Law Society of Singapore v Tay Eng Kwee Edwin
[2007] SGHC 114

Case Number : OS 64/2007

Decision Date : 30 July 2007

Tribunal/Court : High Court

Coram : Chan Sek Keong CJ; Andrew Phang Boon Leong JA; V K Rajah JA

Counsel Name(s) : Bhargavan Sujatha (Peter Low Partnership) for the applicant; The respondent absent

Parties : Law Society of Singapore — Tay Eng Kwee Edwin

Legal Profession – Professional conduct – Breach – Lawyer failing to maintain any books or accounts for one year – Lawyer unrepresented and absent from disciplinary committee proceedings and show cause hearing – Whether lawyer's conduct amounting to grossly improper conduct – Appropriate penalty – Section 83(2)(b) Legal Profession Act (Cap 161, 2001 Rev Ed) – Rule 11 Legal Profession (Solicitors' Accounts) Rules (Cap 161, R 8, 1999 Rev Ed)

30 July 2007

V K Rajah JA (delivering the grounds of decision of the court):

1 This was an application by the Law Society of Singapore ("the Law Society") for the respondent to show cause why he should not be punished for a very serious professional transgression. At the conclusion of the hearing, we ordered the respondent be struck off the roll of solicitors ("the roll") on 25 April 2007 for breach of r 11 of the Legal Profession (Solicitors' Accounts) Rules (Cap 161, R 8, 1999 Rev Ed) ("the SA Rules"). The reasons for our decision are set out below.

Factual background

2 Having been admitted as an advocate and solicitor of the Supreme Court of the Republic of Singapore on 29 July 1995, the respondent was an advocate and solicitor of some 12 years' standing. Upon his admission to the Bar, the respondent practised very briefly at two law firms before setting up his own legal practice, M/s Edwin Tay & Co, on 2 May 1996, a sole proprietorship.

3 The respondent was declared a bankrupt on 30 December 2004 over an unpaid debt of $10,655.99 due to Oversea-Chinese Banking Corporation Limited, the petitioning creditor. The bankruptcy proceedings precipitated a chain of enquiries that in turn unearthed serious accounting breaches on the part of the respondent.

4 Sometime in late December 2004, the Law Society received information that bankruptcy proceedings were pending against the respondent. In accordance with customary procedure, Ms Prabha Dube ("Ms Dube"), and Ms Yashodhara Dhoraisingam ("Ms Dhoraisingam"), Director of Professional Standards and Chief Executive Officer of the Law Society respectively, at the material time, met the respondent on 29 December 2004. At this meeting the respondent informed Ms Dube and Ms Dhoraisingam that he had not drawn up or maintained any of the books of accounts required by r 11 of the SA Rules since January 2004. Ms Dhoraisingam immediately notified the Council of the Law Society ("the Council") of this disturbing revelation.

5 The Council promptly determined that the respondent had contravened s 72 of the Legal Profession Act (Cap 161, 2001 Rev Ed) ("LPA") in failing to abide by r 11 of the SA Rules. Pursuant to

s 74 and para 1(1)(*c*) of the First Schedule of the LPA, the Council intervened into the client account of M/s Edwin Tay & Co on 12 January 2005.

6 On 1 April 2005, the respondent officially ceased practice. In his notice of cessation of practice, he stated that he was unable to produce the final accountant's report because he "did not draw up books of accounts from 1 Jan 04 to 31 Dec 04 [and] Council has since … intervened into clients' accounts". An inquiry committee ("IC") was appointed on 6 June 2005 to look into the matter. The respondent admitted to the IC his failure to maintain the requisite accounts and books.

7 The Law Society subsequently preferred two (alternative) charges against the respondent; first, under s 83(2)(*b*) of the LPA, and alternatively, under s 83(2)(*j*) of the LPA in relation to the respondent's breaches of sub-rr (1), (2), (2A), (2B), (3) and (4) of r 11 of the SA Rules. The alternative charge was later abandoned and the original charge under s 83(2)(*b*) of the LPA amended by omitting r 11(2A) of the SA Rules. The final amended charge against the respondent read as follows:

> That you, EDWIN TAY ENG KWEE, between 1st January 2004 and 31st December 2004, as an Advocate and Solicitor practising as a sole-proprietor in the firm of M/s Edwin Tay & Co., have failed to comply with Rule 11 Of The Legal Profession (Solicitors' Accounts) Rules (Cap 161), by failing:-
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> (1) at all times to keep properly written up in the English language such as cash books, ledgers and journals and such other books and accounts as may be necessary —
>
> (a) to show all your dealings with —
>
> (i) client's money received, held or paid by you; and
>
> (ii) any other money dealt with by you through a client account;
>
> (b) to show separately in respect of each client all money of the categories specified in sub-paragraph (a) which is received, held or paid by you on account of that client; and
>
> (c) to distinguish all money of the categories mentioned in sub-paragraph (b) received, held or paid by you, from any other money received, held or paid by you.
>
> (2) to ensure that all dealings referred to in paragraph (1)(a) shall be recorded as may be appropriate –
>
> (a) in a client's cash book or a client's column of a cash book; or
>
> (b) in a record of sums transferred from the ledger account of one client to that of another;
>
> And in addition -
>
> (i) in a client's ledger or a client's column of a ledger; and
>
> (ii) in a journal.
>
> (2A) to ensure that all your dealings relating to your practice as solicitor other than those

referred to in paragraph (1)(a) shall, be subject to compliance with the Legal Profession (Solicitors' Trust Accounts) Rules (R9), be recorded in such other cash book and ledger or such other columns of a cash book and ledger and such journal as you may choose to maintain.

(3) to ensure that in addition to the books and accounts referred to in paragraphs (2) and (2A), you keep a record of all bills of costs (distinguishing between profit costs and disbursements) and of all written intimations under rules 7(1)(a)(iv) and 9(2)(c)(i) delivered or made by you to your clients, which record is contained in a bills delivered book or a file of copies of such bills and intimations.

(4) to ensure that within one month of your commencing practice on your own account (either alone or in partnership) and thereafter not less than once in every succeeding month you cause the balance of your clients' cash books (or clients' column of your cash book) to be reconciled with your clients' bank statements and keep in the cash book or other appropriate place a statement showing the reconciliation.

And you have thereby breached the rules of conduct made by the Council under the provisions of the Legal Profession Act (Cap 161) as amounts to improper conduct or practice as an advocate and solicitor under Section 83(2)(b) of the Legal Profession Act (Cap 161).

Disciplinary committee proceedings

8 The respondent was neither present nor represented when the matter was heard by a disciplinary committee ("DC") on 30 May 2006. The DC first considered whether proper service of the notice of the hearing had been effected on the respondent. The letter notifying the respondent of the DC hearing was sent by AR (advice of receipt) registered post to the respondent's last-known practising address at Marine Parade while two other copies of the letter were sent by courier to the respondent's last-known residential addresses at Monk's Hill Road and St Michael's Road. Though the letter sent to the Marine Parade address was returned and marked with the words "Gone Away" and "returned by occupant", the two copies sent by courier to the respondent's residential addresses had not been returned. Pursuant to rr 16 and 19 of the Legal Profession (Disciplinary Committee Proceedings) Rules (Cap 161, R 2, 2003 Rev Ed), the DC concluded that while the letter sent to the Marine Parade address might not have constituted sufficient service, proper service on the respondent had indeed been effected through the letters dispatched to the respondent's residential addresses as these had not been returned.

9 Ms Dhoraisingam further confirmed in the course of the DC hearing that the respondent had also been personally notified by the Law Society of the date of the DC hearing by e-mail. Satisfied that the respondent did indeed have actual notice of the proceedings, the DC proceeded with the hearing on 30 May 2006.

10 The Law Society's case at the DC hearing was straightforward – it relied on Ms Dhoraisingam's affidavit, the essence of which has been summed up in [4] to [6] above, to establish that the respondent had failed to maintain the requisite books or accounts for the material period, thereby breaching r 11 of the SA Rules.

11 The DC determined that cause of sufficient gravity prevailed for disciplinary action to be taken against the respondent pursuant to s 83 of the LPA, on the following grounds:

(a) Failure to comply with or to adhere to r 11 of the SA Rules on the part of a solicitor, whatever the reason, will attract serious consequences, as noted by the court in *Law Society of*

Singapore v Chiong Chin May Selena [2005] 4 SLR 320 ("*Selena Chiong*").

(b) A breach of the SA Rules has to be treated extremely seriously.

(c) On the clear evidence before the DC, and based on the respondent's own admissions, a breach of r 11 of the SA Rules by the respondent was established.

(d) Since the DC in *Selena Chiong* found that a failure to keep and maintain proper accounts for a *six-month duration* amounted to grossly improper conduct pursuant to s 83(2)(*b*) of the LPA, the respondent's failure to maintain proper accounts for an *entire calendar year* in this case must *a fortiori* amount to grossly improper conduct under s 83(2)(*b*) of the LPA.

