IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[1994] SGCA 75

CA 144/1993

Between

Whitehouse Holdings Pte Ltd

… *Appellant*

And

The Law Society of Singapore

… *Respondent*

GROUNDS OF DECISION

Legal Profession — Professional conduct; Legal Profession — Disciplinary procedures

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Whitehouse Holdings Pte Ltd v The Law Society of Singapore

[1994] SGCA 75

CA 144/1993
Karthigesu JA; L P Thean JA; Yong Pung How CJ
23 May 1994

1 On 30 December 1992 the appellants lodged a complaint with the respondents against Thomas Tham Kok Leong (`Tham`), an advocate and solicitor, who was called to the Bar in 1974. Tham is the sole proprietor of Thomas Tham & Co. An inquiry committee was constituted to inquire into the complaint under s 85 of the Legal Proceedings Act (`LPA`) (Cap 161). The report of the inquiry committee was considered by the Council of the Law Society under s 87(1) of the LPA. The Council accepted the report of the inquiry committee and, by a letter dated 10 August 1993, notified the appellants of its determination that the appellants` complaint be dismissed.

2 The appellants then made an application under s 96 of the LPA which reads:

> (96) (1) Where a person has made a written application or complaint to the Society and the Council has determined -
>
> (a) that a formal investigation is not necessary; or
>
> (b) that no sufficient cause for a formal investigation exists but that the advocate and solicitor concerned should be ordered to pay a penalty,

> that person, if he is dissatisfied with the decision, may within 14 days of being notified of the Council`s determination apply to a judge under this section.
>
> (2) Such an application shall be made by originating summons and shall be accompanied by an affidavit or affidavits of the facts constituting the basis of the application or complaint and by a copy of the application or complaint originally made to the Society together with a copy of the Council`s reasons in writing supplied to the applicant under section 87(3).
>
> (3) The application accompanied by a copy of each of the documents referred to in subsection (2) shall be served on the Society.
>
> (4) At the hearing of the application, the judge may make an order -
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> (a) affirming the determination of the Council; or
>
> (b) directing the Society to apply to the Chief Justice for the appointment of a Disciplinary Committee,
>
> and such order for the payment of costs as may be just.
>
> (5) If the judge makes an order directing the Society to apply to the Chief Justice for the appointment of a Disciplinary Committee, the applicant shall have the conduct of proceedings before the Disciplinary Committee and any subsequent proceedings before the court under section 98, and any such proceedings shall be brought in the name of the applicant.

3 On 23 October 1993 the High Court dismissed the application but no order as provided under s 96(4) was made. Against that decision the appellants now bring this appeal seeking an order directing the respondents to apply to the Chief Justice for the appointment of a disciplinary committee to formally investigate into the matter complained of.

4 The facts leading to the complaint were these. Tham was retained by Koh Kee Yang (`Koh`), the managing director of the appellants, in connection with the tender of a lease by Koh, Tey Chai Bak (`Tey`) and Ann Thor Lye Suan (`Thor`), Tey`s wife, from the Land Office for the whole of the premises of a property at 32 Maxwell Road, Singapore 0106, which was known as Customs

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House and is presently known as Whitehouse. The tender was successful and Whitehouse Holdings Pte Ltd was incorporated on 21 June 1990, with Koh and Tham`s brother, Tham Kok Chew (`KC Tham`), as the first two subscribers of the company. The other substantial shareholder now is Thor, Tey being an undischarged bankrupt. The lease was entered into on 4 July 1990 by the appellants for a period of three years commencing 1 November 1990, at a monthly rent of $55,000 (`the head-lease`). It was provided in the head-lease that the appellants were to expend a minimum sum of $1.5m for renovations and structural repairs to the premises.

5 Subsequently, part of the premises was sub-let by the appellants. Tham was also retained by the appellants to act for them on all of these sub-tenancies. There were restrictions on sub-letting in the head lease. It was provided that no more than 50% of the premises were to be sub-let and the appellants were to occupy the remainder. As a result, the sub-tenancy agreements entered into were termed `service agreements` where the sub-tenants themselves were allotted one share each in the capital of the appellants.

