Law Society of Singapore v Fun Huay Yew
[2005] SGHC 96

Case Number : OS 414/2005, NM 25/2005

Decision Date : 17 May 2005

Tribunal/Court : High Court

Coram : Belinda Ang Saw Ean J; Chao Hick Tin JA; Yong Pung How CJ

Counsel Name(s) : C R Rajah SC (Tan Rajah and Cheah) and Tan Beng Swee (Tan Beng Swee) for the applicant; The respondent absent

Parties : Law Society of Singapore — Fun Huay Yew

Legal Profession – Show cause action – Advocate and solicitor feigning payment of money to client and absconding with client's money – Whether amounting to grossly improper conduct – Appropriate order to be made – Sections 83(2)(b), 98(5) Legal Profession Act (Cap 161, 2001 Rev Ed)

17 May 2005

Belinda Ang Saw Ean J (delivering the grounds of decision of the court):

1 This was an application brought by the Law Society of Singapore ("the Law Society") under s 98(5) of the Legal Profession Act (Cap 161, 2001 Rev Ed) ("the Act") to make absolute an order to show cause which Tay Yong Kwang J had made on 7 April 2005 against the respondent, Fun Huay Yew.

2 The respondent was called to the Singapore Bar in 1995. At all material times, he carried on practice as a sole proprietor under the style of M/s Fun Huay Yew & Co at 14 Mohamed Sultan Road, #02-02, Singapore 238963. His last known residential address was Block 5 Jurong East Street 32, #10-01, Singapore 609479. The affidavit of service confirmed that all necessary letters and cause papers were sent to both last known addresses. However, they were left unclaimed as the respondent had moved away. Pursuant to the directions of Tay J, the order to show cause was advertised in *The Straits Times*. The respondent was not present in court on the day this application was heard. Neither was he represented by counsel. No cause was shown and at the conclusion of the hearing we ordered that the respondent be struck off the roll of advocates and solicitors of the Supreme Court of Singapore.

3 The story began with a claim brought by Toshiba Machine S E Asia Pte Ltd ("Toshiba") against Reliance Plastic Sdn Bhd ("Reliance"), a Malaysian company, for payment of approximately $1.3m being the purchase price of 11 machines sold to the latter. The respondent was retained as instructing solicitor to work on the claim with a Malaysian law firm, M/s K N Fan & Company. In the course of the proceedings, Toshiba obtained an interim injunction to repossess the 11 machines. By consent of the parties, the 11 machines were sold to a buyer in Singapore. The sale proceeds of $650,000 were held by the respondent as stakeholder pending the outcome of the proceedings in Malaysia. The Malaysian proceedings were eventually settled and Toshiba was to be paid the net sum of $635,000. Initially, Toshiba made no headway in its attempts to secure the release of the $635,000 from the respondent. Finally, on or about 14 February 2003, the respondent handed over a cheque for $635,000 which was post-dated to 5 March 2003. However, the cheque was dishonoured upon presentation for payment on 5 March 2003. Toshiba made a police report against the respondent on 7 March 2003 for misappropriation of the $635,000.

4 Toshiba also lodged a complaint with the Law Society. A Disciplinary Committee was

appointed pursuant to s 90 of the Act to hear and investigate the complaint. The respondent did not appear at the hearing of the Disciplinary Committee. Before the Disciplinary Committee, two charges were preferred against the respondent. They were:

First Charge

That you, Fun Huay Yew are guilty of grossly improper conduct in the discharge of your professional duty within the meaning of Section 83(2)(b) of the Legal Profession Act (Chapter 161) in that you had, in breach of your written professional undertaking stated in your letters dated 13th September 2001 and 1st October 2001 to Toshiba Machine S E Asia Pte Ltd ("Toshiba"), namely to hold the sum of S$650,000.00 as a stakeholder pending the outcome of the trial in the Malaysian case of Suit No. 22-110-1999 ("the suit"), wilfully failed and/or refused to pay the balance sum of S$635,000.00 as stakeholder, to Toshiba as ordered upon conclusion of the suit despite their repeated demands and requests.

Second Charge

That you, Fun Huay Yew are guilty of fraudulent conduct in the discharge of your professional duty within the meaning of section 83(2)(b) of the Legal Profession Act (Chapter 161) in that you had, on or about 5th March 2003, issued a cheque payment to your client, Toshiba Machine S E Asia Pte Ltd by way of a Standard Chartered Bank cheque No. 678555 issued from the client's account of your firm, namely, M/s Fun Huay Yew & Co which cheque was dishonoured upon presentation for payment.

