IN THE COURT OF THREE JUDGES OF THE REPUBLIC OF SINGAPORE

[2021] SGHC 170

Originating Summons No 8 of 2020

Between

The Law Society of Singapore

… *Applicant*

And

Mahtani Bhagwandas

… *Respondent*

GROUNDS OF DECISION

[Legal Profession] — [Professional conduct] — [Breach]
[Legal Profession] — [Duties] — [Client]

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Law Society of Singapore
v
Mahtani Bhagwandas

[2021] SGHC 170

Court of Three Judges — Originating Summons 8 of 2020
Sundaresh Menon CJ, Steven Chong JCA, Woo Bih Li JAD
14 May 2021

5 July 2021

Woo Bih Li JAD (delivering the grounds of decision of the Court):

Introduction

1 This application by the Law Society of Singapore ("the LSS") arose out of a determination (DT/03/2020) by a Disciplinary Tribunal ("DT") pursuant to s 93(1)(*c*) of the Legal Profession Act (Cap 161, 2009 Rev Ed) ("LPA"). The DT comprised Philip Jeyaretnam *SC* and Ian Lim, and had been constituted to investigate the complaint of Tan Cheng Cheng, ("Shyller Tan" or the "Complainant") dated 23 May 2019 against Mahtani Bhagwandas (the "Respondent"), a solicitor. In its Report dated 17 November 2020 (the "Report"), the DT found that the charges against the Respondent had been proven beyond a reasonable doubt, and that there was cause of sufficient gravity for disciplinary action under s 83 of the LPA.

2 The Complainant was the wife of Spencer Sanjay s/o Shamlal Tuppani ("ST"), who passed away intestate on 10 July 2017. ST was a former client of the Respondent. The Complainant was the co-administratrix of ST's estate (the "Estate").

3 ST had been cohabiting with Joan Yeo Gek Lin ("JYGL") at the time of his death. After ST's demise, the Respondent acted for JYGL on certain matters that we elaborate on later.

4 The LSS formulated the following charges against the Respondent:

> **First Charge**
>
> That you, Mahtani Bhagwandas, are charged that, whilst you had acted for ST when he was alive and in the course of your former engagement as ST's lawyer acquired information relating to the assets of ST and/or [ST's estate ("the Estate")] which were confidential to ST and/or the Estate, you failed to decline to represent and/or withdraw from representing JYGL in her claim against the Estate thereby breaching Rule 21(2) of the [Legal Profession (Professional Conduct) Rules 2015 (S 707/2015) ("PCR")], such breach amounting to improper conduct and practice as an advocate and solicitor within the meaning of section 83(2)(*b*) of the [LPA].
>
> **Alternative First Charge**
>
> That you, Mahtani Bhagwandas, are charged with misconduct unbefitting of an advocate and solicitor as an officer of the Supreme Court or as a member of an honourable profession under section 83(2)(*h*) of the [LPA] in that whilst you had acquired information confidential to ST and/or the Estate in the course of your former engagement as ST's lawyer, you failed to decline to represent and/or withdraw from representing JYGL in her claim against the Estate.
>
> **Second Charge**
>
> That you, Mahtani Bhagwandas, are charged with misconduct unbefitting of an advocate and solicitor as an officer of the

> Supreme Court or as a member of an honourable profession under section 83(2)(*h*) of the [LPA] in that you failed to make a timely disclosure to the Complainant of your conflict of interest between the Complainant, JYGL and the Estate, and as a result the Complainant was misled into disclosing information which was confidential to the Estate to you.

5 At the hearing on 14 May 2021, we allowed the LSS' application and ordered that the Respondent be suspended for a period of 24 months. We now set out the grounds for our decision.

Facts

Dramatis Personae

6 The Respondent is an Advocate and Solicitor of the Supreme Court of Singapore of around 27 years' standing.[1] He was called to the bar in 1993, and, at all material times, practised as a partner in the firm known as LegalStandard LLP ("LegalStandard").

7 As outlined above, ST was married to Shyller Tan, the Complainant, from 17 July 2004 until his passing on 10 July 2017.[2] ST had three children with Shyller Tan over the course of their marriage. ST's passing was significant in that he was killed by Shyller Tan's father in a public and widely-reported stabbing at a Telok Ayer coffee shop.[3]

8 As for JYGL, her relevance to the present proceedings arose primarily from her having appointed the Respondent to act for her in her claim against the

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1 Record of Proceedings ("ROP"), Volume 10, at p 23.

2 7 ROP 4.

3 13 ROP 101 from Line 1 to 3.

Estate following ST's death. Shyller Tan, in her capacity as a co-administratrix of the Estate, defended those claims, as will be elaborated on below at [26].

9 Two other persons were significant to this application:

(a) First, Andy Chiok Beng Piow ("ACBP") was, at the material time, a solicitor with Michael Khoo & Partners ("MKP").[4] He had been representing the Complainant with respect to her intended divorce proceedings against ST, and had in fact written to ST's lawyers, LegalStandard (the Respondent's firm), on the morning of ST's death to check if they had instructions to accept service.[5]

(b) Second, Joey Lee ("Joey"), ST's former secretary, was alleged to have shared information concerning ST's assets with Shyller Tan.[6] Shyller Tan subsequently claimed to have conveyed this information to the Respondent as she did not know that he was acting for JYGL.

Factual Background

10 ST passed away on 10 July 2017. It was not contested that prior to ST's death, he had instructed the Respondent on several matters:[7]

(a) In July 2014, ST engaged the Respondent to prepare a Deed of Divorce Settlement between him and Shyller Tan setting out their

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4 13 ROP 98.

5 Respondent's Written Submissions ("RWS") at [11].

6 Report at [32].

7 AWS at [9].

respective financial responsibilities and custodial/visitation rights to their three children in the event of a divorce.[8]

(b) In 2016, the Respondent acted for all the shareholders of TNS Ocean Lines (S) Pte Ltd ("TNS"), including ST and the Complainant, in the sale of their shares in TNS to GKE Corporation Ltd.[9] TNS was a company founded by Shyller Tan's father, Mr Tan Nam Seng.

(c) In December 2016, ST instructed the Respondent's firm to act for him in the purchase of a commercial property at 31A Lorong Mambong, which was eventually leased to the operators of the "Wala Wala Café Bar" (the "Lorong Mambong Property" or "Wala Property").[10] According to the Respondent, this purchase was a joint investment between ST and two of his friends, Jason Er Kok Yong ("JEKY") and Lawrence Lim Soon Hwa ("LLSH"). Thus, while the property was in ST's sole name, the Respondent's evidence was that each of ST, JEKY, and LLSH in fact held 1/3 shares in the property.[11]

(d) In late January/early February 2017, ST and Shyller Tan mutually agreed to update and vary the terms of the Deed of Divorce Settlement. ST informed the Respondent of this and the Respondent updated the deed accordingly.[12]

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8 7 ROP 4 to 11.

9 See in addition, 7 ROP 78 to 85.

10 13 ROP 19 and 20.

11 See for example, 13 ROP 42, from Line 14 to 19.

12 10 ROP 28 and 29.

(e) In February 2017, ST instructed the Respondent to prepare trust deeds in respect of a property at 22 Leedon Heights #07-31 (the "Leedon Property") which ST and JYGL purchased through their respective fathers.[13] The Respondent also helped prepare a power of attorney granting ST the authority to deal with all matters relating to the property on behalf of the registered owners.

11 Following ST's passing on 10 July 2017, there were two developments:

(a) First, Shyller Tan sought to ascertain whether or not ST had made a will. On 11 July 2017, ACBP messaged the Respondent via WhatsApp to ask if the Respondent knew whether ST had prepared a will.[14] There did not appear to have been a reply from the Respondent.[15] In any event, the Respondent met with Shyller Tan on 18 July 2017 at a coffee shop in Raffles Place. At that meeting, Shyller asked the Respondent whether he was aware if ST had made a will. The Respondent confirmed that ST had not done so through his office.[16]

(b) Second, at ST's wake, JYGL asked to meet the Respondent to discuss matters affecting her.[17] The Respondent agreed, and met JYGL at some point before 14 July 2017, which was when ST's funeral was held.[18] This meeting between JYGL and the Respondent lasted for about

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13 7 ROP 99 and 100.

14 10 ROP 36

15 10 ROP 36 at [44].

16 12 ROP 3.

17 10 ROP 36.

18 13 ROP 189 – Transcript of 4 September 2020, Page 55 Line 4 to Page 55 Line 29.

an hour. During this meeting, JYGL sought the Respondent's advice on transferring the ownership of a vehicle – a Toyota Alphard (the "Alphard") that was in ST's name but had allegedly been purchased with JYGL's funds – as well as on the recovery of approximately S$3 million in loans (the "Loans") JYGL claimed to have made to ST.

12 Subsequently, pursuant to Shyller Tan's instructions, ACBP filed an application for Letters of Administration on behalf of Shyller and her sister on 21 July 2017.[19]

13 The Respondent and Complainant next met on 24 July 2017. The parties' accounts of what transpired at this meeting were divergent, but it was agreed that there was at least one meeting that day involving JEKY and LLSH to discuss the Wala Property. Broadly, the parties' positions were as follows:

(a) The Complainant gave evidence that the meeting happened entirely at the Respondent's office, and involved herself, the Respondent, ACBP, JEKY, and LLSH.[20] The Complainant also testified that the Respondent said nothing about the Alphard or the Loans.[21] The Complainant's position was that the Respondent gave no indication that he was acting or intended to act for JYGL against the Estate. The Complainant's position on each of these points was corroborated by ACBP.[22]

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19 5 ROP 268. These Letters of Administration were eventually granted on 21 September 2017.

20 11 ROP 10 to 12.

21 11 ROP 11.

22 13 ROP 102 and 103.