6 Sometime in September 1990 Tham entered into a service agreement (which was itself undated) with the appellants, for the occupation of unit #04-01 in Whitehouse (`the unit`). The unit had an area of about 3,200 sq ft. The plan annexed to the service agreement was apparently that of the ground floor but Tham in fact occupied the unit marked #04-01 on the fourth floor. The agreement was for a period of three years from 1 November 1990, at a monthly rent of $2, consisting of $1 for the hire of fittings and fixtures and $1 for maintenance charges. The terms of the service agreement were substantially the same as those prepared by Tham for the other sub-tenants, except for the rent.

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7 The crux of the complaint was this. The appellants claimed that they had orally agreed with Tham sometime in July 1990 that the unit would be used by Tham for his legal practice, at a rent equivalent to the market rent for that unit, for a period of three years. It is now alleged that the market rent was about $4 per sq ft.

8 The service agreement was signed by Koh and KC Tham, on behalf of the appellants, and Tham. The agreement was alleged to have been signed by the appellants ***`in reliance on the good faith of (Tham) as its solicitor to specify therein the payment of the market rent for the use and occupation of the unit by (Tham)`***

9 . There is a dispute as to who attended to the signing of the agreement. In his evidence before the inquiry committee, Koh alleged that Tham personally gave him the agreement to sign. Koh could not read English and he claimed that Tham did not draw his attention to the rental figure. He had assumed that the correct rate of $4 per sq ft was included in the terms. Koh trusted Tham and signed the agreement. He then claimed that he was not sent a copy of the agreement until sometime later in December 1990.

10 In his complaint to the inquiry committee, Koh produced a document described as the minutes of a meeting of the appellant company on 8 December 1990, which refers to the attendance of Koh, Tey and Tham who was alleged to have attended on behalf of his brother. The document makes reference to Tham proposing the rent of $4 per sq ft for some unoccupied units. It also refers to Koh and Tey proposing that Tham should likewise pay a rate of $4 per sq ft and that Tham had disagreed. Tham denied attending this meeting.

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11 Before the inquiry committee, Tham contended that the agreement in question was prepared by his legal assistant, Jeremiah Choy (`Choy`) and that Choy himself attended to the signing of the agreement. Choy gave evidence before the inquiry committee that he was the solicitor in charge of the whole Whitehouse project and admitted that he drafted the agreement. He said that he specifically explained to Koh that the rent was only $2 per month and that Koh had understood this before signing the agreement in his presence. He then obtained the signatures of KC Tham and Tham. When the agreement was signed, he gave a copy of it to Koh.

12 Several other disputes of fact arose at the inquiry committee stage. There was a dispute as to the proper market rent. Both sides adduced much evidence before the inquiry committee with respect to the sub-leases granted to various tenants in the property to show what the true market rent was. At the hearing of this appeal, the appellants drew our attention to several of these service agreements to indicate that the rent for similar units on the fourth floor were over $4 per sq ft. We found that this aspect was quite immaterial to the crux of this appeal. The main issue here was whether a formal investigation into an allegation of professional misconduct on the part of Tham was necessary. Part of the misconduct complained of here involved the failure of a solicitor to advise his client to seek independent legal advice when a substantial benefit is derived by the solicitor from his client. In this respect, it was quite clear that Tham had derived a substantial benefit even if the market rate was much less than the $4 per sq ft claimed.

13 We now turn to the complaint, comprising a statutory declaration by Koh, which was lodged with the respondents. The inquiry committee which was empanelled identified three specific complaints:

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> (1) Tham `had acted fraudulently or had displayed gross improper conduct in the discharge of his professional duty by fraudulently charging $2 for the use and occupation of ... 32 Maxwell Road, #04-01, Singapore consisting of 4,154 sq ft when the prevailing market rent was $4 per sq ft ... for a period of three years`.
>
> (2) Tham `had displayed improper conduct in taking undue advantage of his position as such solicitor of the [appellants] by inducing the [appellants] to pay the sum of $22,239.20 for the renovation works done to the unit when he knew or ought to have known that it was unprofessional on his part to have taken such undue advantage while he was on record professionally for the company`.
>
> (3) Tham had displayed improper conduct in taking undue advantage of his position as such solicitor of the [appellants] by inducing the [appellants] to enter into three hire-purchase agreements ... whereby (Tham) initially agreed to pay the monthly instalments but totally failed to meet his commitments thereunder ... when he knew or ought to have known that it was unprofessional on his part to have taken such undue advantage while he was on record for the company`.

