when arguing case

: This was an application by Tan Yeow Khoon (`TYK`) and Tan Yeow Lam (`TYL`) - referred to together as `the complainants` - under s 96(1) of the Legal Profession Act (Cap 161, 2000 Ed), for an order directing the Law Society of Singapore to apply to the Chief Justice for the appointment of a disciplinary committee to hear various charges of misconduct against Anthony Lee, a practicing advocate and solicitor. I heard and dismissed the application. The complainants have appealed against that decision and I now set out my grounds.

On 17 and 24 November 1995, the complainants and their two siblings Tan Yeow Tat (`TYT`) and Tan Guek Tin (`TGT`) - referred to together as `the Yeow Tat faction` - met in order to resolve differences that had arisen between them in the running of three family companies in which they were shareholders. Present at these meetings were their respective solicitors, namely:

(1) Mr Lee Mun Hooi (Lee Bon Leong & Co) acting for TYK (complainant).

(2) Mr Michael Khoo SC (Michael Khoo & Partners) acting for TYL (complainant).

(3) Mr Anthony Lee (Bih Li & Lee) acting for TYT (`Yeow Tat faction`).

(4) Mr Lee Chau Ee (Drew & Napier) acting for TGT (`Yeow Tat faction`).

Following these meetings, Anthony Lee wrote a letter (`TYK-5`) dated 28 November 1995 to all parties confirming that at those meetings the parties `as a step towards achieving a comprehensive settlement of their disputes`, had agreed that the Yeow Tat faction shall sell their interest in the three family companies to the complainants. The letter stated that the purchase price was to be based on the audited book value of the companies as at 31 October 1995 but subject to certain adjustments. One of the adjustments to be made was to the market value of four immovable properties owned by the said companies. The letter went on to state that the Yeow Tat faction would appoint Knight Frank and the complainants would appoint Richard Ellis to value the said properties and that the average of the two valuations would be taken as the value of the said properties.

The letter stated that the mechanism as to how the other adjustments were to be made were to be discussed at a further meeting fixed for 7 December 1995. A further meeting was held as scheduled and details in respect of the other adjustments were discussed. In respect of the valuations of the said properties, it was recorded in the minutes (`TYK-31`) of that meeting that:

> *10. Mr Anthony Lee shall instruct Knight Frank to obtain information for the valuation of the Company`s immovable properties from Richard Ellis.*

Letters from Lee Bon Leong & Co (acting for TYK - one of the complainants) to Bih Li & Lee between January and March 1996 advert to the fact that TYT and his valuers had, on several occasions, visited the several sites with a view to assessing the value. In those letters, Lee Bon Leong & Co requested that they be given a copy of the valuation report. Bih Li & Lee responded on 14 March 1996 that they `still do not have a copy of the same`.

On 5 June 1996, Michael Khoo & Partners (acting for TYL - the other complainant) wrote to Bih Li & Lee as follows:

> *In order that all the terms of the agreement may be fully implemented, please let us know if your clients have obtained a valuation of the immovable properties from Knight Frank as agreed, and if so, please let us know when your clients are prepared to exchange Knight Frank`s valuation reports with our clients` valuation reports from Richard Ellis.*

On 10 June 1996, Michael Khoo & Partners again wrote to Bih Li & Lee and gave notice that unless they received a satisfactory response from Bih Li & Lee by 4pm on 12 June 1996, they had instructions to commence legal proceedings to enforce the agreement reached between the parties for the sale and purchase of the shares in the family companies. There was no response from Bih Li & Lee to these letters.

On 26 July 1996, two separate originating summonses (Nos 739 and 740 of 1996) were instituted by the complainants against the Yeow Tat faction in which the complainants sought specific performance of the terms of the agreement contained in Bih Li & Lee`s letter of 28 November 1995. The Yeow Tat faction resisted the applications on the ground that the letter did not constitute a binding agreement and that no settlement agreement had been reached between the parties.