(b) By contrast, the Respondent gave evidence that there were in fact two separate meetings that day – one at his office with the Complainant and ACBP only, and a second meeting without ACBP but including the Complainant, LLSH and JEKY.[23] The Respondent's account was that he told the Complainant and ACBP at the first meeting about what JYGL had told him about the Alphard and the Loans, and, significantly, that he intended to act for JYGL in any proceedings against the Estate with respect to the Alphard and Loans.[24]

14 On 8 August 2017, the Respondent was formally appointed as JYGL's lawyer at a meeting where JYGL signed a letter of engagement and warrant to act prepared by LegalStandard.[25]

15 A week later, on 15 August 2017, the Complainant met with the Respondent. Again, the parties' accounts of what transpired differed:

(a) The Complainant alleged that this meeting with the Respondent took place after a meeting she had with Joey.[26] The Complainant's account was that at this earlier meeting, Joey had shared what she knew about ST's assets, including about ST's credit card debts, his wine collection in London, a Tiffany ring Joey had helped ST to purchase, various art works, jewellery, and watches.[27] The Complainant's evidence was that at the meeting she had with the Respondent, she

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23 13 ROP 200, from Line 2 to 11.

24 13 ROP 148 and 149.

25 6 ROP 35 to 43.

26 11 ROP 12.

27 11 ROP 12 and 13.

shared all of the information Joey had provided her with him, along with information concerning an insurance policy ST had taken out.[28] The Complainant also stated that she had asked the Respondent to be the Estate's lawyer, and that he had replied "yah yah sure Shyller".[29]

(b) The Respondent, by contrast, denied that any information concerning ST's assets was shared with him, or that he had been asked to act for the Estate at this meeting.[30]

16 Shortly thereafter, on 19 August 2017, the Complainant had the following exchange with the Respondent over WhatsApp:[31]

> Complainant: Can you help me with the estate?
>
> Complainant: [My father] ask me to look for u.
>
> Respondent: **Dfntly can.** We are meeting on wed anyway. So maybe you can come bit earlier on wed abt 3 or 3 30 pm
>
> [Emphasis added]

17 The next interaction between the Respondent and Complainant alleged by the Respondent was a meeting on either 23 or 24 August 2017.[32] This meeting was significant in that the Respondent claimed that, for a second time, he disclosed to the Complainant that he was acting for JYGL. The Respondent sought to corroborate this with a purported handwritten attendance note dated 24 August 2017 with text as follows:[33]

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28 11 ROP 13 at [24].

29 11 ROP 14, at [26] in particular.

30 RWS at [39].

31 7 ROP 163.

32 RWS at [108] *et seq*.

33 5 ROP 196

> Shyller – office
>
> Estate? Cldnt [*sic*] as Joan asked me. If settle with her, ok?
>
> - Request for meet[in]g.
>
> […]

The Complainant's position was, by contrast, that there was no such meeting on 24 August 2017, and that even if there had been any such meeting, the Respondent did not disclose that he was or would be acting for JYGL.[34] The Complainant further explained that she could not possibly have attended a meeting on 24 August 2017, as she had been accompanying her father for his criminal proceedings (arising out of his having killed ST). This was not contested by the Respondent, whose position in his Skeletal Submissions before this Court was that "[i]n all likelihood, the meeting took place on 23 August 2017", and that the dating of the attendance note was inaccurate.[35] We accept that there was a meeting on 23 August 2017 as that was a Wednesday and was the Wednesday referred to in the WhatsApp exchanges of 19 August 2017 reproduced at [16] above. The meeting on 23 August 2017 is considered in greater detail below.

18 On 24 August 2017, ACBP sent the Respondent a WhatsApp message stating as follows: "hi, can talk? Basically may have some work for you".[36] The ensuing WhatsApp message log indicated that ACBP and the Respondent spoke around noon on 24 August 2017 about this potential work which ACBP had for the Respondent.

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34 11 ROP 15, at [30].

35 Respondent's Skeletal Submissions ("RSS") at [30].

36 5 ROP 201.

19 On 25 August 2017, MKP wrote to LegalStandard with a view towards formally engaging the Respondent to act for the Estate in the retrieval of information and documents relevant to the assets of the deceased. The salient portion of MKP's letter, sent by fax and post, is reproduced below:[37]

> Dear Sirs
>
> **Estate of Spencer Tuppani**
>
> 1. We refer to the telephone discussion between your Mr Mahtani and our Mr Andy Chiok yesterday.
>
> 2. As you are aware, we act for Mesdames Tan Cheng Cheng and Tan San San [Shyller Tan's sister], the applicants seeking appointment as the administrators of the above Estate.
>
> 3. We are instructed that the deceased had previously retained your firm in connection with his personal matters. In this regard, we have instructions to seek from you information and documents relevant to the assets of the deceased.
>
> 4. In this regard, **our clients will formally retain your firm**. We are obliged if you can let us have an indication of the estimated cost of the retrieval of the information and documents.
>
> […]
>
> [Emphasis added]

The Respondent did not reply to the 25 August 2017 letter. While he accepted at the hearing below that the letter had been prepared contemporaneously, and did not contest the fax transmission and dispatch records of MKP (which were produced by ACBP at the hearing below), he nonetheless claimed to have never seen the letter.[38]

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37 12 ROP 5 to 6.

38 AWS at [21]. See also 13 ROP 375, Lines 1 to 3.

20 Several further meetings occurred between the parties after the letter of 25 August 2017. These meetings occurred on 28 August 2017, 14 September 2017, 20 September 2017, 25 September 2017, and 13 October 2017.[39] The meetings of 28 August 2017 and 13 October 2017 are important:

(a) It was Shyller Tan's evidence that she received further information from Joey on 28 August 2017 concerning, *inter alia*, the contact details of Berry Bros & Rudd, the fine wine merchant managing ST's wine collection in London, and a deposit which had allegedly been paid by ST for a Lamborghini car.[40] She claimed to have conveyed this information to the Respondent later that day.[41]

(b) As for the meeting on 13 October 2017, what transpired at the meeting is best reflected by Shyller Tan's fairly contemporaneous account of the meeting to ACBP the next day over WhatsApp:[42]

> Last night mahtani called me for a drink. Met ah yong [referring to JEKY]. Mahtani kept telling tt the wala property is 3 shares. Why till now I hv not given them any confirmation. At least sent ah yong an sms or email tt I acknowledged. **He said why need Andy. I just hv to tell u what to do.**
>
> **He asked why I want to send joan [JYGL] the demand letter for car. Do I wanna fight w her. She is rich can afford fees. Why waste money.**

39 11 ROP 15 to 19, from [31] to [42].

40 11 ROP 15.

41 11 ROP 16.

42 7 ROP 173.

> **He mentioned joan collating all docs prove of money transfer to [ST].** I asked him are those love gifts. He said you guided me.
>
> He said very firmly 'shyller you promised to buy them hdb flats yes or not?' told him firmly no promise.
>
> [Emphasis added]

21 Between 26 September 2017 and 30 September 2017, ACBP and the Respondent exchanged the following WhatsApp messages:[43]

> ACBP: hi, we spoke. As discussed, Shyller does not want things to get ugly with JY[GL], just want the administration process to be done properly. Let me know when u have given JY[GL] the heads up and I will dispatch the letter. My letter will not be antagonistic.
>
> ACBP: hi, please update on your discussion with JY[GL]? Thanks
>
> Resp: Call u in afternoon
>
> ACBP: Please call me about JY[GL] letter
>
> ACBP: I will send out if there is no development at your end
>
> Resp: Call you mon as overseas n backl sun nt [presumably, "back late Sunday night"]

22 On 3 November 2017, after Shyller Tan and her sister had been granted Letters of Administration for the Estate on 21 October 2017, MKP sent a letter of demand **directly** to JYGL. The letter of demand read as follows:[44]

> […]
>
> 2. We are writing to you to recover assets belonging to the Estate of the late Mr Spencer Tuppani.
>
> 3. As you are aware, since February 2017, Mr Tuppani started living with you, and did so until his demise on 10 July 2017.

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43 5 ROP 201, 202, and 203.

44 2 ROP 15 and 16.

> He moved all of his personal belongings out of the Sennett home where his family lives.
>
> 4. In this regard, we have information that you are in possession of Mr Tuppani's personal effects such as his collection of watches and various artwork.
>
> 5. Further, we are also aware that Mr Tuppani had purchased a Toyota Alphard bearing registration number SKL66S and the said car is also in your possession.
>
> […]

23 Following the 3 November 2017 letter of demand addressed to JYGL, LegalStandard responded with a holding letter. LegalStandard's holding letter of 24 November 2017 read as follows:[45]

> […]
>
> We act for Yeo Gek Lin [JYGL] and refer to your letter dated 3 November 2017 addressed to our client.
>
> We are currently taking our client's instructions and will revert to you shortly.
>
> Kindly hold your hands in the meantime.
>
> […]

It was uncontested that this was the first instance that the Respondent's firm had unequivocally represented in writing that it was acting for JYGL. It was also ACBP and Shyller Tan's evidence that this was the first time they received *any* indication that the Respondent was acting for JYGL.[46]

24 After the holding letter of 24 November 2017, LegalStandard sent a letter dated 1 December 2017 to MKP to respond to the 3 November 2017 letter of demand. Some further correspondence was exchanged on the various

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45 11 ROP 250.

46 13 ROP 109, from Lines 18 to 20.

demands made. Thereafter, the year 2018 was fairly uneventful in relation to the Respondent's conduct. This was subsequently explained by Shyller Tan on the basis that (a) she had become the sole breadwinner for her three young children following ST's passing, (b) she became the person in charge of the company TNS following her father being taken into custody, (c) she had to focus on ensuring that a performance guarantee payable by TNS to another company was not triggered, (d) she was involved with setting up a new project with SATS in 2018, and (e) she was involved in the care and conduct of her father's criminal defence.[47]

25 In 2019, the issue of the Alphard and Loans arose again when JYGL commenced HC/S 217/2019 ("Suit 217") on 25 February 2019 against the Estate.

Procedural Background

26 This application (and in fact the Complainant's entire complaint) could be said to have arisen most directly out of the Respondent acting for JYGL against the Estate in Suit 217. Broadly, JYGL sought S$166,000 as the sum of a loan she had allegedly extended to ST to purchase the Alphard, and S$3,403,161 as the sum of the Loans she claimed to have extended to ST.[48]

27 The Estate filed a Defence and Counterclaim on 18 March 2019. By then, ACBP was practising with JHT Law Corporation ("JHT") and represented the Estate. The Defence and Counterclaim put JYGL to strict proof of the loans alleged, and counterclaimed for (a) conversion of the Alphard by JYGL to her

47 11 ROP 252.

