IN THE COURT OF THREE JUDGES OF THE REPUBLIC OF SINGAPORE

[2022] SGHC 224

Originating Summons No 8 of 2021

Between

The Law Society of Singapore

… *Applicant*

And

Naidu Priyalatha

… *Respondent*

GROUNDS OF DECISION

[Legal Profession] — [Disciplinary proceedings]
[Legal Profession] — [Professional conduct] — [Breach]

Law Society of Singapore
v
Naidu Priyalatha

[2022] SGHC 224

Court of Three Judges — Originating Summons No 8 of 2021
Sundaresh Menon CJ, Andrew Phang Boon Leong JCA and Judith Prakash JCA
9 May 2022

16 September 2022

Judith Prakash JCA (delivering the grounds of decision of the court):

1 In the practice of law, an undertaking given by a solicitor plays the role of a cast-iron guarantee, practically a sacred vow. Once it is given, other practitioners will govern their conduct in reliance on it. Such undertakings are indispensable to the speedy and efficient transaction of legal business including the handling of litigation. Due to the respect lay persons and other lawyers accord an undertaking, its breach by the undertaking solicitor can lead to serious consequences. Breach of an undertaking is, therefore, almost invariably an act of professional misconduct. This case, unfortunately, involves one such breach.

2 This was an application by the Law Society of Singapore ("the Law Society") for an order pursuant to s 94(1) read with s 98(1) of the Legal Profession Act (Cap 161, 2009 Rev Ed) ("the LPA") that the respondent, Ms Naidu Priyalatha ("the Respondent"), be sanctioned under s 83(1) of the

LPA. The application arose from a complaint that the Respondent had breached a solicitor's undertaking she had given. The Respondent did not contest the charge preferred against her. Before the Disciplinary Tribunal ("the DT"), both the Law Society and the Respondent took the position that in this case there was no cause of sufficient gravity which required a reference to this court. Nevertheless, the DT held that the Respondent's conduct was cause of sufficient gravity for disciplinary action and the matter thus came before us.

3 At the end of the hearing, we agreed with the DT that cause of sufficient gravity existed, and that due cause for disciplinary action had been shown. We imposed a three-month suspension on the Respondent. We now set out the full reasons for our decision.

The charge

4 The charges against the Respondent, which were framed in the alternative under ss 83(2)(*b*) and 83(2)(*h*) of the LPA, read as follows:

> **Charge**
>
> That you, Naidu Priyalatha, are guilty of grossly improper conduct in the discharge of your professional duty within the meaning of section 83(2)(*b*) of the Legal Profession Act (Chapter 161) to wit, that, on 18 April 2017, despite having given your solicitor's undertaking not to release a cashier's order for the sum of $26,896.45 made in favour of Balestier Hui Kee Pte Ltd to your clients (Ng Kar Kui and Chang Lien Siang) until a comprehensive agreement had been reached between your clients, and Wong Siew Lan and Seah Sai Hong, in full and final settlement of all issues and claims between them, you in breach of your solicitor's undertaking released the said cashier's order to your clients when no such agreement had been reached between your clients, and Wong Siew Lan and Seah Sai Hong.

Alternative Charge

> That you, Naidu Priyalatha, are guilty of misconduct unbefitting an advocate and solicitor as an officer of the Supreme Court or as a member of an honourable profession within the meaning of section 83(2)(*h*) of the Legal Profession Act (Chapter 161) in that you, on 18 April 2017, despite having given your solicitor's undertaking not to release a cashier's order for the sum of $26,896.45 made in favour of Balestier Hui Kee Pte Ltd to your clients (Ng Kar Kui and Chang Lien Siang) until a comprehensive agreement had been reached between your clients, and Wong Siew Lan and Seah Sai Hong, in full and final settlement of all issues and claims between them, you in breach of your solicitor's undertaking released the said cashier's order to your clients when no such agreement had been reached between your clients, and Wong Siew Lan and Seah Sai Hong.

The facts

5 The following summary of the facts comes from the agreed statement of facts presented to the DT.

6 The Respondent was admitted to the bar on 8 October 1980. At the material time, she was the sole proprietor of the firm Messrs P. Naidu. Chang Lien Siang and Ng Kar Kui (collectively, "the Clients") instructed the Respondent to act for them in early 2017 in a dispute with their business partner, Wong Siew Lan ("the Complainant").