In support of the application for specific performance, TYK, in para 46 of his affidavit filed on 26 July 1996 (first affidavit) raised various points amongst which was the following:

> *(d) I also verily believe that the Defendants have also either by themselves or through their lawyers, instructed Knight Frank to start work on the valuation of the immovable properties. I have been informed by the valuers at Richard Ellis that they had met the representatives from Knight Frank so that Knight Frank can collect (and they did collect) all the documents of title and plans to do the valuation.*

And in another affidavit (second affidavit) filed on 11 December 1996, at para 27(c), TYK alleged:

> *there was a binding settlement reached and some of the terms that were agreed were in fact subsequently performed which are set out in paragraph 46 of my earlier affidavit filed on the 26th July 1996.*

In response to these affidavits, TYT, on 11 December 1996, filed an affidavit in which (at para 18) he

stated:

> *Paragraph 27 of TYK`s second affidavit is wholly denied. I reiterate that there was no binding agreement concluded between the parties as stated in my first affidavit.*

The hearing of these originating summonses took place before MPH Rubin J over nine days, stretching from August 1997 to April 1998. The issue before Rubin J was whether the terms contained in Bih Li & Lee`s letter of 28 November 1995 reflected a binding agreement between the parties. The issue whether there was part-performance of any of those terms was obviously of concern in that hearing. It is relevant in that context to note the following passage in Lee Mun Hooi`s opening statement before Rubin J:

> *The plaintiff engaged Richard Ellis to do a valuation. The defendants` valuer Knight Frank, then contacted Richard Ellis to collect the necessary documents and title deeds to do the valuation.* ***This again is not in dispute****. [Emphasis is added.]*

Anthony Lee did not challenge this statement. That statement clearly implied that the parties were agreed that the Yeow Tat faction had appointed Knight Frank to do the required valuation.

Michael Khoo SC, however, was apparently not aware that there was no dispute between the parties that Knight Frank had been appointed. This is reflected in Michael Khoo SC`s opening statement where he said:

> *The Defendants have refused to perform their obligations under the agreement, particularly to appoint their own valuer, despite repeated demands by the plaintiffs ...*

It is relevant to note that in a subsequent letter dated 11 March 1998 (`TYK-30`), Michael Khoo SC, on behalf of his client, acknowledged that Knight Frank had, in December 1995, obtained the relevant documents from Richard Ellis to carry out the required valuation.

Rubin J held, on 21 February 1998, that the terms embodied and evidenced in the letter of 28 November 1995 constituted a valid and binding agreement between the parties and ordered that the said terms be specifically performed. To enable the parties to carry out that order he gave certain directions amongst which was a direction that the Yeow Tat faction and the complainants were, by 28 February 1998, to appoint Knight Frank and Richard Ellis respectively to value the said properties and their reports were to be completed by 31 March 1998.

On 23 April 1998, Bih Li & Lee sent to Michael Khoo & Partners a copy each of the valuation reports of Knight Frank for the four immovable properties. On perusing these reports, the complainants noticed that the dates on the forwarding letters to Bih Li & Lee, as enclosed in the reports, were: 8 January 1996 for one property; 12 January 1996 for two properties and 24 July 1996 for the fourth property. These dates suggested that, contrary to what Bih Li & Lee had told Lee Bon Leong & Co on 14 March 1996 (namely, that they still did not have a copy of the valuation report - see [para]4 above), three of the valuation reports had in fact been with Bih Li & Lee since January 1996.

In addition, the complainants discovered, in the course of a (related) suit that they had instituted against Knight Frank, that Bih Li & Lee had written to Knight Frank on 14 December 1995 (`TYK-28`) in which they had informed Knight Frank that: TYT had entered into an agreement with the majority shareholder to sell all his shares in the Soon Hock group of companies; that a valuation of four immovable properties owned by these companies was required for the purpose of ascertaining the sale price; and requested Knight Frank to give their quotation to carry out the said valuation. Knight Frank had duly given their quotation and on 18 December 1995 Bih Li & Lee had accepted that quotation and engaged Knight Frank to conduct the valuation.

There was, on 3 July 1998, a hearing before Rubin J on the question of costs relating to the originating summonses. At that hearing, Lee Mun Hooi drew the attention of the judge to Bih Li & Lee`s statement in their letter of 14 March 1996 that `we still do not have a copy` of the Knight Frank valuation report and to the letters from Knight Frank enclosed in their valuation reports that indicated that Bih Li & Lee had, in January 1996, received three of the valuation reports. In view of this `suppression of evidence`, Lee Mun Hooi urged the court to order that Anthony Lee personally bear the whole or a part of the costs. Rubin J declined to make that order.