48 Statement of Claim in Suit 217.

own use, and (b) the "delivery up of valuable chattels belonging to [ST] which were acquired by him, and of which [JYGL] [had] possession of … at the time of his demise".[49] The first paragraph of the Defence and Counterclaim expressly stated as follows:

> This Defence is filed without prejudice to the Defendant's position that the Plaintiff's present firm of solicitors, LegalStandard LLP is in a position of conflict of interests, having represented the Deceased as well as the Defendant previously in respect of his personal affairs.
>
> […]

28 On 20 March 2019, JHT wrote to the Respondent to state that he was acting in conflict of interest by his representing JYGL. The Respondent replied on 26 March 2019 to deny any conflict of interest, though he eventually discharged himself from acting for JYGL in the Suit.

29 On 3 April 2019, the Defence and Counterclaim was amended to remove the allegation of conflict. Shortly thereafter, the Complainant formally lodged the instant complaint against the Respondent.[50]

30 The LSS' Statement of Case dated 22 April 2020 set out the charges against the Respondent.[51] The Respondent contested the charges. The matter was fixed before the DT, which heard evidence over four days on 3, 4, 11, and 22 September 2020.[52] The LSS' witnesses were Shyller Tan and ACBP, while the Respondent's witnesses included himself, JYGL, JEKY, and LLSH.

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49 Defence and Counterclaim in Suit 217.

50 1 ROP 3 to 9.

51 1 ROP 10 to 15.

52 13 ROP 2.

The Disciplinary Tribunal's Decision

31 The DT found that the LSS had proved all three charges beyond a reasonable doubt, and accordingly determined pursuant to s 93(1)(*c*) of the LPA that cause of sufficient gravity for disciplinary action existed under s 83 of the LPA.[53]

32 On the First Charge and Alternative First Charge, the DT specifically found at [79] that:[54]

> … Rule 21(2) [of the PCR] applies even if the prospective client knows of the confidential information already from the former client, so long as the information retains the quality of confidence generally. …

The DT's reasoning in this regard, at [79] of the Report, was that:

> … If the information acquired from the former client is already in the public domain, then the lawyer has no advantage derived from holding that confidential information as against any other lawyer. So long as the information is not in the public domain though, a lawyer holding that confidential information of the client has an advantage over other lawyers in taking on a matter against that client. That is at least part of the mischief that the Rule guards against. We also consider that a related part of the mischief against which the Rule must seek to guard is a lawyer unilaterally deciding that he can act for a prospective client against a former client because he feels the prospective client already holds the same confidential information of the former client that he does. As mentioned … above, there is simply no way for a lawyer to verify this without breaching confidence towards the former client. …

The DT also held at [83] that the element of materiality was made out – a party contemplating a suit to recover moneys would consider whether the other party

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53 14 ROP 33.

54 14 ROP 27.

would be able to meet any judgment in deciding whether or not to commence proceedings.[55] This element was not seriously contested before us, in any event.

33 As for the Second Charge, the DT held at [86] that it was made out:[56]

> It is proven beyond a reasonable doubt that the Respondent misled the Complainant into sharing confidential information of the Estate with him not just by non-disclosure that he was acting for JYGL, but by positive representations that he was ready to help the estate, including as a lawyer.

In particular, the DT found, as a matter of fact, at [85] that:

> … The Complainant shared freely with the Respondent as and when she obtained information, including from Joey, ST's former secretary. In particular on 15 August 2017 she informed the Respondent that ST's insurance policy was in favour of himself (and thus the pay-out would come to the Estate). The Complainant did this because she was under the misapprehension that the Respondent was aligned to the interests of the Estate. In fact, at least from 8 August 2017, the Respondent was acting for JYGL … On 13 October 2017, the Respondent, still without disclosing that he was acting for JYGL, sought actively to dissuade the Complainant from fighting JYGL's claims against the Estate.

34 The DT made a further two critical findings of fact. First, in relation to the credibility of witnesses, the DT found that the Complainant's testimony was "consistent and credible" (at [67]). By contrast, the Respondent's evidence was "often strained, at odds with the context of events as they unfolded and on the question of whether he made the disclosures, made up" (at [67]).[57] In addition, the DT accepted JYGL's evidence that she had learned about the "confidential information", which was the subject of the First and Alternative First Charges,

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55 14 ROP 28.

56 14 ROP 29.

57 Report at [67].

from ST during ST's lifetime. The DT considered JYGL's evidence to be "consistent and credible" (at [85]).

35 The DT also found, categorically, that "the Respondent had made no disclosure that he was acting or intending to act for JYGL" (at [85]).

The Parties' Arguments

36 For its part, the LSS affirmed and adopted the reasoning of the DT. By contrast, the Respondent argued that none of the charges he faced was made out. In relation to the First and Alternative First Charges, the Respondent largely repeated his argument before the DT, that no breach of r 21(2) of the PCR arose on the facts because the information that the Respondent possessed was "not '*confidential information*' vis-à-vis the current client (JYGL) since JYGL already possessed that same information" (emphasis in original).[58] The Respondent further made the point that as the alleged "confidential information" was not confidential *vis-à-vis* JYGL, any "unfair advantage" did not come from the Respondent, but from ST himself. Had JYGL appointed any other lawyer to represent her, she could and would have transmitted the "confidential information" to him.

37 As for the Second Charge, the Respondent's position in his written submissions was that:[59]

> … for the DT's finding to stand, it must meet a three-stage test, each stage of which must be established beyond a reasonable doubt:

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58 RSS at [2(c)].

59 RWS at [45].

> (a) First, that Joey met with the Complainant at Providore on 15 August 2017 and conveyed to her the Joey Confidential Information; and
>
> (b) Second, that the Complainant, in turn, passed on the Joey Confidential Information to the Respondent on 15 August 2017; and
>
> (c) Third, that the assets comprising the Joey Confidential Information did in fact exist.

The Respondent also submitted, as outlined above, that he had in fact disclosed the fact of his acting for/intention to act for JYGL to Shyller Tan on two occasions – a "First Disclosure" on 24 July 2017, and a "Second Disclosure" on 23 August 2017.

38 The LSS relied on the DT's findings to argue that a penalty of 12 months' suspension ought to be imposed.[60] The decision in *Law Society of Singapore v Ezekiel Peter Latimer* [2019] 4 SLR 1427 ("*Latimer*") was specifically relied on, with the LSS arguing that the instant facts fell within Category 2B of the sanctions framework set out in *Latimer*.[61] The Respondent initially made no submissions whatsoever on the appropriate penalty to be imposed were the DT's findings upheld, though his counsel submitted for a fine in oral submissions before us.

Issues before this Court

39 There were three central issues before the Court:

(a) First, were the First Charge and/or the Alternative First Charge made out? This centred on a question of law – whether the fact that the

60 AWS at [48].

61 ABA at Tab 6.

new client (in this case, JYGL) already knew the "confidential information" which the lawyer had gleaned from his previous engagement was a valid defence.

(b) Second, was the Second Charge made out? This entailed consideration of two key flows of information – (i) whether the Complainant *did* in fact disclose information which was confidential to the Estate to the Respondent, and (ii) whether the Respondent disclosed the fact of his acting for JYGL to the Complainant.

(c) Third, assuming any (or all) of the charges was established, what the appropriate sanction was.

The First Charge and Alternative First Charge

40 The key thrust of the First Charge was that the Respondent breached r 21(2) of the PCR by acting for JYGL against the Estate, and that such breach amounted to improper conduct within the meaning of s 83(2)(*b*) of the LPA. It was not in contention that if the First Charge were made out, the Alternative First Charge, which was not premised on a breach of r 21(2) of the PCR, and dealt with misconduct unbefitting an advocate and solicitor under s 83(2)(*h*) of the LPA, would also be made out. The Alternative First Charge was, after all, framed on a "less strict"[62] basis as it only required that the solicitor be guilty of "such conduct as would render him unfit to remain as a member of an honourable profession", even if such conduct were not so egregious as to

62 AWS at [32].

constitute improper conduct: *Law Society of Singapore v Ng Chee Sing* [2000] 1 SLR(R) 466 at [40].[63]

41 Rule 21(2) of the PCR provides as follows:

> (2) Subject to paragraphs (3), (4) and (5), a legal practitioner or law practice must decline to represent, or must withdraw from representing, a client (called in this rule the current client) in a matter, if –
>
> > (*a*) the legal practitioner or the law practice holds confidential information relating to a former client (called in this rule the former client) that is protected by rule 6;
> >
> > (*b*) the current client has an interest that is, or may reasonably be expected to be, adverse to an interest of the former client; and
> >
> > (*c*) that information may reasonably be expected to be material to the representation of the current client in that matter.

The Respondent did not rely on rr 21(3), (4), or (5).

42 Rule 6 of the PCR, which is referred to in r 21(2)(*a*), provides as follows:

> (1) The following principle guides the interpretation of this rule.
>
> *Principle*
>
> A legal practitioner's duty to act in the best interests of the legal practitioner's client includes a responsibility to maintain the confidentiality of any information which the legal practitioner acquires in the course of the legal practitioner's professional work.
>
> (2) Subject to paragraph (3) and any rules made under section 136, 150 or 166 of the Act, a legal practitioner must not knowingly disclose any information which –
>
> > (*a*) is confidential to his or her client; and

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63 ABA at Tab 9.

> (*b*) is acquired by the legal practitioner (whether from the client or from any person) in the course of the legal practitioner's engagement.

43 The key strands of the case for the LSS on the First and/or Alternative First Charges were as follows:

(a) First, the Respondent had, over the course of his engagement by ST, acquired information relating to ST's assets. This information included information as to ST's shareholdings, the Wala Property, and the Leedon Property.

(b) Second, the information acquired was "confidential information" within the meaning of r 21(2) read with r 6 of the PCR as it was not in the public domain and was confidential as against the world.

(c) Third, JYGL's interests were adverse to the interests of the Estate, particularly given that she was contemplating (and did in fact go on to commence) litigation against the Estate.

(d) Fourth, the "confidential information" was material to the Respondent's representation of JYGL in that it was material to the question of whether the Estate could satisfy any judgment made in JYGL's favour, and by extension the viability of a suit against the Estate.

The DT agreed with the LSS on all four points, and accordingly held that the First Charge (and by extension the Alternative First Charge) was made out.[64] The **only** ground upon which the Respondent sought to contest the First Charge pertained to (b) and the question of what "confidential information" for the

[64] Report at [82].

purpose of r 21(2) of the PCR entailed. This continued to be the Respondent's sole defence, even before us.