12 The Law Society subsequently applied for and obtained an order under ss 94 and 98 of the LPA requiring the respondent to show cause before this court as to why he should not be dealt with under s 83 of the LPA.

The issues

13 The two issues the court had to address were:

(a) whether the respondent could show cause why he should not be punished under s 83(2)(*b*) of the LPA; and

(b) if not, what the appropriate penalty should be.

Showing cause

14 Before we refer to the substantive issues at hand, we would like to make some brief observations on the issue of service of process. We understand that the Law Society had obtained an order made in chambers dated 16 January 2007 allowing it to effect service on the respondent (in relation to the present show cause proceedings) by serving the order to show cause at the respondent's last-known address at Pasir Panjang Hill and by posting a copy thereof on the notice board of the Supreme Court. The order of court deemed that such service would be good and sufficient service upon the respondent. Although this was not expressly stated in the *ex-parte* originating summons, the Law Society appears to have made this application for directions as to service pursuant to s 98(2) of the LPA as the respondent was believed to be residing outside Singapore.

15 In the light of this order of court, service at the respondent's last-known address should *prima facie* be considered proper service. Purely as a matter of caution, we queried counsel about the efficacy of such service, since the respondent was not only absent, but unrepresented in court. We sought additional reassurance that the respondent was aware that the show cause proceedings had been initiated against him.

16 On the evidence, we were satisfied that the respondent had been properly notified of the show cause proceedings and indeed had expressly renounced the need for personal service and/or notification. We note, in particular, that the respondent himself stated in an e-mail dated 29 November 2006, addressed to the DC Secretariat, the office of the Official Assignee and counsel for the Law Society, that "I am aware that the Law Society is proceeding with show-cause action against me for not maintaining the books for the year 2004 … [and] I pray for dispensation of service of the documents and presence at the proceedings".

17 We now turn to the substantive issues. The case of *Selena Chiong* ([11] *supra*) stipulates in no uncertain terms the very serious consequences of breaching the SA Rules. We can only reiterate how critical, indeed indispensable, it is that all solicitors strictly comply with and uphold the SA Rules so as to preserve public confidence that moneys held or maintained by solicitors will be safeguarded and legitimately disbursed. The prophylactic rationale underpinning the enactment of the SA Rules – indeed its primal *raison d'être* – is to protect first and foremost the public against any unauthorised use of clients' moneys held by solicitors through carefully calibrated procedures and processes to ensure that the legal profession is properly policed and regulated in this singularly crucial aspect of its practice.

18 It is incontrovertible that the SA Rules must be strictly observed and enforced in their entirety; see *eg*, *Selena Chiong* and *Law Society of Singapore v Tan Sok Ling* [2007] SGHC 37 ("*Tan Sok Ling*"). Solicitors are not at liberty to whimsically turn a blind eye to ignore any rule or procedure prescribed by the SA Rules simply because such a rule or procedure threatens to be costly or inconvenient. Proof of wilful conduct is *not* necessary to establish a breach of the SA Rules; liability is strict, indeed absolute. The respondent in this case had systematically failed to keep any books or accounts for an entire year although he was fully aware of the mandatory requirement to do so. We are satisfied on the unchallenged evidence before us that the charge against the respondent has been more than amply established.

Appropriate penalty

19 It is settled law that the four factors to assess in determining the appropriate penalty in disciplinary cases are:

(a) protection of the public;

(b) safeguarding the collective interest of the legal profession;

(c) punishment of the offender; and

(d) the notion of deterrence (as emphasised in *Selena Chiong supra*).

20 It is the settled practice of this court that should it find a solicitor to be dishonest, it will almost invariably direct that his name be struck off the roll. That said, even if no apparent dishonesty is involved, a solicitor may be struck off the roll if the lapse is of such a nature as to indicate that he lacks the requisite qualities of character and trustworthiness expected of all solicitors: see *Law Society of Singapore v Ravindra Samuel* [1999] 1 SLR 696 at [15]; cited in *Selena Chiong* at [27].