On 9 July 1998, in a letter copied to all other parties, Bih Li & Lee wrote to the Registrar of the Supreme Court to say that the allegations made by Lee Mun Hooi to Rubin J on 3 July 1998 had taken Anthony Lee completely by surprise and Anthony Lee had, at the hearing, been unable (from memory) to recollect all the facts. Bih Li & Lee went on to say that Anthony Lee had now checked his records and could say affirmatively that the valuation reports were first forwarded to Bih Li & Lee on 1 August 1996 under cover of a letter dated 29 July 1996 from Knight Frank.

On 30 July 1998, TYK lodged a formal complaint with the Law Society alleging that Anthony Lee had conducted himself improperly. On 7 August 1998, TYL lodged a similar complaint. An inquiry committee was appointed to inquire into these complaints. That inquiry committee, however, was subsequently dissolved as it came to the attention of the chairman of that committee that he could be in a position of conflict of interest. A new inquiry committee (`IC`) was then appointed to inquire into the complaints.

At the hearing of the complaints before the IC on 4 April 2000, Mr Yang Ing Loong, who appeared for the complainants, dropped some of the complaints that had been raised in their formal complaints. He summarised the remaining complaints against Anthony Lee as follows:

(1) Anthony Lee had misled the court in the originating summonses by putting forward his case on the basis that:
    (a) no settlement agreement had been reached; and
    (b) there had been no part-performance by his client when, to his knowledge, there was a settlement agreement which had been partly performed by his client (ie Knight Frank had been asked to carry out the valuations).

(2) Anthony Lee had misled counsel acting for the complainants, viz Michael Khoo SC and Lee Mun Hooi, by:
    (a) not disclosing that Anthony Lee`s client had part-performed the agreement; and
    (b) preparing an affidavit for his client denying there was any valuation carried out by Knight Frank (see [para]7 above).

(3) Anthony Lee misled the court by:
    (a) suppressing the fact that he had the valuation reports from Knight Frank; and
    (b) informing the court that he needed more time to instruct Knight Frank.

(At the hearing before me Mr Edmond Pereira, who appeared for the complainants, accepted Mr

Yang`s summary of the complaints as accurate.)

It appears from the report of the IC that the IC had asked Mr Yang to indicate to them the relevant paragraphs in the formal complaints, or in other documents before the IC, on which Mr Yang had formulated complaint (3) of his summary (referred to hereafter as `the additional complaint`). Mr Yang was not able to do so and the IC ruled that it would not inquire into the additional complaint as it was not contained in the complaints that they had been appointed to inquire into.

On 6 April 2000, TYL wrote to the IC enquiring if Anthony Lee had made a written submission to the IC and, if so, whether he could have a copy of that submission. On 11 April 2000, the IC replied saying that it was not its practice to release the respondent`s written explanation to the complainant.

On 14 April 2000, the IC forwarded its report to the Chairman of the Inquiry Panel. In its report, the IC stated that it was their unanimous view that there was no substance in the complaints against Anthony Lee and recommended that no further action be taken save to dismiss the complaints. The Chairman of the Inquiry Panel, in turn, forwarded the report to the Council of the Law Society on 24 April 2000.

On the same day that the IC sent its report (14 April 2000) to the Chairman of the Inquiry Panel, TYL wrote to the IC a 60-page letter - `to assist the IC to understand more clearly the issues involved herein` - with voluminous enclosures. This letter was essentially a re-hash of the grievances that the complainants had against Anthony Lee and included references to the allegation relating to misleading the court that the IC had refused to inquire into.

On 2 May 2000, TYL wrote to the IC pointing out that there were discrepancies in the practice of the previous IC and the current IC in that the previous IC had furnished him with a copy of the respondent`s written explanation and asked if the IC would clarify the position. On 3 May 2000, the IC replied to TYL to say that as the IC had rendered its report it was now functus officio and that TYL was to direct all further queries to the Law Society.