44 At [23] of the Respondent's written submissions, the crux of his sole defence to the First Charge was as follows:

> … As JYGL had acquired knowledge of the [Confidential Information] from ST during his lifetime, this information was not confidential to the Estate vis-à-vis JYGL, who was the Respondent's client in this matter. JYGL was entitled to rely on and use this information in any dispute she may have against ST or his Estate. In the circumstances, the Respondent submits that there is no breach of Rule 21(2) of the PCR as the [Confidential Information] is not confidential vis-à-vis his client, JYGL, who is the "current client" referred to in Rule 21(2). Accordingly, there was no requirement for him to decline to represent or withdraw from representing JYGL in her dispute with the Estate relating to the Alphard motor-car and her loans to ST.

We were unpersuaded. There were three reasons for this conclusion.

45 First, the plain wording of rr 6 and 21(2) of the PCR militated against the Respondent's reasoning. Rule 21(2) of the PCR refers to the legal practitioner or law practice "hold[ing]" confidential information relating to a former client that is protected by r 6 of the PCR. There was no reference to what the current/new client knows – the emphasis was simply on the legal practitioner or law practice's *possession* of the information. This was mirrored in r 6 of the PCR. Rule 6 refers to information which is "confidential to [the practitioner's] client". Again, nothing is said about what the current/new client might be aware of, and there was nothing to suggest that the current/new client's knowledge is in any way relevant. The very framing of r 6, referring to information "confidential to [the practitioner's] client", as opposed to information "confidential *vis-à-vis* a certain party or parties", suggested that the focus of the

statute lies on the former client and the confidential quality of the information itself – *not* the current/new client.

46 Reading rr 6 and 21(2)(*a*) of the PCR together, all that was required was for the information to be confidential to the former client, and for such information to be held by the legal practitioner or law practice. Rules 6 and 21(2)(*a*) of the PCR served as a filter in the sense that where the information in question was *not* confidential to the client, in that it was known to the world at large and had therefore lost its quality of confidentiality, such information would not fall within r 21(2) of the PCR. As Prof Jeffrey Pinsler *SC* pointed out in *Legal Profession (Professional Conduct) Rules 2015: A Commentary* (Academy Publishing, 2016) at [21.004], "Confidential information is information which is *confidential to the client* and is acquired by the legal practitioner … in the course of the legal practitioner's engagement" (emphasis added).

47 **Nothing** is said in rr 6 and 21(2)(*a*) of the PCR about the state of the *current/new* client's knowledge. For the Respondent's approach to the First and Alternative First Charges to be at all tenable, a carve-out pertaining to the state of the current/new client's knowledge would have to be *read into* the statute. However, there was no basis to foist such a carve-out on the statute. This was partly because the requirements in r 21 of the PCR which are relevant to the current/new client are specifically set out in rr 21(2)(*b*) and (*c*) of the PCR in relation to whether the current/new client's interests are adverse to those of the former client, and whether the information in question is material to the representation of the current/new client. Again, it is telling that *none* of rr 21(2)(*b*) and (*c*) of the PCR ascribes any relevance to the current/new client

in determining whether the information in question is confidential for the purposes of r 21(2)(*a*).

48 The second reason as to why the Respondent's argument should not be accepted arises from the purpose of r 21 of the PCR. The Respondent asserted, at [24] of his written submissions, that "[t]he mischief that Rule 21(2) of the PCR seeks to address is to protect the lawyer's ("L") 'former client' from being prejudiced by L acting for the 'current client' against the 'former client' and using [confidential information gained by L from the 'former client'] against the 'former client'". This was then said to tie into the Respondent's argument that the "current client" already knowing the confidential information in question would obviate the need for r 21(2) of the PCR to operate. This was, with respect, an overly narrow construction of the purpose behind r 21. As was made clear by Andrew Phang Boon Leong JA (as he then was) in *Law Society of Singapore v Seah Li Ming Edwin* [2007] 3 SLR(R) 401 ("*Edwin Seah*") at [24] in relation to r 31 of the former PCR:[65]

> … The underlying rationale for such a rule is to ensure that the *trust* between lawyer and client is not compromised and that, on the contrary, the confidence of the client is in fact maintained. **There is, indeed, a larger public interest that underscores such a rule. The legitimacy of the law in general and the confidence of clients in their lawyers in particular are of fundamental importance and will be undermined if such a rule is not observed.** Indeed, the fact that a client may feel that he or she is let down or betrayed by his or her lawyer can be very damaging to the standing of the profession as a whole.
>
> [Emphasis in italics original, emphasis in bold added]

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65 ABA at Tab 10.

While r 31(4)(*b*) of the former PCR (namely the Legal Profession (Professional Conduct) Rules 1998 (Cap 161, R 1, 2010 Rev Ed)) adopts slightly different language as compared to that used in r 21(2) of the PCR, both provisions address the disclosure of confidential information in the context of a conflict. It was therefore incorrect for the Respondent to suggest that r 21(2) of the PCR operated *solely* to address the mischief the Respondent describes. There was no justification for a narrow construction of r 21. Rather, the rule operated primarily for the protection of former clients, and also for the "larger public interest" described in *Edwin Seah*.

49 In any event, a perusal of the Second Reading speech by Minister K Shanmugam in the Parliamentary Debates on the Legal Profession (Amendment) Bill 2014, which was the precursor to the PCR, was instructive. The Minister stated that the amendments introduced in the bill "seek to *maintain* high professional standards in the legal industry" (emphasis added).[66] Looking at the Legal Profession (Amendment) Bill 1996, which introduced the former PCR, Prof S Jayakumar's Second Reading Speech was similarly instructive:[67]

> … To sum up, Sir, these amendments are the result of periodic reviews of the Act. **Their main thrust is to further safeguard the public interest and raise the quality of the legal services and the standard of professional conduct of our solicitors**.
>
> […]
>
> [Emphasis added in bold]

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66 Singapore Parliamentary Debates, Second Reading Speech of K Shanmugam, 4 November 2014, Vol 92, Sitting No 17. JLC Core Bundle Tab 3.

67 Singapore Parliamentary Debates, Second Reading Speech of S Jayakumar, 10 October 1996, Vol 66, Col 636. JLC Core Bundle Tab 2.

It was clear from the Parliamentary records that a strong thread of *public* interest and protection of former clients through high professional standards ran throughout both the former and present PCR. By contrast, the Respondent's submission that the current/new client's awareness of the former client's information obviates the need for r 21(2)'s protection was without *any* support whatsoever in the Parliamentary Debates. It also ignored the need to visibly "maintain high professional standards" and safeguard the "public interest", while artificially narrowing the mischief which r 21(2) of the PCR addresses. There was no basis for such an interpretation of r 21 of the PCR.

50 Third, and perhaps even more significantly, insofar as the PCR was meant to provide guidance to lawyers considering whether or not to accept an engagement against a former client, and to shed light on what *prospective* course of action to take, the Respondent's approach would be at odds with those objectives. On the Respondent's approach, a solicitor would be entitled to make his own *assumptions* or *enquiries* as to whether a prospective client may already be aware of information which would otherwise be "confidential information" within the meaning of r 21(2)(*a*) of the PCR. This was highly problematic, because in many situations, the mere fact of the solicitor making enquiries as to the prospective client's state of knowledge might already entail some disclosure of elements or aspects of the confidential information in the first place. The Respondent's approach thus *necessarily* assumed symmetry of information – the solicitor had to *somehow* know, with some degree of certainty, that what the prospective client *already knew* matched precisely with the otherwise confidential information, such that he could act for the prospective client. This was, with respect, an absurdity. If the Respondent were correct and the state of the current/new client's knowledge were relevant in determining whether or not information was "confidential information" for the purposes of r 21(2) of the

PCR, that would place a solicitor in the invidious position of having to somehow discern the state of the prospective client's knowledge *without* disclosing what he already knew. The obvious difficulty of this, along with the two arguments raised from [45] to [49] above, militated towards a finding that the knowledge of the current/new client was irrelevant to whether or not the information was "confidential information" within the meaning of r 21(2)(*a*) of the PCR or at all.

51 We add that if ST were alive and if his relationship with JYGL had soured, ST would have been entitled to object to the Respondent acting for JYGL in a claim against ST. It would be no defence for the Respondent to say that JYGL already had the same information that had been disclosed by ST to the Respondent. Underlying r 21(2) of the PCR and also the acquisition of confidential information was the basic principle of conflict of interest. The trust and confidence which ST had reposed in the Respondent was not to be undermined.

52 For the reasons above, the Respondent's defence in relation to the First and Alternative First Charges was rejected. To the extent that the Respondent knew or had sound basis to believe that JYGL already knew about the confidential information, this might be relevant to the question of sanction.

The Second Charge

53 In comparison to the First and Alternative First Charges, the Second Charge was markedly more fact-centric. It entailed consideration of whether (a) the Respondent had failed to make a timely disclosure to the Complainant of the fact that he was acting/intended to act for JYGL, and (b) whether the Complainant was thereby misled into disclosing information which was confidential to the Estate to the Respondent. The Respondent's account of what

had transpired was that he had, through the First Disclosure of 24 July 2017, and the Second Disclosure of 23 August 2017, disclosed the fact that he was acting for JYGL to the Complainant. He also asserted that the Complainant had never provided him with any information confidential to the Estate. By contrast, the Complainant's account was that the First and Second Disclosures had not occurred, and that she had, on 15 and 28 August 2017, conveyed information confidential to the Estate to the Respondent. The information which was allegedly conveyed by the Complainant to the Respondent included, *inter alia*:

(a) At the meeting of 15 August 2017:[68]

(i) That ST had a wine collection in London valued at around GBP 100,000;

(ii) That ST had purchased a Tiffany ring;

(iii) That ST owned the Wala and Leedon Properties;

(iv) That ST had purchased artwork, paintings, jewellery, and designer goods;

(v) That ST had a watch collection; and

(vi) That ST had taken up an insurance policy worth S$3m, but that his children with Shyller Tan had not been listed as beneficiaries.[69]

(b) At the meeting of 28 August 2017:[70]

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68 11 ROP 12 and 13.

69 11 ROP 14.

70 11 ROP 15.