14 Just weeks before the complaint was filed, on 9 December 1992, the appellants issued a writ against Tham on the same facts and contentions, which formed the basis of the complaints preferred by the appellants against Tham. In it, the appellants sought, inter alia, to set aside the service agreement between themselves and Tham. No notice of the civil suit was given in the complaint to the respondents.

15 The inquiry committee heard oral evidence from Koh, Tey and Thor for the appellants, and from Tham and Choy. The inquiry committee reviewed the evidence adduced before them and concluded on the first complaint in the following terms:

> *The Committee finds no reason not to accept Choy`s evidence and the Committee cannot, on the evidence produced before the Committee, find that [Tham] had been fraudulent in his conduct.*

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> *The Committee accordingly recommends that the complaint be dismissed.*

16 With respect to the second complaint, the inquiry committee seemed to accept Tham`s explanation that he had always been willing to pay for the renovation works but only for the part that was incurred by him and that the sum of $22,239.20 claimed included renovation works unrelated to the unit he was occupying. The inquiry committee also appeared to have interpreted part of Koh`s evidence as indicating that the payments were made by the appellants because Tham was a friend and not because he was their lawyer. The inquiry committee concluded that:

> *The Committee finds no merit in the second complaint.*

17 The third complaint was also dismissed on the basis that Tham had accepted liability but had so far refused to pay for the same reasons as above. The inquiry committee held the view that the appellants had failed to prove that Tham had used his influence as their solicitor to induce them into entering into the hire-purchase agreements. The conclusion was similarly that:

> *The Committee is also unable to find any merit in the third complaint.*

18 On 24 July 1993 the Law Society Council received the inquiry committee report dated 16 June 1993. At a meeting on 6 August 1993 the Council deliberated on this matter. Under s 87(1) of the LPA, the Council, upon receipt of the report of the inquiry committee, was to deliberate and determine one of the following:

> (a) that a formal investigation is not necessary;
>
> (b) that no cause of sufficient gravity exists for a formal investigation but that the advocate and solicitor should be ordered to pay a penalty under s 88;

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> (c) that there should be a formal investigation by a disciplinary committee; or
>
> (d) that the matter be referred back to the inquiry committee, or adjourned for consideration.

19 In a letter dated 10 August 1993 from the respondents to the appellants, it was stated that:

> *The inquiry committee of the Law Society has met and inquired into your complaint and has reported to the Council of the Law Society that your complaint does not merit a formal investigation by a disciplinary committee. The Council has accepted this report and the complaint is, therefore, dismissed.*

20 On 16 August 1993 the appellants sought the reasons for the dismissal of the complaint, including a copy of the inquiry committee report, pursuant to s 87(3) of the LPA. By a letter dated 17 August 1993 the executive director of the respondents replied, stating, inter alia, that:

> *The Council took into consideration the report of the inquiry committee in arriving at its determination that no cause of sufficient gravity existed for a formal investigation into your client`s complaint.*

21 On 20 August 1993 the appellants, upon reviewing the inquiry committee report and, being dissatisfied, made the application pursuant to s 96.

22 The learned judicial commissioner in the High Court below declined to affirm the determination of the Council that a formal investigation was not necessary. He found that the inquiry committee had failed to indicate its findings on the question of whether Tham had ***`displayed gross improper conduct in the discharge of his professional duty`*** . The inquiry committee appeared to have only made the finding that Tham had not been fraudulent in his conduct. The learned judicial commissioner could not find in the inquiry committee report that the complaint of gross improper conduct had been investigated or

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considered. He was of the opinion that, as the second limb of the first complaint was not considered by the inquiry committee and since the Council had accepted and adopted the findings of the inquiry committee, the Council could either have made no determination at all or have failed to arrive at a proper determination on the first complaint. He opined that the Council ought to have referred it back to the inquiry committee in accordance with s 87 (1)(d). The following passage in the judgment of Chan Sek Keong JC (as he then was) in ***Wee Soon Kim Anthony v Law Society*** , was cited and followed:

> *The statutory scheme gives the advocate and solicitor concerned a right to be judged first by his own peers, ie the inquiry committee, followed by a determination by the Council, before the complaint can be brought by a dissatisfied complainant before a judge. Section 93(4) should not be construed in such a manner as to deprive the advocate and solicitor concerned of these rights. In my view, a judge has no jurisdiction to inquire into any complaint which has not been inquired into by the inquiry committee or where the Council has not made a determination on the basis of such an inquiry.*

23 The learned judicial commissioner concluded that, on the facts here, it would be wrong for the court on an application under s 96 to make an order for the appointment of a disciplinary committee as it would mean that the solicitor concerned would be deprived of the safeguards provided by law. [See [1994] 1 SLR 315 .]

24 In his grounds of judgment, the learned judicial commissioner expressed his concern that the inquiry committee had failed to consider the fact that Tham ***`received a very substantial benefit from his client under an agreement prepared by his assistant who attended the client and who said in evidence before the inquiry committee that he did not advise the client to be independently advised`*** . He referred to the fact that there was no evidence from Tham that he did advise the appellants to be independently advised and that Tham did not deny the benefit which he derived. With respect to the contention

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that the nominal rent was in consideration of Tham`s services, the learned judicial commissioner found that there was no record in any document, nor was there any evidence, of the value of such services. He was of the opinion, at p 8 of his judgment, that:

> *If it is found that a solicitor derives a substantial benefit other than his proper remuneration under a document prepared by him for his client to execute and he has not advised his client to obtain independent legal advice on it before the document is executed by the client it would be open to a disciplinary committee to hold that the solicitor has been guilty of grossly improper conduct in the discharge of his professional duty. It would also be open to the Council to determine that the solicitor should be ordered to pay a penalty under s 88 should it take the view that no cause of sufficient gravity exists for a formal investigation.*

25 Mr Ramakrishnan submitted before us that the inquiry committee was in error as they did not address themselves to the fact that the service agreement was made when Tham was on record as the solicitor of the appellants. He contended that the evidence was overwhelming that Tham had misconducted himself professionally. The respondents` submissions were that there was no relevant determination by the Council pursuant to s 87(1) as to the second limb of the first complaint and therefore the court had no jurisdiction under s 96 on that matter, but that the other determinations of the Council on the second and third complaints were relevant and should be affirmed.

26 The decision of the learned judicial commissioner appears to have been based on two grounds. The first ground was that there could not have been a relevant determination by the Council on the basis that there was no deliberation of the matter at all when the Council merely accepted and adopted the report. The second ground was that there could not have been a relevant determination by virtue of the material defect in the inquiry committee proceedings.

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27 On the first ground, the learned judicial commissioner referred to the determination of the Council as represented by the letter of 10 August 1993 and the second letter of 17 August 1993 enclosing the inquiry committee report. On the first letter, he commented at p 5 of his grounds of judgment [see p 318 of the report]:

> *This does not accurately represent what the council did on 6 August 1993. More significantly this is not what the Council is required to do by s 87. The Council must consider the report and according to the circumstances of the case it must come to a determination as to the matters set out in para (a) to (d) of sub-s (1). It is not sufficient to `accept` or to `adopt` the inquiry committee`s findings. This may be and often is an important step leading to the determination but it is not the determination.*

28 On the second letter, the learned judicial commissioner suggested that the phrase ***`no cause of sufficient gravity existed for a formal investigation`*** would only have meant that the Council arrived at a determination under s 87(1)(b) but without an order as to a penalty.

29 Unfortunately, Mr Ramakrishnan did not address us on this point at all. On the other hand, Mr Giam agreed with the views of the learned judicial commissioner and conceded that there could have been no relevant determination by the Council by the mere acceptance of the report of the inquiry committee. However, with respect to the learned judicial commissioner, we are unable to agree that the Council by merely accepting and adopting the report had not made a determination. We cannot see any objection to this practice. The Council need not supplement the reasons given by the inquiry committee in its report, when the Council in effect is in agreement with and accepts the findings of the inquiry committee and makes a determination consistent with that in the report. The Council had clearly determined that no formal investigation was necessary and that there was therefore no ambiguity at all. The precise words in

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s 87(1)(a)-(d) need not be used as long as the meaning of the Council`s determination was clear (see ***Re Tang King Kai***).