On 30 May 2000, the complainants were informed by the Law Society that the Council had accepted and adopted the recommendations of the IC that the complaints be dismissed. On 7 June 2000, TYL wrote to the Law Society requesting for the IC`s report as well as Anthony Lee`s written explanation. By a letter dated 8 June 2000, the Law Society furnished a copy of the report of the IC as well as a copy of Anthony Lee`s written explanation to TYL. In that letter, the Law Society stated:

> *The Council had for the reasons described in the IC`s report found that no formal investigation by a Disciplinary Committee was required of the complaint. The Council accepted and adopted the findings and recommendation of the IC.*

On 9 June 2000, TYL again wrote (`TYK-20`) to the Law Society and asked for:

(1) reasons/basis of the Council in accepting and adopting the findings of the IC and dismissing the complaints; and

(2) whether the IC and/or Council did or did not consider adequately his letter of 24 April 2000 to the Chairman and members of the IC.

In response, the Law Society, by letter dated 12 June 2000, stated:

> *In response to your query, please kindly note that the Council`s reasons for dismissal of the complaint is as described in the findings of the Inquiry Committee report. Please refer to my letter dated 8 June 2000.*

In response to your second query, as to whether the Inquiry Committee had considered your letter of 24 April 2000, I refer to the self-explanatory letter dated 3 May 2000 from the Chairman of the Inquiry Committee.

In that letter, the Chairman of the Inquiry Committee had advised you that the Inquiry Committee had tendered its report before the receipt of your letter and the Committee was functus officio.

In response to your final query whether the Council had been forwarded your letter of 24 April 2000, the Council had been forwarded your letter of 24 April 2000 by the Chairman of the Inquiry Panel.

Dissatisfied with the decisions of the IC and the Council of the Law Society, the complainants, on 13 June 2000, commenced these proceedings under s 96 for an order directing the Law Society to apply to the Chief Justice for the appointment of a disciplinary committee.

In his Skeletal Arguments filed on 13 February 2001, counsel for the complainants, Mr Edmond Pereira, summarised his clients` dissatisfaction with the decision of the IC under three heads:

(1) breach of the rules of fair hearing/duty to act fairly;

(2) errors in law; and

(3) errors in fact (in that the findings of the IC were clearly wrong and/or against the weight of evidence).

I will deal with the submissions under each head in turn.

Breach of rules of fair hearing

Under this head, Mr Pereira, in his skeletal arguments, highlighted the following grievances of the complainants:

(1) not being given a copy of Anthony Lee`s written explanation or being allowed to question Anthony Lee;

(2) not being given the opportunity to hear or cross-examine Lydia Sng of Knight Frank;

(3) failure of the IC to hear Lee Mun Hooi and Michael Khoo SC; and

(4) the refusal of the IC to consider, on the ground that it was `functus officio`, the written submissions of TYL dated 24 April 2000,

as instances where the IC had acted in breach of the rules of fair hearing/duty to act fairly.

In the case of **Seet Melvin v Law Society of Singapore** [1995] 2 SLR 323 , the Court of Appeal had expressed its views on the concept of fairness in relation to a complainant appearing before an IC. The court, after referring to the decision of Chan Sek Keong JC on this point in **Yusuf Jumabhoy v Law Society of Singapore** [1988] SLR 236 [1988] 1 MLJ 491 , pointed out that `As a general rule,

the complainant is not entitled to a right of hearing at IC proceedings`. The court then went on to say (at p 341):

> *... the procedure for the actual conduct of the inquiry is not regulated by the LPA. The IC is free to determine and regulate its own procedures. In* ***Jumabhoy****`s case, even if a right of hearing had been afforded to Teo, it did not mean that the complainant would have correspondingly acquired such a right as a necessary consequence.*
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> *Unlike Thangaveloo, against whom the complaint was directed, the appellant [the complainant in that case] was unable to point to any statutory right to be heard at the inquiry. Instead, the appellant contended that, on a general principle of natural justice or fairness, the IC had failed in its duties. In essence, the appellant`s grievance was that he did not have any right of reply to Thangaveloo`s explanations. It must be noted, however, that the inquiry process is not adversarial but `inquisitorial`. The IC was only required to determine whether there was a prima facie case which would merit formal investigation. The requirements of natural justice must depend on the particular circumstances of each case and the subject-matter under consideration (per Wee Chong Jin CJ in* ***Law Society of Singapore v Chan Chow Wang*** *[1975] 1 MLJ 59 , at p 67). The IC sits to conduct an inquiry; it does not either condemn or criticize. As held by this court in* ***Whitehouse Holdings Pte Ltd v Law Society of Singapore*** *[1994] 2 SLR 476 :*
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> *`The role of the Inquiry Committee is merely to investigate the complaint. It does not have to make any conclusions on misconduct or whether an offence was committed but simply to consider whether or not there is a prima facie case for formal investigation.`*
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> ***The concept of fairness in IC proceedings need not extend to affording the complainant a right to an oral hearing****.* ***Natural justice does not dictate that the appellant be given a right to fire a final salvo in reply, as it were****, once Thangaveloo has furnished his explanations, bearing in mind the fact that the IC proceedings are neither adversarial nor accusatorial. All that natural justice requires is that the person or body charged with making the decision should act fairly. In the circumstances, and having regard to the role of the IC, we were of the view that the allegations as to breaches of natural justice were not tenable. [Emphasis is added.]*