7 The Complainant and the Clients were the shareholders and directors of Balestier Hui Kee Pte Ltd ("the Company"), a company in the business of running a noodle stall. The Complainant, who was the cook at the noodle stall, had engaged one Seah Sai Hong ("Seah") to work as a store assistant.

8 Cash takings from the stall were initially deposited into the Company's bank account. At some point, the Complainant allegedly discovered that the Clients had issued cheques from the Company's bank account without the

Complainant's knowledge. After this discovery, the Complainant stopped depositing the stall's cash takings into the Company's bank account and put them elsewhere. The Clients were upset by this behaviour and threatened to sue the Complainant unless she returned the funds so taken.

9 On 28 February 2017, Linus Law Chambers who was then acting for the Complainant and Seah, made a settlement offer that included a term under which the cash takings from the stall for the period from 19 December 2016 to 11 February 2017, amounting to $26,896.45, would be repaid by way of a cashier's order in favour of the Company ("the Cashier's Order"). On 29 March 2017, the Respondent asked for the Cashier's Order to be given to her by 6.00pm that day, failing which legal action would be commenced by the Clients against the Complainant and Seah.

10 Linus Law Chambers then proposed that they would hand over the Cashier's Order subject to an undertaking from the Respondent not to release the Cashier's Order to the Clients until a comprehensive agreement had been reached by the parties in full and final settlement of all issues and claims between them ("the Undertaking"). The Respondent replied by letter on 30 March 2017, agreeing to the Undertaking.

11 Unfortunately, thereafter the parties were unable to settle their disputes. Accordingly, on 24 April 2017, the Clients commenced legal proceedings against the Complainant and Seah. Allen & Gledhill LLP ("A&G") entered an appearance for the Complainant and Seah. On 4 May 2017, A&G asked for the return of the Cashier's Order. On 9 May 2017, the Respondent replied to A&G, saying that the Cashier's Order had been held by her until 18 April 2017, and

had since been deposited by the Clients into the Company's bank account to pay for the Company's overheads.

12 A settlement was eventually reached between the Complainant and Seah and the Clients in April 2018.

The proceedings before the Disciplinary Tribunal

13 On 29 November 2019, the Complainant made a complaint against the Respondent for breach of the Undertaking to the Council of the Law Society of Singapore ("the Complaint"). On 26 January 2021, the DT was appointed to hear and investigate the Complaint.

14 During the proceedings before the DT, the Respondent pleaded guilty to the charge of grossly improper conduct under s 83(2)(*b*) of the LPA and admitted the agreed statement of facts. The main issue for the Tribunal was whether cause of sufficient gravity for disciplinary action existed under s 83 of the LPA.

The Law Society's position

15 The Law Society contended that, while the Respondent was wrong to have breached her undertaking, no cause of sufficient gravity for disciplinary action existed under s 83 of the LPA. This was because the Respondent had not acted dishonestly when she breached the Undertaking and had been under a lot of pressure from her clients. Instead, the Law Society argued that a sanction under s 93(1)(*b*)(i) of the LPA was called for, and that the appropriate sanction in the circumstances was a penalty of $15,000.

The Respondent's position

16 The Respondent submitted that she had only released the Cashier's Order to her clients because the Company was incurring costs that were being met by her clients' personal funds. She also alluded to the fact that the Complaint had been filed despite there having been a settlement between parties. Further, no loss was suffered by the Complainant.

17 In mitigation, the Respondent submitted that she had elected to plead guilty, and that the breach was a "bare breach" that was not deliberate. Citing the case of *The Law Society of Singapore v Chan Chun Hwee Allan* [2016] SGDT 3 ("*Allan Chan*"), she submitted that there was no cause of sufficient gravity for disciplinary action and that the appropriate sanction was either a monetary penalty or a reprimand.

The DT's findings and determination

18 The DT agreed that the Respondent had not acted dishonestly when she breached the Undertaking and had been forthright with the Complainant's solicitors when the return of the Cashier's Order was requested. The DT also agreed that the Respondent had not benefited personally as the Cashier's Order was deposited into the Company's bank account.