30 On the second ground that there may not have been a relevant determination by the Council by virtue of the defect in the inquiry committee report, the learned judicial commissioner held at p 8 of his judgment [see p 319 of the report]:

> *Since the Council accepted and adopted the findings of the inquiry committee, it would appear that the Council also did not consider the second limb of the complaint. It could not have come to any determination on this complaint. The Council ought to have determined in accordance with s 87(1)(d) that the matter be referred back to the inquiry committee.*

31 Further, at p 9 of his judgment he said:

> *On the question of grossly improper conduct either the Council had made no determination in which case there was no determination to be affirmed or it had made a determination without having considered the matter because the inquiry committee had not reported on it and the Council had merely accepted and adopted the inquiry committee`s findings in which case its determination cannot stand.*

32 On perusing the records of appeal, we noted that it was not part of the submissions of the respondents before the learned judicial commissioner that the Council had failed to make a relevant determination. Both parties had proceeded upon the merits of the evidence before the inquiry committee. The absence of a specific finding by the inquiry committee on the issue of gross improper conduct on the first complaint was not considered by either party at all.

33 The learned judicial commissioner here was of the view that the scheme for disciplinary proceedings under the LPA requires that an inquiry committee inquire into a complaint first except where otherwise provided. The reasoning

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that follows is that as there was a defect at the inquiry stage, a court has no jurisdiction to intervene. Mr Ramakrishnan submitted before us that there was a relevant determination of the Council under s 87(1), despite the absence of the finding of the inquiry committee. He sought to rely on the learned judicial commissioner`s finding that he could not affirm the Council`s determination if there was no necessity to investigate the allegation of gross improper conduct. The respondents` position was clearly that as the investigations were incomplete, the Council was not in a position to make a relevant determination.

34 The appellants` first line of argument was based on their construction of s 96(4) of the LPA. Section 96(4) was read by the appellants as implying that a judge has the obligation to either affirm the Council`s determination or direct the application for the appointment of a disciplinary committee. This would therefore mean that he does not have the discretion not to make any order at all. We disagree with this construction, which is not borne out from the words of s 96(4) itself; the key phrase there being ***`the judge may make an order`*** and not ***`shall`*** , which implies that there is no mandatory obligation to make either of the two stipulated orders. Equally, s 96(4) provides that the judge`s powers are limited to the two orders there. In consequence, there was no error of law in refusing to make an order.

35 The following extract of the decision of Chan Sek Keong JC (as he then was) in ***Wee Anthony*** was cited to us by the respondents:

> *If indeed the inquiry committee had acted wrongly in failing to inquire into the complaint, the only determination open to the Council would be to refer the matter back to the inquiry committee for inquiry.*

36 ...

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37 Under s 93(4) [what is now s 96(4)], my jurisdiction is limited to either one of the two orders specified therein, ie (a) affirming the determination of the Council, or (b) directing the Law Society to apply to the Chief Justice to appoint a disciplinary committee. If the Council`s determination was wrong, I cannot affirm it. But it does not follow that I can then review the matters before me and make an order under para (b). In my view, s 93(4) does not vest in a judge an original jurisdiction to hear a complaint against an advocate and solicitor. Section 93(4) [now 96(4)] does not contemplate such a hearing. His jurisdiction is supervisory or appellate in nature.

38 Mr Ramakrishnan admitted that the propositions in ***Wee Anthony*** were correct in law but that the facts there could be distinguished from those here.

39 In ***Wee Anthony*** , a complaint was dismissed by an inquiry committee on the ground that the allegations giving rise to the subject matter of the complaint were already the subject matter of civil and criminal proceedings and therefore any such inquiry into the matter would interfere with the administration of justice. Chan Sek Keong JC, for the above reasons, declined to inquire into the complaint.