In the light of that authoritative statement of the applicable principles, Mr Pereira told the court (quite properly in my view) that he would not pursue this line of submission.

Errors in law

irrelevant matters flawed Under this head, Mr Pereira raised three separate matters:

(1) That the IC was wrong in refusing to consider the complaint that Anthony Lee had misled the court in the course of the hearing of OS 739/96 and OS 740/96 by leading the judge to believe that no valuation had been done by Knight Frank when in fact Anthony Lee had with him the valuation report (ie the IC was wrong in refusing to inquire into the `additional complaint`).

(2) The IC took into consideration , namely, the complainants` suit against Lydia Sng and others for conspiracy and the suit by the complainants against Anthony Lee in Suit 1034/99.

(3) The legal reasoning in the IC report was when they held that even if Anthony Lee disclosed the act of part-performance the judge hearing OS 739/96 and OS 740/96 would still have ruled in favour of the complainants.

IC was wrong in not hearing the additional complaint

The IC had ruled (see [para]17 above) that as the complaint that Anthony Lee misled the court about the existence of the Knight Frank valuation reports was not to be found in the formal complaints or other documents that up to that part of time had been lodged by the complainants, the IC would not look into it. Looking at the documentation before the IC when that ruling was made, there was indeed no such complaint.

The IC could, if it was so minded, have broadened the scope of its inquiry to include the additional complaint. There is, in fact, specific provision in the Legal Profession Act enabling an IC to do so [see s 86(8)]. But whether an IC should embark on an additional inquiry is a matter that is at the discretion of the IC. So long as that discretion was exercised judicially, it cannot be faulted. In the absence of the IC misguiding itself in some way, it would be wrong for this court to substitute its discretion for the discretion of the IC.

Mr Pereira submitted, and I could see the logic of that submission, that the additional complaint was so connected with the other complaints that it could have been conveniently dealt with by the IC. Convenience, however, is only one factor that the IC has to bear in mind in deciding whether to exercise its discretion. A more pertinent factor would be fairness to the solicitor complained against. To formulate an additional complaint, for the first time, on the day scheduled for the hearing would be unfair to that solicitor. Natural justice would require that the solicitor have sufficient notice of the additional complaint before the date of the hearing. Of course, the IC could have adjourned its hearing to give Anthony Lee the required time, but, given the desirability of dealing with complaints expeditiously and the tight time constraints within which an IC is expected (under the Legal Profession Act) to complete its report, an IC may well be reluctant to entertain additional complaints raised at the last minute. There can, however, be no hard and fast rule. Each case must depend on its own facts. I could not, on the evidence before me, categorise the decision of the IC in this case not to inquire into the additional complaint as a wrongful exercise of discretion.