(i) That ST's wine collection was held with Berry Bros & Rudd, which Shyller Tan intended to contact;

(ii) Information concerning ST's watches; and

(iii) Information concerning jewellery ST had purchased.

For ease of reference, we refer to all the pieces of information set out at (a) and (b) above as the "Joey Confidential Information".

54 The Second Charge thus, in effect, turned on two alleged flows of information – whether the Joey Confidential Information had flowed from the Complainant to the Respondent, and whether the Respondent had communicated the fact of his acting for JYGL to the Complainant. There were no written records expressly stating or even making reference to the information flows.

55 Given the centrality of the parties' testimony to the findings on the second charge, it was apropos to bear in mind the high threshold for appellate intervention in the contexts such as the present. As a five-Judge *coram* of this Court had observed in *Gobi a/l Avedian v Public Prosecutor* [2021] 1 SLR 180 at [33]:

> … It is well established that although an appellate court will be slow to overturn findings of fact that hinge upon the trial judge's assessment of the witness' credibility and demeanour, appellate intervention may be justified if the trial judge's findings are found to be "**plainly wrong or against the weight of [the] evidence".**
>
> [Emphasis added]

This observation echoed that made by Tay Yong Kwang J (as he then was) in *Fernandez Joseph Ferdinent v Public Prosecutor* [2007] 3 SLR(R) 65 at [20] that:

> The law is clear on the approach that an appellate court should adopt when dealing with the credibility of witnesses. As held in *Moganaruban s/o Subramaniam v PP* [2005] 4 SLR(R) 121, where the trial court has had the benefit of hearing the evidence of the witnesses and observing their demeanour, an appellate court must defer to the findings of fact based on the assessment of the witnesses unless such findings are clearly wrong or wholly against the weight of the evidence. **Should the appellate court wish to reverse the trial judge's decision, it must not merely entertain doubts as to whether the decision is right but must be convinced that it is wrong.**
>
> [Emphasis added]

While the Court of Three Judges does not, *sensu stricto*, operate in an appellate capacity in cases like the present, due weight should nonetheless be given to the DT's findings of fact, which were made with the benefit of hearing the evidence of the witnesses and assessing their credibility. The DT's factual findings should not be lightly overturned.

The Alleged Disclosures

56 On an assessment of the evidence available, there did not appear to be any basis for suggesting that the First Disclosure had in fact taken place. There were reasons for this which were specific to the First Disclosure, and *further* reasons considered below from [67] to [73] which applied to cast doubt on the Second Disclosure or *both* the First *and* Second Disclosure. Collectively, the weight of the evidence was that the alleged disclosures had not been made.

57 The first point indicating that the First Disclosure had not in fact taken place was the clear and unequivocal evidence of both Shyller Tan *and* ACBP to

the contrary. Shyller Tan's AEIC at [19] categorically stated that "[t]he Respondent never informed me that if there were proceedings between the Estate and JYGL on [the Alphard and Loans], he would be acting for JYGL." Similarly, and significantly, ACBP's evidence echoed this:[71]

> Applicant's Counsel: Okay. Do you recall any specific discussion … on Ms Joan Yeo at this meeting?
>
> ACBP: No, there was absolutely no mention about Joan Yeo at this meeting.
>
> Applicant's Counsel: Right. So can I take it then that Mr Mahtani did not mention at this meeting that he would be acting for Ms Joan Yeo in any dispute with the estate of Mr Tuppani?
>
> ACBP: Certainly not, Sir.

ACBP's evidence in this regard was significant insofar as he, unlike the personally-involved Complainant and Respondent, did not appear to have any incentive to distort the truth one way or another in this case.

58 The second reason for disbelieving the Respondent's version of events concerning the First Disclosure stemmed from the fact that the Respondent's *own* attendance note for the 24 July 2017 meeting made no mention *whatsoever* about the alleged disclosure which had taken place. The Respondent's attendance note stated as follows:[72]

> 24/7/17
>
> MEETING – ANDY / SHYLLER - OFFICE
>
> -WILL - SPENCER? NOT WITH US / DIDN'T PREPARE
>
> - JOAN – WATCHES/ASSETS – PASSED AWAY
>
> EXPENSIVE WATCHES

---

71 13 ROP 104, Lines 6 to 12.

72 5 ROP 194.

- NO KNOWLEDGE BUT WILL ASK

- BUT SHE SAID SPENCER OWED MONEY TO HER

- ALSO HER FAMILY CAR ALPHARD – HERS AS PAID BY HER (SPENCER NAME)

REQUEST FOR MEETING WITH JOAN – WILL CHECK & REVERT

- LOR MAMBONG – JASON / LAWRENCE SHARE REQUEST FOR MEETING – WILL ARRANGE AS THEY HAVE BEEN ASKING ALSO

This provided a *further* basis to disbelieve the Respondent's allegations concerning the First Disclosure.

59 In addition, the Respondent's representations to Shyller Tan were at odds with his having disclosed that he was otherwise acting for JYGL. Even setting aside Shyller Tan's claim that the Respondent had answered "yah yah sure Shyller" when she had asked him orally on 15 August 2017 to act for him, there was a clear representation from the Respondent on 19 August 2017, "Dfntly can" in relation to her follow-up on WhatsApp that day (see [16] above). The absolute and unqualified nature of the Respondent's reply here was remarkable. Given that the Respondent had specifically already agreed to act for JYGL in her claims against the Estate, his representation that he *definitely could* help Shyller Tan with the Estate was egregious.

60 As against the reasons undermining the alleged First Disclosure set out above, the Respondent made a number of arguments in support of his position. First, the Respondent highlighted how the Complainant's account (which was corroborated by ACBP) of there having been one meeting on 24 July 2017

including JEKY and LLSH at the LegalStandard office was contradicted by JEKY and LLSH, who claimed that they did not attend the meeting at LegalStandard's office, but only the subsequent meeting at the ground floor of 1 Raffles Place.[73] The Respondent thus claimed that the Complainant's account must be either faulty, or knowingly dishonest.[74] Second, the Respondent argued that he *had* in fact raised the First Disclosure in the very first response he gave to the LSS – in his letter of 12 July 2019 (see [72(a)] below). Third, the Respondent asserted that it was not his "style" to include facts like the First Disclosure in his attendance notes.[75] None of these arguments was at all convincing, and there was no basis to disturb the DT's findings in this regard:

(a) First, the precise location of exactly *where* the First Disclosure had allegedly been made – whether at LegalStandard's office, or downstairs from LegalStandard's office – was of only tangential relevance. Even assuming that the Complainant had erred in identifying the location of the meeting, that did not necessarily impugn her account of whether the First Disclosure had in fact been made.

(b) Second, as we have explained, the Respondent had not mentioned that the First Disclosure had been made by him in his letter of 12 July 2019. Even later, when asked about what was discussed at the meetings, he did not raise the First or Second Disclosures. The Respondent sought to argue, in his written submissions, that he had "referenced Paragraph 10 of his initial response [of 12 July 2019]", and that his answers in his letter of 25 October 2019 were merely

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73 See, for example, 11 ROP 390 to 391, at [4].

74 RWS at [99].

75 13 ROP 205, at Lines 26 and 27.

"supplementary".[76] This attempt to explain away his omission was, with respect, disingenuous. As was evident, there was *nothing* which suggested that the material in the 25 October 2019 letter merely supplemented what had been stated in the letter of 12 July 2019. The 25 October 2019 letter had been precipitated by the LSS' email of 10 October 2019. That email had asked, *directly*, what was discussed at the meetings in question. The Respondent's answer in his 25 October 2019 went over and repeated several details *already covered* in his letter of 12 July 2019, and any suggestion that the later letter was merely supplementary was untenable.

(c) Third, and quite simply, the Respondent's explanation for why he did not record the First Disclosure in his attendance note of 24 July 2017 was contrived. The only explanation provided was that making such a record was not his "style", though the Respondent was forced to concede that the disclosure was in fact an important thing to record down:[77]

> Q: Would you have considered that disclosure to be an important thing to record down?
>
> A: Yah.
>
> Q: Did you consider that to be an important fact, if you like, you can call it that right now, to record in an attendance note? Wasn't it an important thing to record down?
>
> A: Yah, but I won't write – I specifically told – I told them that I'm acting for Joan Yeo. I mean, Sir, I won't – I won't – it's not – it's not in my style.

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76 RWS at [105].

77 13 ROP 205

61 Accordingly, there was sound basis for the DT's conclusion that the First Disclosure did not in fact take place. This basis was buttressed by the reasons outlined from [67] to [73] below, which applied to cast doubt on *both* the First *and* Second Disclosures.

62 We now consider the evidence which pertains to the Second Disclosure or both the First and Second Disclosures. There was a paucity of direct evidence beyond the testimony of the Complainant and Respondent, as well as a vague and oblique reference, allegedly to disclosure, in the Respondent's attendance note dated 24 August 2017.[78] The limitations with the evidence were exacerbated by the fact that a substantial portion of the Respondent's Written Submissions dealt with the date of the alleged Second Disclosure, and in particular showing that there must have been a meeting on 23 August 2017, where the Second Disclosure was allegedly made. Ultimately, however, the existence of a meeting on 23 August 2017 was not decisive – what mattered was whether *disclosure* had been made then. We consider the factors the Respondent relied upon in showing that disclosure was made, before outlining the evidence against there having been such disclosure.

63 First, as we have set out at [17] above, we accept that there had been a meeting between the Respondent and Complainant on 23 August 2017.[79]

64 The fact that there was a meeting on 23 August 2017 notwithstanding, it was Shyller Tan's unequivocal evidence that the Respondent did *not* disclose that he was acting for JYGL. Shyller Tan's evidence in this regard was that:[80]

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78 5 ROP 196.

79 RWS from [112] to [117].

80 11 ROP 15, at [30].