40 At first glance, it appears that the facts in ***Wee Anthony*** were not dissimilar to those here. However, in ***Anthony Wee*** , although an inquiry into the matter was convened, the findings of the inquiry committee were that any disciplinary inquiry was premature. Therefore, there was no inquiry as such. On the facts of this case, we find that there was, in fact, an inquiry into the complaint despite there being no specific finding on the issue of gross improper conduct by the inquiry committee. On reviewing the written submissions of the appellants and Tham, the inquiry committee report and, significantly, the

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written submissions of the respondents with respect to the hearing of the s 96 application in the court below, it is evident that the substance of the first complaint was fully and thoroughly inquired into. It cannot be a mere oversight that both parties did not realize that no specific finding on gross improper conduct was made. Tham obviously had notice of the allegation of gross improper conduct and had, in fact, presented his defence based on the alleged breakdown in his relationship with the appellants. We are of the opinion that the common view must have been that the inquiry committee had made the necessary inquiries, with oral evidence before them, and, having done so, had reached the overall conclusion on the entire complaint that there was no necessity for formal investigation by a disciplinary committee. There is therefore no room for an objection that Tham has not been judged by his own peers.

41 Mr Giam contended on behalf of the respondents that this appeal should not have been brought by the appellants at all. Instead, the appropriate remedy was for the appellants to apply for an order of mandamus against the inquiry committee or the Council to further investigate the allegation of gross improper conduct. A remedy in judicial review would, of course, be clearly appropriate where there was some form of procedural impropriety, bias or irrationality (see ***Re Singh Kalpanath***). We do not disagree that mandamus is also available to the appellants but we would also think that the statutory apparatus under the LPA, namely, s 96 already encompasses this situation here.

42 The role of the court in a s 96 application was clearly spelt out in ***Wee Anthony*** . The court`s jurisdiction is appellate and supervisory in nature and cannot be that of an original jurisdiction. In the present case, it would not be correct to classify the assumption of jurisdiction by the court here as belonging to the latter category. The role of the inquiry committee is merely to investigate

the complaint. It does not have to make any conclusions on misconduct or whether an offence was committed but simply to consider whether or not there is a prima facie case for a formal investigation.

43 There is much force in the appellants`s submission that:

> *The fact that the process adopted by the respondents and its conclusion was flawed cannot bar the honourable court from directing that a disciplinary committee be appointed. Rather those flaws are precisely the basis on which the honourable court should order the appointment of such a committee in this case.*

44 Mr Ramakrishnan also submitted before us that the appropriate remedy for a dissatisfied complainant was to proceed under s 96 and that there was no necessity to incur additional expense by resorting to other remedies. We agree. Prerogative orders are, of course, concurrently available here. However, its scope of application would also extend to areas outside the ambit of s 96 and s 97 (for complainants dissatisfied with a disciplinary committee`s decision). This is evident from the decision in ***Re An Advocate & Solicitor*** which was referred to by the respondents as to the availability of mandamus. There, the order of mandamus was sought by the Law Society itself to compel a disciplinary committee to hear and investigate all the charges preferred by the Council where the disciplinary committee had on its own deleted several charges from the statement of case.

45 As we have said, we are of the view that there was a relevant determination by the Council. Section 96 was enacted as a specific appeal procedure for dissatisfied complainants and therefore should be the procedure of first resort. We do not find it inconsistent with the supervisory powers of the court under s 96 to assume jurisdiction here.

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46 The appellants also contended before us that where a court is apprised of facts with respect to an advocate and solicitor of the Supreme Court which reveal the need for a full disciplinary investigation, the court is obliged to direct that a disciplinary committee be appointed. This power is allegedly found in s 85(3), which reads:

> *The Supreme Court or any judge thereof or the Attorney-General may at any time refer to the Society any information touching upon the conduct of an advocate and solicitor in his professional capacity, and the Council shall -*
>
> (a) refer the matter to the Chairman of the Inquiry Panel; or
>
> (b) where the Supreme Court or a judge thereof or the Attorney-General requests that the matter be referred to a disciplinary committee, apply to the Chief Justice to appoint a Disciplinary Committee.

47 We find the appellants` submission in this respect to be misplaced. Instead, we agree with the respondents that s 85(3) applied to the situation where a complaint is made by a judge of the Supreme Court or by the Attorney General and is not an alternative to or in substitution of s 85(1), which deals with complaints from other persons.