19 The DT did not accept, however, that the Respondent's breach of the Undertaking was not deliberate, or that it was a bare or technical breach. The DT also did not accept that the Respondent had no alternative but to give the Cashier's Order to her clients, and opined that the Respondent could have continued to hold the Cashier's Order or returned it to Linus Law Chambers. As for the Respondent's argument that her performance of the Undertaking was

rendered impossible by her client having deposited the Cashier's Order into the Company's bank account, this "impossibility" had been created by the Respondent's breach of the Undertaking.

20 In breaching the Undertaking, the Respondent had facilitated the deposit of the Cashier's Order into the Company's bank account, which was what the Complainant and Seah had objected to in the absence of a resolution to the dispute between parties. While the parties eventually reached a settlement, the DT was of the view that the eventual settlement could well have been influenced by the Respondent's breach of the Undertaking.

21 In the DT's view, the Respondent's breach of the Undertaking was deliberate, even if she did not benefit personally from the breach. And by deliberately breaching the Undertaking, the Respondent had disregarded the trust reposed in her when she gave the Undertaking.

22 In this regard, the DT held that it is the foundation of an honourable profession that a member abides by her undertaking, and a deliberate breach by a member would seriously undermine the integrity of the profession. Accordingly, the DT found that cause of sufficient gravity for disciplinary action under s 83 of the LPA existed. The Respondent was also ordered to pay costs of $6,000 (inclusive of disbursements) to the Law Society.

23 Following the DT's decision, the Law Society applied to this court for an order that the Respondent be sanctioned under s 83(1) of the LPA.

The issues before this court

24 Before this court, the Law Society continued to maintain the position it had adopted before the DT: namely, that there was *no* cause of sufficient gravity for disciplinary action and that it was for the DT to determine the appropriate order to be made under s 93(1)(*b*) of the LPA. Unsurprisingly, the Respondent wholly adopted the Law Society's submissions, and submitted that the matter should be remitted to the DT as no cause of sufficient gravity for disciplinary action existed.

25 Hence, the issues before this court were as follows:

(a) Did the DT err in finding that there was cause of sufficient gravity for disciplinary action under s 83(1) of the LPA?

(b) Had due cause for disciplinary action under s 83(2)(*b*) of the LPA been established?

(c) If so, what would be the appropriate sanction?

Was there cause of sufficient gravity for disciplinary action?

26 We now turn to address the first issue of whether the DT had erred in finding that there was cause of sufficient gravity for disciplinary action.

27 It was established in *Law Society of Singapore v Jasmine Gowrimani d/o Daniel* [2010] 3 SLR 390 ("*Jasmine Gowrimani*") at [37], that the DT's function was to:

> … act as a "*filter*" in order to determine whether or not there was a case of "sufficient gravity" that *could*, on a finding by the court of three Judges, be ascertained (based *not only* on the case falling within one or more of the limbs of s 83(2) *but also*

> on the *gravity and seriousness of the conduct based on the evidence*) to constitute "*due cause*" that merited the requisite sanction from a range of sanctions prescribed under s 83(1). …
>
> [emphasis in original]

This function ensured that *only* the most serious complaints would be referred to the Court of Three Judges (see *Jasmine Gowrimani* at [24] to [28]).

28 The Respondent had pleaded guilty to the proceeded charge, and the threshold question of whether her actions fell under s 83(2)(*b*) of the LPA was not in dispute. The only issue before this court was whether the *gravity and seriousness of the Respondent's conduct* based on the evidence would constitute cause of sufficient gravity for disciplinary action. In this regard, both the Law Society and the Respondent argued that based on the precedent cases involving breaches of solicitor's undertakings, the Respondent's conduct in the present case was not cause of sufficient gravity.

29 We disagreed with these submissions and will explain why hereafter.

The essential features of a solicitor's undertaking

30 As stated in *Re Lim Kiap Khee; Law Society of Singapore v Lim Kiap Khee* [2001] 2 SLR(R) 398 ("*Lim Kiap Khee*") at [21]:

> … *It is of the utmost importance that a solicitor should abide by the undertaking he formally gives.* It is the very foundation of an honourable profession that its members act honourably. To deliberately breach an undertaking solemnly given would seriously undermine the integrity of the profession and would bring it into disrepute. …
>
> [emphasis added]

31 An undertaking given by a solicitor is a solemn promise that is not merely an agreement or a contract. As Hamilton J in *United Mining and Finance*

Corporation, Limited v Becher [1910] 2 KB 296 at 307 succinctly put it (see also *Law Society of Singapore v Tham Kok Leong Thomas* [2006] 1 SLR(R) 775 ("*Thomas Tham*") at [28]):