5 Before the Disciplinary Committee, Michael Sim Chee Sin, the deputy general manager of Toshiba, gave evidence. He testified as to the circumstances surrounding the appointment of the respondent and the events leading to the sum of $650,000 being held by the respondent as stakeholder. Prior to the appointment of the respondent as stakeholder, there was an issue as to who should hold the sale proceeds pending the outcome of the Malaysian proceedings. The proposal was for the sale proceeds to be held in a trust account in the joint names of the Malaysian lawyers representing the litigants. Mr Sim testified that the respondent had advised Toshiba against the transfer of the sale proceeds to Malaysia and warned Toshiba of foreign exchange losses and possible complications arising from foreign exchange controls. The respondent advised Toshiba to transfer the sale proceeds to his firm. Toshiba agreed and the sum of $650,000 was deposited with the respondent's firm as stakeholder pending the outcome of the Malaysian proceedings. The firm duly issued an official receipt no 1207 dated 20 September 2001 which described the payment as "[b]eing Sale Proceeds held by us as stakeholders".

6 The first charge concerned the respondent's undertaking. It is helpful to set out the relevant paragraphs of the respondent's letters of 13 September 2001 and 1 October 2001 to Toshiba. The first letter reads:

…

Further, we have also explained the need to transfer the sum of S$650,000.00 to us to hold as stakeholders pending the outcome of the trial. As mentioned before, the said sale proceeds should not be held by you and since [Reliance is] now making an issue out of this, we must therefore assure the Malaysian Court that the monies are safely held in our Clients' Account.

…

The letter of 1 October 2001 reads:

> …
>
> The said trial has now been further adjourned to a date yet to be fixed, although the Court has indicated it to be sometime in late October or early November 2001. At the same time, the Court required us to give an undertaking that the sale proceeds of S$650,000.00 is to continue being held by us as Stakeholders until the conclusion of the trial.
>
> In the circumstances, please be informed that we shall continue to hold the funds in our Clients' Account.

7 The action in Malaysia was settled in January 2002. Under the terms of settlement, Reliance was entitled to $15,000 being partial interest on the sum of $650,000 leaving the balance sum of $635,000 due to Toshiba. Reliance was duly paid $15,000. Initially, the respondent informed Toshiba that he could only release the $635,000 when the Malaysian court order, which recorded the terms of settlement, was extracted. In August 2002, Mr Sim, together with the managing director of Toshiba and the Malaysian lawyer, Mr Fan Kin Ning, met the respondent who again maintained that he could not release the stakeholder money without the Malaysian court order in hand. However, he mentioned the possible release of the money against a letter of indemnity from Toshiba, but his auditors would have to first sanction the arrangement. After that meeting, Toshiba heard nothing more from the respondent. The Malaysian court order was finally extracted in December 2002. Mr Sim learned of the availability of the court order from the respondent's secretary when he telephoned the respondent's office to speak with him. The respondent was in China and Mr Sim was told that the respondent would return the money before Christmas.

8 Nothing was heard from the respondent in the month of December 2002. Toshiba then obtained a copy of the Malaysian court order from K N Fan & Company and, on or about 20 January 2003, the managing director of Toshiba wrote to the respondent's firm demanding the return of $635,000 without further delay. The respondent did not respond to the letter. Mr Sim tried unsuccessfully to contact the respondent on numerous occasions at his office. On one occasion, Mr Sim managed to speak with the respondent on his mobile phone. In that telephone conversation, Mr Sim was told that the respondent was in China caring for a cancer-stricken sibling and that he would be returning to Singapore after the Chinese New Year in February 2003.

9 On or about 14 February 2003, the respondent gave to Toshiba a cheque post-dated to 5 March 2003 for the sum of $635,000 with an accompanying explanation that the money was in a fixed deposit which would mature on 4 March 2003. Shortly thereafter, Toshiba's management changed its mind and on 17 February 2003 asked the respondent for immediate payment. The respondent refused. He warned Toshiba that as it had already agreed to accept his post-dated cheque, he would sue the company for breach of contract if it continued to insist on immediate payment. The respondent's threat was repeated in his letter to Toshiba dated 17 February 2003.