48 Having found that the court has jurisdiction under s 96 here, we now deal with the question of whether the Council`s determination should be affirmed or not in the light of the evidence. We accept that the court here is exercising an appellate and supervisory role and we approve of the following proposition as enunciated by Lai Siu Chiu JC (as she then was) in ***Wong Juan Swee v Law Society*** at p 17B:

> *The court here is exercising its appellate jurisdiction over the defendants as an administrative tribunal (see decision of Chan Sek Keong JC [as he then was] in* ***Wee Soon Kim Anthony v Law Society of Singapore*** *[1988] 3 MLJ 9). Therefore, the court should be slow to disturb or interfere with the findings of fact by the inquiry committee unless it can be shown that supporting evidence was lacking or there was some*

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> *misunderstanding of the evidence or there are other exceptional circumstances justifying the court to do so.*

49 The respondents laid great emphasis on the background of the parties involved and the factual matrix to justify its decision to dismiss the complaint. As to the first complaint, the inquiry committee appears to have accepted that there was a joint venture between Tham, Koh and Tey in the appellant company, and that KC Tham was holding the shares on behalf of Tham. The inquiry committee also appears to have accepted Tham`s contentions that the nominal rent of $2 was in recognition of the fact that he was a promoter of the company. Further, they accepted Choy`s evidence that it was not Tham who procured the signature of Koh but Choy himself. The failure of the appellants to demand the rental of $4 per sq ft until June 1992 was held to be inexplicable by the inquiry committee. In their written submissions to the court below, the respondents noted that the appellants were using Tham`s vulnerability to further their civil suit and found it disturbing that no mention was made of the suit in the complaint. They therefore concluded that there was nothing fraudulent about Tham`s conduct and that the complaint had no basis.

50 Be that as it may, this still does not resolve Tham`s obligations as an advocate and solicitor, when found in a position of conflict of interest and duty. Whatever the motives of the parties may be, an advocate and solicitor cannot evade the obligations and duties expected of him. He must ensure that he does not act whenever his own interests conflict with the interests of his client. At the hearing before the learned judicial commissioner, it was conceded by counsel for the respondents that it would constitute a professional misconduct where an advocate and solicitor obtains an advantage from a client without advising the client to seek independent legal advice. The learned judicial commissioner had indeed found that it was open to a determination of professional misconduct in

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such circumstances. There was no doubt that there was a substantial benefit, but the evidence was clear that neither Choy nor Tham, whichever version is accepted, advised Koh to seek independent advice.

51 We therefore agree with the learned judicial commissioner. The inquiry committee, and consequently the Council, was in error. In our judgment, there should be a formal investigation into the complaint that Tham has displayed grossly improper conduct in the discharge of his professional duty. Accordingly, we direct the respondents to apply to the Chief Justice for the appointment of a disciplinary committee to investigate into the first complaint.

52 The second and third complaints were dismissed by the inquiry committee, on the basis that they were essentially matters in the nature of commercial disputes, and we are of the view that we should not interfere with these findings of the inquiry committee.

53 The respondents also contended before us, based upon the reasoning in ***Wee Anthony*** , that the allegations and facts here comprise the subject matter of a pending civil suit and therefore any parallel investigation may amount to an interference with the administration of justice. Mr Giam in fact questioned the appellants` decision to lodge the complaint with the respondents so soon after the filing of the civil suit, and referred to the fact that the appellants could always avail themselves of their right to complain against Tham`s conduct later. Here, the allegations involve an advocate and solicitor`s obligations when found in a position of conflict of interest and duty. Although to a certain extent the issue of the professional misconduct complained of here is materially different from the issues in the civil suit, we are of the view that the disciplinary committee proceedings should only be held after the determination of the civil dispute and we so order.

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54 There will be no order on costs.

55 ***Appeal allowed***

Karthigesu JA
L P Thean JA
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V Ramakrishnan (V Ramakrishnan & Co) for the appellant
Giam Chin Toon (Wee Swee Teow & Co) and N Sreenivasan (Derrick Ravi & Co) for the respondents

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