> … when a solicitor, in the course of business which he is conducting for clients with third parties in the way of his profession, gives an undertaking to those third parties incidental to those negotiations, that undertaking is one which is given in his capacity as a solicitor and not as a mere layman undertaking the office of stakeholder or guaranteeing the payment of money. It seems to me that *the part which solicitors are nowadays well known to play in elaborate negotiations, which constantly have to be embodied at various stages in legal forms of a highly technical character, constantly involves for the purpose of facilitating the business the giving of subsidiary undertakings for the payment of money and of a similar character, and that those undertakings are given in their capacity as solicitors, and money is entrusted to them under those undertakings largely because they are solicitors and are deemed therefore, and found to be, especially worthy of trust.* …
>
> [emphasis added]

32 There is a unique status that is accorded to an undertaking given by a member of the legal profession, that allows the average person and even the court to rely on it without question. Parties in dispute may decide to compromise their positions and even halt or forgo proceedings, on the faith of what the solicitor has promised that she would or would not do. Quite simply, a solicitor should *only* give an undertaking with which she is able to comply. Once given, there is no turning back. The solicitor can be called to account for any breach of the undertaking given, which accounting includes both legal repercussions and possible disciplinary action. In our view, if such breaches are not met with the strongest disapprobation from the profession, it would severely erode the trust one can place on a solicitor's undertaking and fundamentally change the way modern legal business and dispute resolution is conducted.

33 Where the breach of the undertaking is committed deliberately, not simply negligently, the situation is even more serious. As stated by this court in *Lim Kiap Kee* at [21]:

> … The failure was clearly not due to an oversight. It was, in each instance, a deliberate act on his part to disregard the undertaking he had given. It is of the utmost importance that a solicitor should abide by the undertaking he formally gives. It is the very foundation of an honourable profession that its members act honourably. *To deliberately breach an undertaking solemnly given would seriously undermine the integrity of the profession and would bring it into disrepute.* …
>
> [emphasis added]

34 In this regard, we found it surprising that the Law Society had taken the position that as a matter of principle, a *deliberate* breach of a solicitor's undertaking by a member of the legal profession would not be cause of sufficient gravity to come before this court, as long as it could be shown that the member had not acted dishonestly and had not personally benefited from that breach. When pressed, counsel for the Law Society accepted that such a stance could adversely impact the unique status accorded to a solicitor's undertaking, but continued to argue that the present case would fall in those cases that were analogous with *Allan Chan* and *The Law Society of Singapore v Shanmugam V* [1988] SGDSC 14 ("*Shanmugam*").

35 Briefly, in *Allan Chan*, the respondent solicitor had furnished two solicitor's undertakings for the sums of $10,000 and $35,000 as security for costs for his client's appeal. His client subsequently changed lawyers and withdrew the appeal. Costs were ordered against the respondent's (now former) client, and payment was sought from the respondent. After the respondent failed to pay, a complaint was lodged with the Law Society. Prior to the DT hearing, the respondent paid the sums sought. At the DT hearing, he alleged that he had

given the undertaking due to the urgency of the appeal even though his client had not put him in funds. The DT found the respondent guilty of "*grossly improper conduct*" under s 83(2)(*b*) of the LPA, although the DT was of the view that there was no cause of sufficient gravity as it was the respondent's "misjudgment or foolishness" which had led to the breach of the undertakings (see *Allan Chan* at [29]–[30]).

36 At the outset, we observe that *Allan Chan* was not a decision of this court. Accordingly, it has limited precedential value. Further, we agreed with the DT that *Allan Chan* was distinguishable from the present case. First, in *Allan Chan* the respondent had eventually complied with the terms of his undertaking. Second, in *Allan Chan* the respondent had acted under the pressure of time and thought that he had to give the undertaking to ensure his client's case was not struck out. There was no such urgency or deadline to meet in the present case. The DT thought that the assertion in *Allan Chan* that the solicitor there had breached the undertakings through his own "misjudgment or foolishness" also distinguished that case as no such assertion was made here. But in our view an argument by the Respondent here that she was foolish or misjudged the situation would not have helped her in any event: it would be unbelievable that a solicitor of her seniority could be so naïve or foolish in respect of the gravity of any undertaking.