10 Mr Sim could not contact the respondent after the cheque was dishonoured. The respondent had vacated his office sometime between 17 February 2003 and 7 March 2003. The respondent had also moved from his last known residential address. His whereabouts were unknown. He had apparently absconded. The Disciplinary Committee found that cause of sufficient gravity existed for disciplinary action against the respondent. On the first charge, the Disciplinary Committee found the respondent guilty of grossly improper conduct in the discharge of his professional duty under s 83(2)(*b*) of the Act. He breached his written professional undertaking to Toshiba by wilfully failing or refusing to pay Toshiba $635,000. On the second charge, the respondent was found guilty of

fraudulent conduct in the discharge of his professional duty under s 83(2)(*b*) of the Act. His post-dated cheque to Toshiba was dishonoured upon presentation for payment.

11 In relation to both charges, due cause was shown under s 83(2)(*b*) of the Act. This was a clear case of fraudulent and grossly improper conduct on the part of the respondent in the discharge of his professional obligation under s 83(2)(*b*) of the Act.

12 Wee Chong Jin CJ in *Re Marshall David* [1972–1974] SLR 132 at 138, [23] construed the phrase "grossly improper conduct" to mean "conduct which is dishonourable to [the solicitor] as a man and dishonourable in his profession". In *Law Society of Singapore v Lim Kiap Khee* [2001] 3 SLR 616, the solicitor there had deliberately breached an undertaking to pay over moneys that he held as a stakeholder. The court held such conduct to be grossly improper and the solicitor was struck off the roll even though he had eventually made payment. Chao Hick Tin JA, delivering the decision of the court, at [21] said:

> It is of the utmost importance that a solicitor should abide by the undertaking he formally gives. It is the very foundation of an honourable profession that its members act honourably. To deliberately breach an undertaking solemnly given would seriously undermine the integrity of the profession and would bring it into disrepute. Such a conduct, in our opinion, clearly constitutes grossly improper conduct, especially in the circumstances here where the respondent did not even bother to explain himself.

13 In the present case, the contemporaneous documented evidence clearly showed that the sum of $650,000 was received and held by the respondent as stakeholder. The respondent accepted an obligation in his capacity as Toshiba's solicitor to act as stakeholder. He is not permitted to continue to hold the stake once the event upon which the stake is payable has occurred. Significantly, the respondent utilised $15,000 of the stakeholder money to pay Reliance. Yet, he did not abide by his undertaking when it came to paying Toshiba. There was clearly no excuse not to pay, and the respondent was aware of his obligation. In ignoring the requests and demands for payment, his conduct portrayed prevarication in order to avoid the discharge of his professional obligation.

14 Along the way, grossly improper conduct turned, unsuspectingly, to misconduct which involved dishonesty and deception. The respondent feigned payment of the stakeholder money using a post-dated cheque. By the time Toshiba learned the truth, the respondent had disappeared along with the money.

15 In *Law Society of Singapore v Lim Yee Kai* [2001] 1 SLR 721 ("*Lim Yee Kai*"), the solicitor in question had misappropriated and absconded with money from the client account maintained by the firm. The total amount missing from the client account was $413,129.72. The solicitor was charged before the District Court on 3 April 1998 for criminal breach of trust in respect of the aforesaid sum. The matter was adjourned several times at the request of the solicitor to enable him to make restitution. He failed to make restitution or to appear at the adjourned hearing. He had absconded and a warrant for his arrest was issued. L P Thean JA, delivering the grounds of decision of the court, said (at [20]) that it is trite law that where a solicitor has acted dishonestly, the court will order that he be struck off the roll. In that case, the solicitor wilfully misappropriated his clients' moneys for his own use. His conduct was dishonest and dishonourable. In those circumstances, the court ordered that the solicitor be struck off the roll.

16 Unlike *Lim Yee Kai*, the respondent here was not charged with or convicted of criminal breach of trust or of any related offence. However, the evidence against the respondent was overwhelming.

17 The respondent's reason for issuing a post-dated cheque to await maturity of a fixed deposit was a blatant lie to deliberately deceive Toshiba. When Toshiba wanted to change the post-dated cheque with another for immediate payment, the respondent threatened to sue Toshiba for reneging on its agreement to accept a post-dated cheque. He knew very well that he had issued a bogus cheque in that there would be no money in the bank account with the Standard Chartered Bank when the time came to present the post-dated cheque. The respondent's conduct had the hallmarks of dishonesty. The dishonoured cheque was returned by Standard Chartered Bank with the remark "Not Arranged For". The respondent was clearly guilty of deception and dishonesty constituting fraudulent conduct in the discharge of his professional duty under s 83(2)(*b*) of the Act.

18 On the facts and authorities, we reached the unanimous decision that the respondent be stuck off the roll of advocates and solicitor of the Supreme Court of Singapore. We also awarded costs to the Law Society.