There was one further difficulty. The IC had declined to inquire into the additional complaint. That being so, Anthony Lee did not have any opportunity to address the IC (or this court for that matter) on the merits of that additional complaint. In those circumstances, if I were to grant the complainants the order they sought in this application, (ie direct the Law Society to apply to the Chief Justice for the appointment of a disciplinary committee to hear charges that would encompass the additional complaint), the effect would be that a disciplinary committee would be convened to hear the additional complaint without Anthony Lee having had the opportunity, accorded to him under the Legal Professional Act, of having the complaint looked into by an Inquiry Committee. In this regard, the comments of Chan Sek Keong JC (as he then was) in **Wee Soon Kim Anthony v Law Society of Singapore** [1988] SLR 510 [1988] 3 MLJ 9 at 12 were pertinent:

The statutory scheme gives the advocate and solicitor concerned a right to

> ***be judged first by his own peers, ie the inquiry committee, followed by a determination by the Council, before the complaint can be brought by a dissatisfied complainant before a judge. Section 93(4) should not be construed in such a manner as to deprive the advocate and solicitor concerned of these rights****. In my view, a judge has no jurisdiction to inquire into any complaint which has not been inquired into by the inquiry committee or where the Council has not made a determination on the basis of such an inquiry.*
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> *The plaintiff has available to him other remedies against a defaulting inquiry committee or Council, eg an order of mandamus against the inquiry committee or the Council (see* ***Re An Advocate & Solicitor*** *[1987] 2 MLJ 21) or an declaratory order (see* ***P Suppiah v Law Society of Singapore*** *[1986] 1 MLJ 459). [Emphasis is added.]*

I adopted the views expressed by the learned judicial commissioner. Where a complaint has not been inquired into by the IC it is not open for the court, in an application under s 96(1), to grant an order under s 96(4)(b) in respect of that complaint.

Mr Pereira raised a further issue relating to the additional complaint. It was that in his letter to the IC of 24 April 2000 TYL had submitted information on, inter alia, matters relating to the additional complaint. Mr Pereira submitted that it was incumbent on the Council of the Law Society to have considered this information before adopting the IC`s report. Mr Pereira pointed out that although the Law Society had informed TYL that that letter had been forwarded by the IC to the Council, there was no indication that the Council, before adopting the report of the IC, had considered the letter. Mr Pereira submitted that had the Council considered the letter the Council could, in view of the new evidence in that letter, have invoked the provision of s 87(1)(d) of the Legal Profession Act, and referred the matter back to the IC for re-consideration or a further report. The Council, he submitted, had merely `rubber-stamped` the IC`s report instead of `determining` that a formal investigation was not necessary.

The IC in its report to the Council had very clearly set out the fact that it had not inquired into the additional complaint as there was no reference to that complaint in the documentation before the IC. The Council, when it adopted the recommendations of the IC, was therefore fully cognizant of this fact. TYL`s letter of 24 April 2000 which included new evidence relating to the additional complaint had been forwarded to the Council before it adopted the report. The submission by Mr Pereira that the Council did not consider that letter before adopting the report appears to be mere speculation. In any event, there was no obligation on the Council for it to consider any further representations from the complainants before it adopted the recommendations of the IC.

In adopting the report, the Council was, even if it did not expressly say so, also adopting the decision of the IC not to inquire into the additional complaint. In the context of the submissions made by Mr Pereira, the following passage in the decision of the Court of Appeal in **Whitehouse Holdings v Law Society of Singapore** [1994] 2 SLR 476 at 484G would be relevant:

> *... we are unable to agree that the Council by merely accepting and adopting the report had not made a determination. We cannot see any objection to this practice. The Council need not supplement the reasons given by the inquiry committee in its report, when the Council in effect is in agreement with and accepts the findings of the inquiry committee and makes a determination consistent with that in the report. The Council had clearly determined that no formal investigation was necessary and that there was therefore no ambiguity*

at all.

I agree with Mr Pereira that the Council had powers to refer the matter back to the IC for re-consideration but I cannot agree that the failure of the Council to do so amounted to an error in law. I would add that, even if it was such an error, it is not open to me for the reasons given in [para]30 above, to grant an order under s 96(4)(b) on account of that error.

Irrelevant matters considered

The IC, in its report, referred to the fact that Lydia Sng of Knight Frank (who testified that the valuation reports, although prepared earlier, had only been forwarded to Bih Li & Lee on 1 August 1996) had, without prompting, volunteered information that she was sued by the complainants for conspiracy. The report also made reference to Anthony Lee having told the IC that he was sued by the complainants in Suit 1035/99 but had on 9 October 1999 successfully applied to have the claim struck out.