37 The next case relied on was that of *Shanmugam*. There, the respondent solicitor had failed to return a deposit of $2,500 which his client had paid to him towards costs. Following a complaint to the Law Society, the respondent undertook to repay the sum and, as a result, the Law Society withdrew the proceedings against him. When the respondent failed to pay the sum in accordance with the undertaking, new disciplinary proceedings were initiated

against him. A few months after those proceedings started, the payment was made. Before the DT, the respondent claimed that he had instructed someone to pay the sum on his behalf as he was overseas, and was not aware that that person had failed to do so. The respondent had subsequently made good on his undertaking when this lapse was brought to his notice. The DT determined that in those circumstances, no cause of sufficient gravity for disciplinary action existed.

38 As with *Allan Chan*, *Shanmugam* was not a decision of this court and has limited precedential value. We also agreed with the DT that *Shanmugam* could be distinguished from the present case, as the respondent there had eventually made good on his undertaking. In fact, it would appear that the breach in *Shanmugam* was more akin to an inadvertent breach on the solicitor's part, rather than having been deliberate. In our view, both *Shanmugam* and *Allan Chan* were of no assistance in the present case.

39 As we emphasised at [30]–[32] above, a solicitor's undertaking is a *sui generis* bond that a solicitor gives to a party or the court. Such undertakings are often given by legal practitioners to facilitate settlements or transactions. Both lay persons and other practitioners can reasonably expect that reliance on such undertakings would not have any untoward result because they had been given by a member of an honourable profession. There is thus a real risk that should deliberate breaches of solicitor's undertakings be treated too lightly by this court and the legal profession, the status accorded to such solemn promises would be severely eroded. We, therefore, found it very difficult to accept the Law Society's argument that where a member *deliberately* breaches a solicitor's undertaking, no cause of sufficient gravity would *prima facie* arise in the absence of dishonesty or personal benefit to that member.

40 In our judgment, where a member of this honourable profession chooses to deliberately breach an undertaking that has been given in a professional capacity, there is *prima facie* cause of sufficient gravity for disciplinary action. That having been said, we accept that, possibly, extraordinary circumstances may arise in which a deliberate breach of an undertaking may not be of sufficient gravity to be referred to this court, although we are hard pressed to think of an example of such a situation. In any case, the seriousness of the conduct would still undoubtedly call for some measure of disciplinary action to be meted out by the DT. We also take this opportunity to remind all solicitors of the need for them to do their utmost to abide by the undertakings they give and that if they have any doubt about their ability to do so, no undertaking should be given.

Had due cause for disciplinary action under s 83(2)(b) of the LPA been established?

41 It was clear from the facts that the Respondent had committed a deliberate breach of the Undertaking when she handed over the Cashier's Order to the Clients in the absence of a settlement agreement between the parties. Even if the Respondent had been facing pressure from the Clients, this was not a reason for her to resile from the promise she had given to the Complainant and Seah. She could have informed them flatly that the Undertaking prohibited the release of the Cashier's Order, or she could have returned it to the Complainant and Seah. Deliberate breaches of an express undertaking such as this call into question the special standing that members of the legal profession have in society and the respect accorded to undertakings they give. The circumstances of this case provided no reason to depart from the DT's holding that cause of sufficient gravity for disciplinary action existed.

42 The Respondent did not contend that her breach of the Undertaking was an inadvertent mistake on her part or the result of an oversight. The Respondent was keenly involved in the dispute between her clients and the Complainant and Seah until it was finally settled. Before us, she did not deny that she knew that there were no grounds for her to release the Cashier's Order pursuant to her Undertaking.

43 The Undertaking had been given by the Respondent in order to avert a lawsuit and facilitate a settlement between parties. The Complainant and Seah had provided the Cashier's Order as a sign of their good faith in this regard and would have relied on the Undertaking to allay their fear that the Clients would misuse the funds. We agreed with the DT that by releasing the Cashier's Order to the Clients in breach of the Undertaking, the Respondent had done precisely what the Complainant and Seah had sought to prevent. While the details of the settlement were not before us, this may well have impacted the eventual settlement between parties. In our view, the fact that no loss had been shown to have been incurred by the Complainant was equivocal at best.

44 Given our views on the seriousness of a deliberate breach of a solicitor's undertaking, we had no hesitation in finding that due cause for the imposition of sanctions was shown.