> I understand … that the Respondent's recollection is that there were meetings on 15 August 2017 and 24 August 2017 at LegalStandard. However, I do not recall any other meeting on 15 August 2017 except for my meeting with the Respondent at Providore after I met with Joey. I also do not recall meeting the Respondent at all on 24 August 2017. In the afternoon of 24 August 2017, I recall having to attend court for my father's criminal proceedings. Even if there had been a meeting with the Respondent on 24 August 2017 which I cannot recall, the Respondent certainly *did not* inform me that "*if there were proceedings between the Estate and JYGL…, he would be acting for JYGL*".
>
> [Emphasis original]

As was apparent from the above, Shyller Tan's evidence did not make reference to any meeting on the 23rd, though in fairness the meeting on 23 August 2017 appeared to have been predominantly with the tenant of the Wala Property, whom Shyller Tan was in discussions with concerning the lease.[81] This would appear to cast doubt on the accuracy – or at least completeness – of Shyller Tan's account. However, the fact that Shyller Tan's account did not mention the meeting on 23 August 2017 did not preclude the veracity of her statement that the Respondent did not disclose the fact of his acting for JYGL to her. She may have simply forgotten the 23 August 2017 meeting, or characterised that meeting as being mainly with the tenant of the Wala Property in relation to the said property, rather than with the Respondent *per se*.

65 A further ground upon which the Respondent argued that the Second Disclosure was made relied on an attendance note produced by the Respondent and dated 24 August 2017. The said attendance note reads as follows:[82]

> Shyller – office

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81 3 ROP 304 to 305.

82 5 ROP 196.

> Estate ? cldnt as Joan asked me.
>
> If settle with her – ok?
>
> - Request for meet[in]g
>
> […]

The attendance note went on to refer to the Wala Property. The individuals referred to in the note were "Tenant Stanley" (the tenant of the Wala Property), "Jason" (JEKY), "Lawrence" (LLSH), and "Shyller". The Respondent sought to rely on the reference to "cldnt as Joan asked me" as being evidence of his having disclosed that he had agreed to act for Joan. This connection was somewhat tenuous – it was not at all clear what the Respondent could not do, nor was it apparent what Joan had asked him for. Similarly, the reference to "Estate?" did not shed any light on the precise context. The Respondent's claim that he had disclosed that he would act for JYGL also did not sit easily with the rest of the attendance note, that "if settle with her – ok?". It was not clear what was to be settled, nor is the reference to permission ("ok?") readily comprehensible in the context the Respondent purports. There was thus sound basis for the DT to find that the attendance note dated 24 August 2017, which even on the Respondent's own case was erroneous as to the date, was at best equivocal and unclear. It did not evidence the alleged Second Disclosure.

66 The Respondent attempted, at [121] of his written submissions, to persuade the Court that the Complainant's evidence was unreliable as she had allegedly said that there had been "no meeting" between her and the Respondent

on 23 August 2017.[83] This claim was inaccurate. The Complainant's evidence had been as follows:[84]

> Q: … So having looked at these WhatsApp, do you still take the position that there was no such meeting?
>
> **A: I cannot recall there is any meeting on the 24th---**
>
> Q: Yes.
>
> A:---which we supposed to arrange on the 24th but he did not turn up.
>
> Q: Sorry, could you say that again---
>
> A: No---
>
> Q: ---plea---
>
> **A: No meeting on the 24th.**
>
> Q: Yes, and it was either 23rd or 24th according to the---
>
> A: Twen---
>
> Q: ---according to the---to the WhatsApp messages and the--- Mr Mahtani's recollection is that it's the 23rd. However, his short attendance note for this meeting has put 24th. I think the attendance note is exhibited somewhere.
>
> (Conferring)
>
> Q: Can you look at volume 4 again …
>
> […]

83 RWS at [121].

84 13 ROP 81 and 82.

> **Q: … So if it is on the 23rd of August, would you accept that you had a meeting with Mr Mahtani on that day?**
>
> **A: I---I cannot recall.**
>
> Q: You cannot recall? Alright. But as far as that meeting goes, Mr Mahtani's position is that there was such a meeting. And, you--- "She mentioned to me as to whether I could help with the estate." And his reply to her was---and Mr Mahtani's goes on to say: "I informed her that I could help the estate in any manner I could but insofar as Joan's issues against the estates were concerned, my firm was already representing Joan …" Now, I put it to you that this is what you were told by Mr Mahtani at that meeting.
>
> A: I disagree.
>
> Q: Yes.
>
> A: There's---there's no---
>
> Q: And
>
> A:---meeting.
>
> [Emphasis added]

Thus, when seen in context, it was clear that Shyller Tan's frankly unclear expression reflected two positions – she "[could not] recall" a meeting on 23 August 2017, and there was "no meeting" on 24 August 2017. The Respondent's attempt to read the words at the tail-end of the extract as indicating that Shyller Tan denied the existence of a meeting on 23 August 2017 altogether was unconvincing.

67 We turn to the evidence militating against both the First and Second Disclosures. First, the WhatsApp messages exchanged between ACBP and the Respondent on 24 August 2017 (see above at [18]), where ACBP indicated that he "may have some work" for the Respondent, were at odds with the notion that

the Respondent had already disclosed that he was acting for JYGL.[85] If the Respondent *had* in fact disclosed that he was acting for JYGL to Shyller Tan at their 23 August 2017 meeting, and assuming that Shyller had not informed ACBP of it, the Respondent would have informed ACBP of his acting for JYGL in their call on 24 August 2017. Likewise, if the First Disclosure had been made, the Respondent would have reminded ACBP of it. Yet, the WhatsApp exchange between ACBP and the Respondent on 24 August 2017 revealed no such disclosure. Significantly, it would have been very odd for ACBP to be seeking to give the Respondent work – particularly work on a matter potentially adverse to JYGL's interests – if he knew that the Respondent was in fact acting for JYGL.

68 Second, the letter sent by ACBP's firm, MKP, to the Respondent's firm (see [19] above) was also telling. The salient portions of the letter were as follows:[86]

> 3. We are instructed that the deceased had previously retained your firm in connection with his personal matters. In this regard, we have instructions to seek from you information and documents relevant to the assets of the deceased.
>
> 4. In this regard, **our clients will formally retain your firm**. We are obliged if you can let us have an indication of the estimated cost of the retrieval of the information and documents.
>
> […]
>
> [Emphasis added]

This letter militated against the existence of the First or Second Disclosures. As the DT rightly pointed out, there was no convincing explanation as to why the

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85 5 ROP 201.

86 12 ROP 5 to 6.

Complainant (and ACBP) would want to "formally retain" the Respondent's firm, even if just for the limited purpose of seeking "information and documents relevant to the assets of the deceased", if the Respondent had disclosed that he was acting for JYGL.[87] This was all the more so for two reasons – First, as the Respondent admitted while under cross-examination, there was antipathy and no love lost between the Complainant and JYGL.[88] Second, and significantly, the "information and documents relevant to the assets of the deceased" the Complainant wanted the Respondent to look into would no doubt have included assets held by JYGL, and it was unthinkable that the Complainant would instruct the Respondent, if she knew he was acting for JYGL, to look into matters that were pertinent to the *very dispute she was engaged in with JYGL*. Put another way, ACBP would have in effect been asking the Respondent to place himself in a position of conflict (*vis-à-vis JYGL*) had he (ACBP) asked the Respondent to look into "information and documents relevant to the assets of the deceased" while aware that the Respondent was acting for JYGL. This letter, the veracity of which the Respondent does not challenge, was simply incongruous with the alleged Second Disclosure – and was in fact at tension with there having been *any* alleged disclosure at all.

69 Third, the messages sent by the Complainant to ACBP on 14 October 2017 (see above at [20(b)]) following her meeting with the Respondent on 13 October 2017 were significant. In particular, the Complainant's messages showed that she did not appear to have had any indication from the Respondent, even by the meeting on 13 October 2017, that the Respondent was acting for JYGL. The Complainant's near-contemporaneous record of the meeting on

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87 Report at [50].

88 13 ROP 192 and 193.

13 October 2017 recorded the Respondent telling the Complainant that she might wish to reconsider legal proceedings against JYGL as JYGL was rich and could afford fees. The Complainant indicated that she was surprised by what the Respondent was saying at the meeting on 13 October 2017, and her surprise was evidenced by her recounting what had been discussed at that meeting to ACBP the next day, on 14 October 2017. Had the Complainant *already* been informed by the Respondent that he was acting for JYGL, there would have been no reason for such surprise, nor would there have been any need for the Complainant to specifically outline what had transpired at the 13 October 2017 meeting to ACBP.

70 Fourth, the Respondent's own account was that he was behaving as a "friendly intermediary" – but this position was at odds with his having told the Complainant that he would be, in effect, acting against her (in her capacity as co-administratrix of the Estate) for JYGL. We have referred to the interaction between the Respondent on the one hand, and the Complainant and/or ACBP on the other hand, up to 13 October 2017. Thereafter, such interaction ceased abruptly. On 3 November 2017, ACBP's firm sent a letter of demand to JYGL. A marked change in the interaction between the Respondent and Complainant arose following the Respondent's holding letter of 24 November 2017, which was when the Respondent first revealed, categorically, that he was acting for JYGL. It was telling that after that date, there was no evidence *whatsoever* of messages seeking his assistance or appointing him to act for the Estate. Insofar as the Respondent referred to an email dated 2 January 2018 from the Complainant to suggest that the Complainant was still communicating with his firm, this appeared to be a perfunctory message from the Complainant addressed to a conveyancer (and only copying the Respondent) at the Respondent's firm.

It was different from the previous kind of enquiry seeking the Respondent's assistance for information about the Estate's assets.

71 Fifth, and significantly, there would have been no justification for ACBP's firm to send the letter of demand dated 3 November 2017 *directly* to JYGL if the Respondent had disclosed that he was acting for JYGL.[89] As was ACBP's unchallenged evidence, he would have written to the Respondent directly had he known that the Respondent was acting for JYGL. Two points in particular bore note – (a) ACBP writing to an individual he *knew* was represented by a lawyer directly would have potentially placed ACBP in breach of r 7(3) of the PCR; and (b) the Respondent's attempt to suggest that *he* had been the one to suggest to ACBP that ACBP write to JYGL directly was unbelievable.[90] The Respondent made no reference *whatsoever* in his AEIC to allegedly having suggested that ACBP write to JYGL directly. Had the Respondent given ACBP some indication that he (the Respondent) was acting for JYGL, there would have been no reason for ACBP to write to JYGL directly instead of the Respondent. The obvious inference that followed (particularly since the Respondent's case was *not* that ACBP had erred or misdirected his letter) is that the Respondent had failed to disclose that he was acting for JYGL. This conclusion is buttressed further by the WhatsApp messages exchanged between ACBP and the Respondent set out above at [21], where ACBP clearly indicated that he would be sending a legal letter to JYGL (and not to the Respondent), but the Respondent *still* gave no indication that *he* was already acting for JYGL.