21 In *Selena Chiong* and *Tan Sok Ling* ([18] *supra*), both respondents were suspended from practice for one year for breaches of the SA Rules (rr 11(1), 11(2) and 11(4) in the former case; and rr 3 and 7 in the latter). No dishonesty was found in either case. The circumstances in the present case are, however, markedly different from those two cases. The respondent in *Selena Chiong* was medically unwell and her breach of the SA Rules was benign in nature; her illness inevitably clouded her judgment and as a consequence she made decisions without properly considering the repercussions. The respondent in *Tan Sok Ling*, though not medically unwell, committed his breaches of the SA Rules as a result of "gross inefficiency" and "sheer incompetence"; in other words, there was nothing wilfully or deliberately dishonest about his actions. Further, his breaches had been largely rectified before the hearing of the show cause proceedings. In both *Selena Chiong* and *Tan Sok Ling*, the court found that the errant solicitors' indiscretions were caused purely as a result of illness or human frailty and not by reason of an apparent character defect or deficiency. We note that in each

of these cases, the solicitors faced more charges as compared to the respondent in the instant case. However, the sheer number of charges is not in itself a true reflection of the actual extent of a solicitor's blameworthiness or culpability.

22 Even though in the present case the respondent might not have been actually dishonest, we were of the view that the respondent's deliberate, wilful and prolonged omission to maintain the mandated bookkeeping records in disregard of the SA Rules was deplorable. It was amply evident that the respondent considered his personal interests far more important than his obligations as an advocate and solicitor. We found this entirely unacceptable and accordingly concluded in the circumstances that the respondent had fallen far short of the required standards of integrity, probity and trustworthiness expected of officers of the court. A solicitor who consciously and consistently ignores the SA Rules, which have the force of law, cannot be expected to responsibly discharge his obligations to uphold the rule of law. In our view, the respondent's conduct manifested a patent defect of character.

23 Furthermore, the respondent has made no significant effort whatsoever to mitigate his professional lapses. Save for an e-mail dated 29 November 2006 (referred to at [16] above), the respondent showed no particular interest in these proceedings and/or made no attempt to redress the transgressions. In his e-mail, he stated the following:

(a) He secured his present employment in China (and is working there with the Official Assignee's permission) only after much difficulty and it was his only hope of keeping his family together.

(b) He was aware of the present proceedings against him and had acknowledged his error to the Law Society as well as been very cooperative in every regard.

(c) He had no desire at this moment, and would encounter substantial difficulty should he do so, to return to practice in the light of his bankruptcy.

(d) He had problems drawing up his accounts because he had no money to pay his accountant who was holding all his books on lien.

(e) While he would accept whatever decision this court made, he implored that he be given a second chance should he clear his debts and wish to return to practice.

24 The respondent's breaches over a period of more than a year were both deliberate and contumacious. They warranted a severe penalty. We could not give much weight to his assertion that he was co-operative. His breaches of the SA Rules were only brought to light when the Law Society commenced probing the causes and history of the bankruptcy proceedings brought against him. At no point did the respondent own up voluntarily. The respondent's contention that he had problems drawing up his accounts because he could not afford to pay the accountant holding his books on lien was also completely unsubstantiated and, in any event, wholly irrelevant as an exonerating or mitigating factor. As such, we were of the view that the respondent's "plea of mitigation" in his e-mail dismally failed to address the gravamen of the transgressions.

25 Further to what has been said in [20] above, it bears mention that in the oft-cited case of *Bolton v Law Society* [1994] 1 WLR 512 at 518, Sir Thomas Bingham MR (as he then was) stated that:

It is required of lawyers practising in this country that they should discharge their professional

duties with integrity, probity and complete trustworthiness. …

> Any solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon him ... Lapses from the required high standard may, of course, take different forms and be of varying degrees. The most serious involves proven dishonesty, whether or not leading to criminal proceedings and criminal penalties. In such cases the tribunal has almost invariably, no matter how strong the mitigation advanced for the solicitor, ordered that he be struck off the Roll of Solicitors. Only infrequently, particularly in recent years, has it been willing to order the restoration to the Roll of a solicitor against whom serious dishonesty had been established, even after a passage of years, and even where the solicitor had made every effort to re-establish himself and redeem his reputation. *If a solicitor is not shown to have acted dishonestly, but is shown to have fallen below the required standards of integrity, probity and trustworthiness, his lapse is less serious but it remains very serious indeed in a member of a profession whose reputation depends upon trust. A striking off order will not necessarily follow in such a case, but it may well.*
>
> [emphasis added]

26 The case of *In re A Solicitor* (1962) 3 MC 323 illustrates the extremely serious view that the courts take apropos any breach of accounting rules. In that case, the solicitor failed to keep accounts in the prescribed manner as well as to account for a very large sum of money which had come into his hands as a solicitor. Thomson CJ observed at 323:

> The legal profession enjoys very great privileges. In return for these privileges they owe the public a duty and that duty involves not only an extremely high standard of probity but a way of conducting business, and particularly business in relation to financial matters, which is beyond suspicion. *In particular it is required, and it is part of the price the profession must pay for its privileges, that separate accounts of solicitors' money and clients' money should be kept*. [emphasis added]

The court in that case acknowledged that the solicitor was not in the best of health, but concluded that that was not a consideration that should be allowed to prevail over the public interest, which was paramount. The solicitor was accordingly struck off the roll. Extrapolating from this case, *inter alia*, Prof Tan Yock Lin in *The Law of Advocates and Solicitors in Singapore and West Malaysia* (Butterworths Asia, 2nd Ed, 1998) accurately observes (at p 905) that "[w]here there is failure to keep proper accounts, striking off the roll is quite common".

27 Since only persons of good character may be admitted to the roll, it must also inexorably follow that an advocate and solicitor with an obvious character defect should also be struck off the roll. Michael Wilkinson & Michael Sandor, *Professional Conduct of Lawyers in Hong Kong* (Butterworths Asia, 1996) at ch XV, para 753 incisively observe that the appropriate test to be applied by the court in deciding whether to strike off a solicitor is that enunciated in *Ex parte Attorney-General for the Commonwealth* (1972) 20 FLR 234 at 243, as follows:

> When it is a question of removal from the roll, there is, in the end, a single question, namely, whether the legal practitioner who has been charged is a fit and proper person to remain a member of the profession …

We agree. In view of our findings in [22] above, we were unequivocally of the view that the respondent was not a fit and proper person to remain in the profession.

28 We emphasise that it is clearly not enough for solicitors who have been found to have breached the SA Rules to claim in mitigation that no actual loss has been occasioned. The fact that no accounts whatsoever have been maintained, in itself makes it inherently difficult to determine whether any loss had indeed occurred. In any event, the essence of the wrong is the deliberate disregard of statutory rules specifically designed and enacted to protect the public.

29 Subsequent to the hearing, our attention was drawn to the fact that there was in fact another DC proceeding concerning the respondent which related to a breach of the SA Rules. It is regrettable that in a case of this nature, counsel for the Law Society failed to highlight this case to us in her submissions. All that counsel mentioned in passing was that other unrelated DC proceedings prevailed against the respondent. This did not convey the correct picture. The respondent had actually been found guilty by another DC of having breached r 3 of the SA Rules ("the second DC proceedings") as well. No show cause proceedings were subsequently initiated against the respondent only because he had been struck off the roll in the present proceedings. The second DC proceedings had been initiated as a result of the respondent's inappropriate conduct in depositing $15,000 into an overdrawn office account rather than properly into a client's account. While we are satisfied that counsel was not aware of the outcome of these disciplinary proceedings, this does not absolve her from the duty of diligence to draw all material facts to the court's attention. The substance of the second DC proceedings should have been specifically drawn to our attention even if counsel was not aware of the actual outcome of the disciplinary proceedings when we heard this matter. Counsel should not have so quickly echoed the respondent's blithe and by no means verifiable claim that no loss had accrued as a result of his conduct.

30 On the issue of the respondent's bankruptcy, we agree that a solicitor's status as a bankrupt *per se* should not affect the penalty meted out since it does not, *ipso facto*, connote dishonesty on his or her part. This proposition is firmly established in *Selena Chiong* ([11] *supra*). However, we note that the respondent's debt that culminated in his bankruptcy was to the tune of a mere $10,655.99. That he could not settle such a paltry debt as a practising solicitor should clearly be a matter of grave concern as an indication that there could be more problems than meet the eye. It would also be relevant in considering whether or not he can be entrusted with clients' moneys.

Conclusion

31 The respondent has committed a serious breach of his obligations as an advocate and solicitor for which this court could have censured him, suspended him from practice for up to five years or struck him off the roll. In deciding to impose the ultimate punishment, we took into account the following considerations:

(a) his deliberate omission to maintain his books and accounts in disregard of the SA Rules;

(b) his continuing to receive moneys whilst practising under such conditions;

(c) his concealment of his transgressions until the Law Society began investigating the basis of his bankruptcy; and

(d) his bankruptcy, which had rendered the other two penalties, namely censure and suspension from practice, entirely meaningless.

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