The appropriate sanction

45 The next question we had to consider was the appropriate penalty to be imposed on the Respondent. Under s 83(1) of the LPA, when due cause has been shown, there is a variety of sanctions that the court may choose to impose. This ranges from the striking off of the solicitor from the roll of advocates and solicitors to a term of suspension or a fine.

46 In its submissions, the Law Society had highlighted three cases wherein the respondents were either struck out or suspended for two years. The Law Society submitted that the Respondent was less culpable than the respondents in those cases as there was no dishonesty on the part of the Respondent, and the Respondent had acted under the pressure of her clients. Thus, the appropriate sanction was a fine. The Respondent took a similar stance.

47 In determining the appropriate length of suspension on these facts, we derived assistance from the following cases.

48 Firstly, *Re Marshall David; Law Society of Singapore v Marshall David Saul* [1971–1973] SLR(R) 554 ("*David Marshall*"). In *David Marshall*, the respondent lawyer had given an undertaking to the Attorney-General in the chambers of the Chief Justice not to release the affidavits of his clients to the press. Two days later, the respondent breached his undertaking. He was found guilty of grossly improper conduct in the discharge of his professional duties and was suspended for a period of six months.

49 In *Re Seow Francis T; Law Society of Singapore v Seow Francis T* [1971–1973] SLR(R) 727 ("*Francis Seow*"), the respondent had given his personal undertaking to the Attorney-General to hand over all relevant documents concerning a criminal case against his partner to the police. However, the respondent did not comply with his undertaking, relying entirely on his partner to hand over the relevant documents. This resulted in certain files being left out. The court found the respondent guilty of culpable negligence such as to amount to grossly improper conduct in the discharge of his profession. The respondent was suspended for a period of one year.

50 In *Lim Kiap Khee*, the respondent who acted for the sub-purchaser of a property gave an undertaking to hold 13% of the purchase price as a stakeholder and release portions of the sum to the developer on certain dates. The respondent failed to release the amounts on time and payment was only made much later after enforcement action had been commenced. The Court of Three Judges found the respondent guilty of grossly improper conduct under s 83(2)(*b*) of the LPA. The respondent was struck off; the Court found the deliberate breach of the undertaking to be an aggravating factor. It also took into consideration the facts that the respondent had previously been found guilty of misconduct and suspended for a year and that he was a lawyer of more than 20 years' standing.

51 In *Thomas Tham*, the complainant had deposited US$60,000 with the respondent in order to obtain banking facilities from the respondent's client in order to import cars. The sum was to be released to the respondent's client upon the issue of a letter of credit for the import of the cars. After the sum had been deposited, the respondent's client pressured the respondent to release the moneys even though no letter of credit had been issued. The respondent agreed to release the moneys on the condition that his client gave him a personal cheque covering the sum. The respondent subsequently gave an undertaking to the complainant's lawyers that he would only release the sum when the letter of credit was issued. Thereafter, he confirmed on three separate occasions to the complainant's lawyers that he had not parted with the sum. The DT found that the respondent had breached his undertaking and had attempted to deceive the complainant and the complainant's lawyers. Accordingly, the DT determined that there was cause of sufficient gravity. Upon reference to this court, the respondent was found guilty of grossly improper conduct in respect of his breach of his undertaking and his attempts to deceive the complainant into believing that the deposit was safe with him. The respondent was suspended for

a period of two years, with the court observing the respondent should not have given in to his client's demands, and that it was "a case of foolishness compounded by the letters written with an ostrich-like mentality" (*Thomas Tham* at [37]).

52 In *Law Society of Singapore v Gurdaib Singh s/o Pala Singh* [2018] SGHC 47 ("*Gurdaib Singh*"), the respondent solicitor had pleaded guilty to two charges. The first charge concerned a sum of US$250,000 which he had received from the complainant and held as a stakeholder. The respondent solicitor gave a formal undertaking to repay the sum to the complainant pursuant to an escrow agreement. However, he had failed to do so despite numerous requests. The second charge concerned a breach of r 8(4) of the Legal Profession (Solicitors' Accounts) Rules (1999 Rev Ed). The court agreed with the DT that the respondent's conduct constituted "grossly improper conduct" in respect of both charges. While the court acknowledged that the respondent did not gain personally from the breach of the undertaking, he was found to have "nevertheless fallen below the required standards of integrity, probity and trustworthiness, and, by his actions, [had] brought grave dishonour to the profession" (*Gurdaib Singh* at [6]). On this basis, the respondent was struck off.