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89 2 ROP 15.

90 13 ROP 116, Transcript of 3 September 2020, Page 111, Lines 2 to 10.

72 Furthermore, the Respondent provided strikingly inconsistent accounts of the First and Second Disclosures. Chronologically, the Respondent's varying accounts of the disclosures were as follows:

(a) In the Respondent's letter to the LSS dated 12 July 2019 in response to the LSS' letter indicating that it had appointed a Review Committee to investigate Shyller Tan's complaint, the Respondent stated as follows at [9] and [10]:[91]

> 9 … Needless to say, I was surprised as the Complainant and the Estate's lawyers had known from as early as July 2017 (prior to the litigation) that a claim was about to be made by JY[GL] in Court, using LegalStandard as her solicitors. In fact, prior to the filing of the Writ, our 2 firms had been corresponding with regards to trying to find an amicable solution.
>
> 10 The Complainant and her lawyer were therefore aware that Legal Standard was acting for JY[GL] from as early as July 2017, when they attended at our office on 24 July 2017, when this matter was discussed. Between 24 July 2017 and 24th November 2017 (ref: paragraph 13 of the Complaint), the Complainant and her lawyer (Mr Andy Chiok) were in communication with me (over the telephone and by way of whatsapp messages), and I was also requested to seek a possible settlement, which unfortunately, never came about. There is hence no basis for the Complainant to now state that she was surprised that the firm was representing JY[GL] in respect of her claims against the Estate. In fact, by her own solicitors' letter as early as 29 November 2017 to us, the firm was requested to revert with Ms Joan Yeo's instructions …

Although the Respondent relied on this letter to show that he had made the First Disclosure, it is pertinent to note that the letter did not in fact say that he was the one who had disclosed to the Complainant and ACBP

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91 3 ROP 8 and 9.

that LegalStandard was acting for JYGL. Neither did it mention the Second Disclosure.

(b) The LSS responded to the Respondent with an email of 10 October 2019. The email of 10 October 2019 read as follows:[92]

> […]
>
> The Committee would also like you to prepare submissions relating to the following issues and submit it to us by 14 October 2019:
>
> **Issues**
>
> 1. What is the context of the meetings between the Complainant and you between July 2017 and November 2017?
>
> 2. **What was discussed at these meetings?** In particular what are the confidential information which the Complainant shared with the [*sic*] you?
>
> […]
>
> [Emphasis added]

Notwithstanding having been asked *directly* what had been discussed at the meetings between July 2017 and November 2017, the Respondent's reply of 25 October 2019 to the LSS' 10 October 2019 email made **no mention whatsoever** of there having been any disclosure of his acting for JYGL. Instead, the *entirety* of the Respondent's response concerning the 24 July 2017 meeting was:[93]

> The first official meeting took place on 24 July 2017 at my office and this was initiated by Mr Andy Chiok, who was the Complainant's then divorce lawyer, and who was representing her (he is now acting for the Estate). The Complainant attended this meeting with him. Mr Andy Chiok sought confirmation that Spencer had not

92 3 ROP 181.

93 3 ROP 182 and 183

> made a will. I informed him that to my knowledge, he did not. He also asked if I was aware whether [JYGL] was in possession of any watches or other assets belonging to Spencer. I conveyed to both of them that I had no knowledge of any but that JY[GL] had informed me that Spencer had borrowed substantial sums from her and she wished to recover those monies. Further, I relayed to them that according to JY, the Alphard car she was driving, although in Spencer's name, had been paid for by her. As I recall, Andy Chiok enquired if I could arrange a meeting between JY[GL] and them. I believe that they wished to meet with JY[GL] so as to learn of whether she knew of Spencer's assets and also other personal matters.

Given the detail with which the Respondent set out the events at the meeting of 24 July 2017, his complete omission to make even the *slightest* reference to the First or Second Disclosures was, at the very least, *puzzling*.

(c) On 12 June 2020, the Respondent filed his Defence, which referred to the First Disclosure, as well as to the Second Disclosure. However, remarkably, there was no reference to the First and Second Disclosures *at all* in the Respondent's own AEIC, which was dated 5 August 2020.[94]

(d) This striking omission was rowed-back on at the Respondent's oral examination-in-chief. Recognising the omission of *any* reference to the First Disclosure in his AEIC, the Respondent *added to* his AEIC orally, requesting that his testimony at [53] of his AEIC be amended to add a line that "In the event of any proceedings between [JYGL] and the Estate, I will be representing [JYGL]".[95] This statement was said to have

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94 10 ROP 37 and 38.

95 13 ROP 149 and 150.

been made "to the complainant, Shyller Tan, in the presence of Mr Andy Chiok".[96] The Respondent's explanation for this *ex post facto* addition to his AEIC was, as was elicited under cross-examination, that the omission was "inadvertent" and due to the fact that "[t]he affidavit was actually drafted by … Mr Devadason", another lawyer at the Respondent's firm.[97]

The striking vacillation in the Respondent's accounts provided a yet further reason for the DT's rejection of the Respondent's account.

73 In sum, there did not appear to be a sound basis on which to challenge the DT's findings of fact. On the contrary, the DT was entitled to find that there had not been disclosure, and that this was so beyond a reasonable doubt. The DT had considered the full range of arguments placed before it and had meticulously gone through the various pieces of evidence available. The evidence, circumstantial as much of it was, strongly indicated that none of the alleged disclosures was in fact made.

Conveying of Confidential Information

74 Having accepted the DT's finding that the Respondent had "made up" the First and Second Disclosures,[98] the remaining element of the Second Charge was that the Complainant had been misled into disclosing information confidential to the Estate to the Respondent as a result of the Respondent's non-disclosure. The Respondent's defence in this regard centred on a claim that the

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96 13 ROP 150, Lines 14 to 15.

97 13 ROP 202 and 203; Transcript of 4 September 2020, Page 68 Line 24 to Page 69 Line 8.

98 14 ROP 24.

Complainant had not in fact disclosed *any* information confidential to the Estate to him. By contrast, the Complainant averred that she had, on instances such as 15 and 28 August 2017, conveyed, *inter alia*, the Joey Confidential Information to the Respondent.[99]

75 The Respondent was correct in pointing out that the only evidence before the Court as to whether the Complainant had disclosed the Joey Confidential Information to him came from the Complainant and, to a lesser extent, ACBP.[100] In this regard, the question of whether the Joey Confidential Information was conveyed to the Respondent turned in large part on an assessment of the Complainant and Respondent's relative credibilities. Given that the DT was amply justified in finding that the Respondent had, in effect, made up his claims as to the First and Second Disclosures, his credibility as to whether the Complainant had disclosed the Joey Confidential Information was, at the very least, diminished. The Respondent claimed that there was no evidence that (i) the Complainant had received the Joey Confidential Information from Joey, (ii) the Complainant had conveyed the Joey Confidential Information to the Respondent, and (iii) the assets referred to in the Joey Confidential Information existed at all. However, the following points bore particular note:

(a) First, it was never put to the Complainant that she had not received the Joey Confidential Information from Joey at their meetings on 15 and 28 August 2017. It was also not contested that the Respondent did in fact meet the Complainant on 15 and 28 August 2017. Therefore,

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99 11 ROP 12 to 17.

100 13 ROP 107, at Lines 2 to 5.

it was not open to the Respondent to argue that Joey was not called as a witness before the DT insofar as that point had not been raised below.

(b) Second, it was logical to expect that the Complainant would tell the Respondent about the Joey Confidential Information. This would be in line with the Complainant's objectives at the time, namely the identification and ascertainment of ST's assets belonging to the Estate. Given that the Complainant had sought the Respondent's help in identifying those assets, and that the Respondent himself acknowledged that the Complainant had sought such help, it would have followed that the Complainant would have told the Respondent about information she received in relation to those assets.[101]

76 The Respondent made a number of other arguments to rebut the Complainant's account:

(a) First, the Respondent argued that his exchanges with the Complainant on WhatsApp made no reference to the Joey Confidential Information, but only other assets such as the Alphard and Wala Property.[102]

(b) Second, the Respondent pointed out that the Complainant's written response of 29 October 2019 to queries from the LSS on what confidential information she had shared with the Respondent did not refer to the Joey Confidential Information.[103]

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101 See for example, 12 ROP 5.

102 RSS at [15(b) and (c)]. See also 4 ROP 197.

103 RSS at [15(d)].

(c) Third, it was argued that the Complainant had not included the assets referred to in the Joey Confidential Information in the Schedules of Assets filed by the Complainant in relation to the Estate on 14 February 2018 and 28 August 2019.[104]

(d) Fourth, the Respondent noted that there was no evidence that any of the assets referred to in the Joey Confidential Information actually existed at the time of ST's death.[105]

77 With respect, none of these arguments was persuasive:

(a) First, the fact that the WhatsApp exchanges between the Complainant and Respondent did not specifically refer to the assets referenced in the Joey Confidential Information was neither here nor there. After all, the Complainant did not appear to have had much success in tracking down ST's wine collection, artwork, watch collection, and purchased jewellery. It would be unsurprising that, in the absence of any updates in relation to those assets, there was little exchanged about them over WhatsApp.

(b) Second, the Respondent's attempt to rely on the Complainant's email to the LSS dated 29 October 2019 was again unpersuasive. While the Complainant's email did not specifically name and enumerate assets such as the "wine collection", "watch collection", or "jewellery", the

104 RSS at [15(e)].

105 RSS at [16].

Complainant did refer to ST's "assets" generally. Her answer in this regard was instructive:[106]

> […]
>
> **2. What was discussed at these meetings? In particular what are the confidential information which you shared with the Respondent?**
>
> The matters discussed at the meetings were:
>
> (1) Tuppani's estate – the matters of his assets, including bank accounts, GKE shares and the property at Jalan Mambong (the purchase of which I did not know), and cars that involved Tuppani.
>
> (2) His history and relationship with his mistress Joan Yeo.
>
> (3) Any possible defence or assistance for my father's case.
>
> […]
>
> [Emphasis original]

While the Complainant did not spell out what the assets referred to were, she did refer broadly to "Tuppani's estate – and the matters of his assets …" being discussed at the meetings. Moreover, and even assuming that the Complainant's omission to spell out what the assets referred to suggests that information about those assets was not conveyed, the Complainant did make express reference in her email to certain significant assets referenced in the Joey Confidential Information:[107]

> In particular, Mahtani knew about
>
> (1) details of the purchase of the Jalan Mambong property …
>
> (2) the transactions involving GKE shares, how it was structured etc,

106 4 ROP 165 and 166

107 4 ROP 166.