TYK, in a lengthy affidavit filed on 25 October 2000, asserted that Lydia Sng and Anthony Lee`s motive in referring to these suits was to show that the complainants were vindictive and vengeful so that the members of the IC would think less of the complainants. Mr Pereira, in his submissions, referred the court to the paragraphs in his client`s affidavit deposing to those assertions. Mr Pereira also drew my attention to para 49 of the said affidavit where his client (TYK) stated:

> *Similarly, Anthony Lee failed to explain adequately, if at all, that the Applicants agreed to withdraw the Suit 1034 of 1999 and settle the suit on a `drop hands` basis after the Honourable Justice Tan Lee Meng`s persuasion to the 1st Applicant to pursue his cause by way of disciplinary proceedings in the Law Society.*

Mr Pereira did not elaborate any further on the merits of TYK`s criticism of the IC and rested his submissions on the position adopted by his client in that affidavit.

I was unable to agree with TYK that evidence relating to the fact that action was commenced by the complainants against Lydia Sng and Anthony Lee and the status of those actions were irrelevant to the proceedings before the IC. These actions were, after all, events closely connected to the subject matter of the complaint. In any event, TYK`s fear that the IC may have been prejudiced against him and TYL by this evidence appears to be completely unfounded. Reading the report of the IC, it seems to me (although the IC did not expressly say so) that the reason the IC adverted to this evidence was to remind itself that Lydia Sng might be a tainted witness whose evidence might be motivated by self-interest since she was also a party sued by the complainants. The existence and status of those actions were relevant to the IC in assessing the credibility of Lydia Sng. It was, in my view, entirely proper for the IC to be told that Lydia Sng and Anthony Lee had been sued by the complainants and for the IC to take note of that.

Flaw in the legal reasoning

The IC in its report took note that the contents of the letters exchanged between Bih Li & Lee and Lee Bon Leong & Co from January to March 1996 showed that the complainants were aware that Knight Frank had been appointed to do the valuation. The IC also took note of the fact that Lee Mun Hooi had, in effect, told Rubin J (at the commencement of the hearing) that there was no dispute between the parties that the Yeow Tat faction had appointed Knight Frank to do the valuation. The IC, in that context, adverted to what Michael Khoo SC had said in his opening statement and to what the issues before Rubin J were. It would be helpful to set out what the IC said:

> *28. Whatever Mr Michael Khoo SC might have thought, a close reading of Rubin J`s judgement shows that there is no reference whatsoever to part performance on the part of the Defendant being an issue: see the learned Judge`s careful summary of the rival submissions of counsel at paragraphs 14 to 17 of his judgment and at paragraph 38 where there is this reference:*
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> *`... Having considered all the arguments and having regard* ***to the steps taken by both parties*** *, particularly when the plaintiffs had executed part of their obligations with regard to the valuation of the immovable properties as well as making certain payments to Guek Tin and Yeow Tat, I was of the view ...` [Emphasis is added.]*
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> *The issue whether the defendants had instructed valuers as part performance of their obligations under the settlement agreement played no part in the learned Judge`s reasoning in coming to his decision. The main thrust of his judgement centered around the construction of the 28 November 1995 letter, whether that could be construed as a valid and binding agreement or evidence of a valid and binding agreement and whether he had the power to order specific performance when it came to appointing some expert or valuer to do the adjustments to the audited book price of the companies.*
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> *29. Mr Yang also submitted that if AL had been forthright with the court and disclosed that positive steps taken by the defendants in part performance of their obligations it would have put a `very different complexion` in the way that the judge decided the case. However this Inquiry Committee cannot agree for the reasons set out above and cannot see how differently the judge would have decided the case.*

TYK, in his affidavit, refers to this approach by the IC as flawed. At para 51 he stated:

> *With due respect, I am advised and verily believe that this reasoning is flawed. Clearly, it is Anthony Lee and his client`s case that his letter dated 28 November 1995 did not constitute a binding agreement. Had Anthony Lee revealed that he had personally part performed the letter agreement by engaging Knight Frank, surely it would have weakened his client`s case substantially since it evidenced an intention to create a binding legal relationship between the parties therein. The parties would then reassess their respective merits in their case and thereby resulting in a less lengthy and acrimonious litigation.*

Mr Pereira adopted the arguments of TYK as stated in para 51.