53 We recognise that apart from *Gurdaib Singh*, the cases cited were decided before amendments to the LPA in 2009 made the option of a fine available under s 83 of the LPA. However, we did not think that a fine was the appropriate sanction in the present case.

54 As we had stated in *Law Society of Singapore v Chan Chun Hwee Allan* [2018] 4 SLR 859 at [40], the appropriate sanction in any particular case would depend on the following considerations:

(a) the protection of members of the public who are dependent on solicitors in the administration of justice;

(b) the upholding of public confidence in the integrity of the legal profession;

(c) deterrence of similar defaults by the same solicitor and other solicitors in the future; and

(d) the punishment of the solicitor who is guilty of misconduct.

55 In the present case, it was clear that all four considerations were engaged and called for the imposition of a significant sanction. However, we agreed that this case did not call for a striking off. The breach in the present case was not as serious as that in *Lim Kiap Khee* or *Gurdaib Singh*: (a) the sum involved in this case was significantly lower; (b) the Respondent did not have a history of disciplinary-related antecedents; and (c) the Respondent had only faced one charge of professional misconduct which she had, from the beginning, admitted unconditionally.

56 Turning back to the relevant considerations mentioned at [54] above. With regard to considerations (a) and (b), if the public is unable to trust lawyers to be able to keep the promises they have made in their professional capacity, public confidence in the integrity of the legal profession will be severely undermined. Where an undertaking is given by a member of an honourable profession, members of the public are entitled to rely on it knowing that the solicitor cannot resile from his promise without risking disciplinary action. As for considerations (c) and (d), an appropriately severe sanction had to be meted out to show this court's clear disapprobation of deliberate breaches of

undertakings by a solicitor, as both specific and general deterrence. Such a sanction had to be more than just a slap on the wrist. In our view, in a case like that before us, nothing short of a term of suspension would suffice.

57 As to the length of the period of suspension, we considered that the Respondent's conduct was not as serious as that of the respondent in *David Marshall* where an undertaking regarding ongoing court proceedings was breached. Nor was it as serious as that of the respondent in *Francis Seow*, whose breach hampered an ongoing police investigation. The Respondent's conduct was also not as serious as that of the respondent in *Thomas Tham*, even though both cases concerned the breach of an undertaking given by a solicitor acting as a stakeholder. In this regard, the respondent in *Thomas Tham* had been charged with two offences – one of which concerned an act of deception. On this basis, the two-year suspension had been warranted in *Thomas Tham*, and was likely too lenient in light of the dishonesty involved.

58 In coming to our decision on the appropriate sanction, we considered the following aggravating factors: (a) the Respondent here was a senior lawyer of over 36 years' standing at the material time and should have understood the importance of keeping an undertaking she had given in her professional capacity; (b) although she had been forthcoming with the details of her breach when she was asked to return the Cashier's Order, this only occurred after her clients had commenced legal proceedings against the Complainant and Seah and she knew that there would be no settlement forthcoming; (c) by releasing the Cashier's Order to the Clients, the Respondent had only herself to blame for placing it beyond her own ability to comply with the Undertaking; and (d) most importantly, she had deliberately chosen to breach the Undertaking.

59 Having regard to all the circumstances, we were of the view that a period of suspension of three months was warranted. The length of suspension which we imposed took into consideration the fact that there had been no dishonesty or personal benefit to the Respondent when she breached the Undertaking. The Respondent had also chosen to plead guilty.

Costs

60 In the peculiar circumstances of this case, where the Law Society had chosen to adopt an untenable position on the question of whether sufficient gravity for disciplinary action existed, we considered it just for each party to bear its/her own legal costs in these proceedings. As the application had to be brought by the Law Society pursuant to s 98 of the LPA, however, the Law Society was awarded its reasonable disbursements, to be taxed if not agreed.

Sundaresh Menon
Chief Justice

Andrew Phang Boon Leong
Justice of the Court of Appeal

Judith Prakash
Justice of the Court of Appeal

Saw Seang Kuan and Kang Su-Lin (Lee & Lee)
for the applicant;
Anand Kumar s/o Toofani Beldar and Krishnasamy Siva Sambo
(Pathway Law Practice LLP) for the respondent.