> (3) the fact that Tuppani was supposed to take out **insurance policies for our children** ($1 million each) when we were talking about divorce,
>
> (4) **purchases and accumulation of assets by Tuppani** …
>
> [Emphasis added]

Clearly, even taking the Respondent's case here at its highest, at least ST's insurance policy (see [53(a)(vi)] above) was specifically referred to in the Complainant's 29 October 2019 email. Even the purchases and accumulation of assets by ST was also referred to, even if not itemised.

(c) Fourth, the fact that the specific assets referred to in the Joey Confidential Information were not included in the Schedules of Assets filed for the Estate was hardly surprising. After all, insofar as some of the assets referred to in the Joey Confidential Information were not in fact recovered or ascertained, it would be premature to include them in the Schedules of Assets. Even the Respondent's Counsel accepted that this was a reason for why items might be omitted from the Schedules of Assets ("And I presume that's because [the asset] was never found.")[108]

78 Tying the above points together, the Respondent's argument in relation to the conveyance of the Joey Confidential Information centred primarily on pointing out that the Complainant had, in various documents and correspondence, not precisely and specifically outlined the assets referred to. This could not be said to be decisive. Broad references to the "assets" ST had accumulated did not preclude the specific items making up those assets. By contrast, the Complainant's account to the DT clearly outlined her conveying

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[108] 13 ROP 49 at Line 12.

the Joey Confidential Information to the Respondent. This cohered with her objectives at the time and was consistent even with the Respondent's own case. The DT thus did not err in finding that the Joey Confidential Information – and in particular information pertaining to ST's insurance policy (see above at [53(a)(vi)]) – had been conveyed by the Complainant to the Respondent as a result of her having been misled by his failure to disclose his retainer for JYGL. There was no basis to disturb the DT's findings in this regard.

79 Before we move away from the issue of whether the charges are made out, it may be appropriate to provide clarification on two matters:

(a) First, the parties joined issue over the question of the burden of proof in this case, particularly in relation to the First and Second Disclosures. The DT also made a number of observations on the burden of proof at [69] of the Report. It may thus be useful to restate the law on this point at this juncture: As the LSS rightly acknowledged, it bears the burden of proof to prove the elements of the charges beyond a reasonable doubt (*Law Society of Singapore v Ahmad Khalis bin Abdul Ghani* [2006] 4 SLR(R) 308 at [6]). This refers to what has been described as the "legal burden", which remains on the LSS throughout. However, where the LSS has discharged a *prima facie* case that the Respondent had failed to make any disclosures to the Complainant, the "evidential burden" then shifts onto the Respondent to show otherwise. Where the Respondent makes specific claims that he had carried out the First Disclosure and the Second Disclosure, it is *he* who bears the evidential burden of showing that those instances of disclosure did in fact take place. After all, to hold otherwise would risk requiring the LSS to prove a negative. This approach is entirely in line with existing

authority distinguishing between legal and evidential burdens: see *inter alia*, *Public Prosecutor v GCK and another matter* [2020] 1 SLR 486 at [132], and *Beh Chew Boo v Public Prosecutor* [2020] 2 SLR 1375 at [63].

(b) Second, the Respondent sought to mount an attack on the *entirety* of the case of the LSS by relying on the fact that the Complainant had not raised any issue about his alleged conflict all throughout 2018, and had only complained to the LSS in 2019, following the commencement of Suit 217. This was not, however, decisive. Rather, the Complainant's delay was merely one of several factors to be considered in ascertaining the weight to be placed on the parties' evidence, and there did not appear to be any basis for disturbing the DT's acceptance of the reasons Shyller Tan had provided for not having made any complaint in 2018 (as set out at [24] above).

Ultimately, the DT had carefully considered the evidence placed before it and could not be faulted for having drawn together the entirety of the evidence in making its conclusions. While one or two discrepancies might have been explicable by the Respondent, the overwhelming weight of the evidence was against his account.

The Appropriate Sanction

80 Given the conclusions on the charges as outlined above, we turn to the appropriate sanction. All three charges pertained to a conflict of interest. While the First and First Alternative Charges did not expressly make reference to "conflict of interest" like the Second Charge did, the First Charge expressly asserted a breach of r 21 of the PCR, which pertains to conflict or potential

conflict between the interests of a current and former client. The First Alternative Charge also made similar reference to the Respondent's "former engagement as ST's lawyer", placing the issue of conflict front and centre in this case. In *Latimer* at [49], the Court of Three Judges specifically observed that:

> In our judgment, in all disciplinary proceedings involving a conflict of interest, the sanction to be imposed should reflect both the culpability of the errant solicitor and the harm caused by his misconduct. As we observed in *Law Society of Singapore v Uthayasurian Sidambaram* [2009] 4 SLR(R) 674 (at [74]–[75]), the appropriate sanction varies depending on the factual matrix of the case; all things considered,
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> > … the sanction must be *commensurate* with the degree of culpability of the solicitor, the breaches committed and the extent and effect to which public confidence in the administration of justice has been shaken (and consequently, must be restored through punishing the errant ways of the solicitor) … [emphasis in original]

The Court went on to outline three broad categories of conflict of interests (at [58]):

(a) Where the errant solicitor had preferred his own interests over those of a client ("Category 1");

(b) Where the errant solicitor preferred the interests of one client over the other ("Category 2A"); and

(c) Where the errant solicitor failed to advise a client of a potential conflict of interest arising out of concurrent representation ("Category 2B").

Category 1 cases of conflict were said at [60] to be "presumptively more serious and deserving of more severe sanction". As between Category 2A and 2B,

misconduct belonging in the former category was said at [70] to "typically attract a higher sanction than misconduct in the latter category", primarily on the basis that the latter category gave rise to a *potential* conflict, but the interests of either client would not *in fact* have been subordinated to those of the other.

81 On the instant facts, the LSS sought the imposition of a sentence of 12 months' suspension. It argued that the instant facts fell only within Category 2B, acknowledging that the DT had not found any actual harm to have materialised to the interests of the Estate or the Complainant. Given the generally heightened seriousness of Category 2A instances of conflict as compared to those falling within Category 2B, the LSS suggested that a sentence of 12 months' suspension was appropriate. The Respondent made no written submissions on sentence, though his counsel submitted at the oral hearing before us that a fine would be appropriate if the charges were found to be made out.

82 With respect to the position advanced by the LSS, we were unable to agree that this case fell only within Category 2B. Were the First Charge the only charge before us, the Respondent's breach might arguably be construed as being less serious, particularly given the actual state of JYGL's knowledge. However, the facts relating to the Second Charge were certainly egregious and brought the present case into Category 2A, with an overall sentence of 24 months' suspension condign on the instant facts given the following aggravating factors which are material for the assessment of culpability:

(a) First, the Respondent was a solicitor of 27 years' standing, and the Court had held in *Latimer* at [54] that a solicitor's abundant experience might increase his culpability to the extent that it reveals an

inexcusable lack of competence in failing to take necessary steps to address a conflict of interest.

(b) Second, it was well within the Respondent's ability to avoid placing himself in a position of conflict, particularly by making full and frank disclosure. There was no defensible justification for why the Respondent might have decided to not disclose his dealings with JYGL if he was intent on acting for her. The Respondent also had, at all times, direct control over the circumstances giving rise to the misconduct, as it was within his power to disclose his acting for JYGL: *Latimer* at [51(d)]. Moreover, the misconduct appeared to have been sustained over a period of time and did not appear to be a one-off or spontaneous instance of non-disclosure: *Latimer* at [51(b)].

(c) Third, not only did the Respondent fail to ensure that the Complainant was not labouring under the misapprehension that he was willing and able to act for the Estate, he made *positive* representations ("dfntly can", "yah yah sure Shyller") suggesting that he would in fact act for the Estate. This was all the more egregious having regard to the particular characteristics of the Complainant – who clearly reposed a great degree of trust and confidence in the Respondent as a solicitor who could help her following the killing of her husband, her father's arrest, and the threat of legal action from JYGL.[109]

(d) Fourth, on 13 October 2017, the Respondent had sought to persuade the Complainant to settle or compromise in relation to JYGL's claims. This was specifically evidenced by the Complainant's messages

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109 *Latimer* at [52].

to ACBP on 14 October 2017, where she recounted the Respondent having questioned the wisdom of contesting JYGL's claims, warning that JYGL was rich and could afford fees, and that resisting her claims would be a "waste" of money.[110]

(e) Fifth, and perhaps most concerningly, the manner in which the Respondent carried out his defence – by essentially fabricating the First and Second Disclosures – was particularly worthy of condemnation. While individuals should be fully entitled to mount their defence, or put the prosecuting authority to strict proof, that does not extend to wilfully falsifying material before the Court or tribunal. That the Respondent did so in relation to the alleged First and Second Disclosures, notwithstanding his position as an advocate and solicitor of the Supreme Court of Singapore, is regrettable. This cavalier relationship with the truth was not only aggravating (*Latimer* at [51(e)]), it arguably was *itself* illustrative of the Respondent's suspect professional integrity.

83 As pointed out in *Edwin Seah*, the underlying rationale for the rule proscribing conflicts is the maintenance of public confidence in lawyers. A 24-month suspension would serve that rationale.

Conclusion

84 The application was thus allowed, and an order under s 98(1) of the LPA that the Respondent be suspended from practice for 24 months made. Costs here and below in the sum of S$20,000 (all-in) were ordered in favour of the LSS.

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110 7 ROP 173.

Sundaresh Menon
Chief Justice

Steven Chong
Justice of the Court of Appeal

Woo Bih Li
Judge of the Appellate Division

Ong Min-Tse Paul (Paul Ong Chambers LLC) for the applicant;
Chelva Retnam Rajah *SC* (Tan Rajah & Cheah), Letchmanan Devadason and Ivan Lee Tze Chuen (LegalStandard LLP) for the respondent.