The main issue that Rubin J had to decide was whether or not the letter of 28 November 1995 constituted a binding agreement between the parties. Part-performance by the parties could be evidence that the letter reflected a binding agreement. In reaching the conclusion that there was a binding agreement, Rubin J stated that he had regard to `the steps taken by both parties` and particularised the fact that the complainants had appointed Richard Ellis as one of these steps. The fact that Rubin J did not particularise the fact that the Yeow Tat faction had appointed Knight Frank does not take the complainants` case any further. In view of the fact that that was an agreed fact between the parties, Rubin J may well, if he had been so minded, have recited that as another step that had been taken by the parties. I could not therefore see why TYK in his affidavit categorises the reasoning of the IC in this regard as flawed.

The IC was, in my view, quite justified in taking the view that Lee Mun Hooi`s opening statement that it was not in dispute that Knight Frank had been appointed (by the Yeow Tat faction) to carry out the valuation reflected accurately the position of the parties at the hearing before Rubin J and that Michael Khoo SC`s contrary statement did not reflect the true position. I might add that if the complainants intended to seriously pursue their argument that reliance should be placed not on what Lee Mun Hooi told Rubin J but on what Michael Khoo SC said, it would not have been inappropriate for the complainants to have filed, in these proceedings, affidavits from Lee Mun Hooi and Michael Khoo SC to that effect. No such affidavits were filed.

Errors of fact

The role of a court in hearing an application such as this is well-settled. Chan Sek Keong JC in the case of ***Wee Soon Kim Anthony v Law Society of Singapore*** quoted above, enunciated it as follows (at p 514I):

> *In my view, s 93(4) does not vest in a judge an original jurisdiction to hear a complaint against an advocate and solicitor. Section 93(4) does not contemplate such a hearing. His jurisdiction is supervisory or appellate in nature.*

It is accepted law that in exercising jurisdiction of a supervisory or appellate nature the court `should be slow to disturb or interfere with the findings of fact by the inquiry committee unless it can be shown that supporting evidence was lacking or there was some misunderstanding of the evidence or there are other exceptional circumstances justifying the court to do so` (see ***Whitehouse Holdings*** , supra at p 487G-H).

TYK, in his affidavit filed on 25 October 2000, made an impassioned and lengthy submission in which he complains (from paras 62-117) about numerous matters which he considers to be errors of fact by the IC. Mr Pereira, in his submissions, did not seek to elaborate on anything that TYK had stated. With due respect to whoever drafted the affidavit for TYK to sign, I would point out that it is not appropriate for solicitors to draft affidavits in which they make their clients depose to legal submissions. Doing that makes an affidavit protracted and unwieldly and detracts from its primary purpose which is to put the facts before the court. But, be that as it may, it did not appear to me, on a perusal of the submissions contained in the affidavit of TYK, that it could be said in respect of any one of the numerous matters TYK complained about, that the IC misdirected itself or erred in arriving at the conclusion it did. It would therefore not be appropriate for me to interfere with the findings of

fact made by the IC.

I agreed with the submission of Mr Daniel John, who appeared for the Law Society, that the complainants` real grievance stems from the fact that although Anthony Lee was the author of the `letter agreement` dated 25 November 1995, he nevertheless forcefully advanced the argument in court that there was no concluded agreement between the parties. The complainants view this conduct of Anthony Lee as all the more improper because Anthony Lee, in appointing Knight Frank to do the valuation, had himself part-performed the agreement and therefore, from their point of view, Anthony Lee could not honestly have believed in the arguments he made to the court. The complainants considered that in making those arguments and in drafting what the complainants considered to be false affidavits for his clients to sign, Anthony Lee was assisting his clients to advance a false case in court.

I agreed with Mr Daniel John that, in taking the above view, the complainants had failed to appreciate that Anthony Lee was merely acting as his clients` mouthpiece. So long as his clients were of the view that there was no concluded agreement and so long as that was a view that could be properly placed before the court, it was Anthony Lee`s duty to argue his clients` case as best he could. And if, in doing so, Anthony Lee did not intentionally mislead the court, he was acting properly as an advocate. Although some of the affidavits filed in the two originating summons could have been better drafted, I saw no reason to disagree with the findings of the IC that, on the matters that they inquired into, Anthony Lee had not conducted himself improperly.

For the above reasons that I dismissed with costs the application by the complainants under this originating summons.

Outcome:

Application dismissed.

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