IN THE COURT OF THREE JUDGES OF THE REPUBLIC OF SINGAPORE

[2024] SGHC 90

Originating Application No 7 of 2023

Between

The Law Society of Singapore

… *Applicant*

And

Ezekiel Peter Latimer

… *Respondent*

GROUNDS OF DECISION

[Legal Profession — Conflict of interest]
[Legal Profession — Professional conduct — Breach]
[Legal Profession — Duties — Client]
[Legal Profession — Solicitor's undertaking]

Law Society of Singapore
v
Ezekiel Peter Latimer

[2024] SGHC 90

Court of Three Judges — Originating Application No 7 of 2023
Sundaresh Menon CJ, Tay Yong Kwang JCA and Woo Bih Li JAD
24 January 2024

28 March 2024

Sundaresh Menon CJ (delivering the grounds of decision of the court):

1 About two years ago, disciplinary proceedings were commenced against Mr Ezekiel Peter Latimer ("**the Respondent**") in respect of his alleged misconduct while acting for Mr Chung Fook Keong Melvin ("**Mr Chung**") and Ms Doan Thi Thanh Thuy ("**Ms Thuy**") (collectively, "**the Complainants**") in the period from 2016 to 2019. The acts and omissions that were complained of pertained to two sets of events: (a) the Respondent's involvement in Ms Thuy's appointment as a director of a company and the events which followed ("**the first matter**"), and (b) his management of the Complainants' lawsuit in MC/MC 16562/2017 ("**MC 16562**" and also referred to in these grounds as "**the second matter**"). These were essentially two separate matters.

2 Two charges were preferred by the Law Society of Singapore ("**the Applicant**") against the Respondent with respect to each matter:

(a) in relation to the first matter, a charge of failing to disclose to Ms Thuy information which would reasonably affect her interests (in particular, that the company was involved in significant ongoing litigation) ("**the First Charge**");

(b) also in relation to the first matter, a charge of failing to withdraw from representing Ms Thuy despite a reasonable expectation of a conflict between her interests and his own, which allegedly arose when the Respondent provided a personal surety to secure Ms Thuy's return to Singapore ("**the Second Charge**");

(c) in relation to the second matter, a charge of failing to act with reasonable diligence and competence in MC 16562 ("**the Third Charge**"); and

(d) a charge of failing to keep the Complainants reasonably informed of the progress of MC 16562 ("**the Fourth Charge**").

3 In May 2023, the Disciplinary Tribunal ("**the DT**") found that all four charges were made out on the evidence and that cause of sufficient gravity for disciplinary action existed. The Applicant therefore brought this application, C3J/OA 7/2023 ("**OA 7**"), for the Respondent to be dealt with. The Applicant sought an order that the Respondent be struck off the Roll of Advocates and Solicitors pursuant to s 83(1) of the Legal Profession Act 1966 (2020 Rev Ed) ("**the LPA**").

4 Having heard the parties on 24 January 2024, we overturned the DT's findings in relation to the Second Charge but agreed that the First, Third and Fourth Charges were made out beyond a reasonable doubt. Based on these three charges, we were satisfied that due cause had been shown and struck the Respondent off the Roll of Advocates and Solicitors. We furnished our reasons in brief at the time and now set out the detailed grounds for our decision.

Facts

5 The Respondent was admitted as an Advocate and Solicitor on 25 May 1996. He has not held a valid practising certificate since his suspension from practice by a previous order of this Court that took effect on 1 April 2019. This was the result of two separate disciplinary proceedings brought against him. On 1 April 2019, the Court of Three Judges ("**the C3J**") imposed an order suspending the Respondent from practising for a period of three years, having found that he had preferred one client's interests over another, and also had knowingly deceived or misled the Attorney-General's Chambers: see *Law Society of Singapore v Ezekiel Peter Latimer* [2019] 4 SLR 1427 at [81]. In February 2020, the C3J imposed a further suspension for a period of two years, having found that the Respondent had disregarded his client's interests, as reflected in his total inaction over a period of 14 months and his failure to remedy the consequences of such inaction despite providing two signed undertakings that he would do so: *Law Society of Singapore v Ezekiel Peter Latimer* [2020] 4 SLR 1171 at [1] and [6]. The latter suspension term commenced upon the expiry of the earlier three-year suspension and is slated to end on 31 March 2024.

6 This is the context in which we considered the present charges. We first set out the facts pertaining to each of the two matters that these charges are founded upon.

Ms Thuy's appointment as a director of the company and the events which followed

7 In or around 2015, the Complainants engaged the Respondent to act for them in an adoption matter. It appears that this was how the Respondent first became acquainted with the Complainants. Subsequently in 2016, the Respondent asked Ms Thuy whether she would be interested in becoming a director of Hang Huo Energy Pte Ltd ("**the Company**"). He informed her that the Company was dormant and needed to replace another director, supposedly one Mr Lim Kian Boon ("**Mr Lim**"). Mr Lim allegedly needed to return to Malaysia to undergo medical treatment. According to Ms Thuy, the Respondent told her that she would not need to do anything in relation to the Company's business or affairs and that she could potentially be employed by the Company upon Mr Lim's completion of his treatment and return to Singapore.

8 It was not disputed that Ms Thuy had specifically asked the Respondent what the "risks or potential risk and responsibilities of becoming a director" were. The Respondent admitted that he had assured Ms Thuy she would not face any liability as long as she did not sign any personal guarantee. Ms Thuy then agreed and was appointed a director of the Company on 8 October 2016.

9 The Company was not in fact dormant. Further, the Respondent had omitted to inform Ms Thuy that the Company was party to an ongoing suit, HC/S 1248/2014 ("**Suit 1248**"), that had been brought by Horizon Petroleum Limited ("**HPL**"), a Malaysian-registered company, to recover a debt of

US$1.6m which the Company allegedly owed to HPL. According to Ms Thuy, the Respondent did not inform her of (a) the state of the Company's indebtedness owed to HPL, and (b) the existence of Suit 1248, much less that it was ongoing at the time she agreed to become a director. This was despite the fact that the Respondent was aware at the time that the Company was involved in Suit 1248 and had seen no documentary proof that the suit had been settled. He chose instead to rely solely on assertions by Mr Lim that Suit 1248 had been settled and conducted no checks of his own.

10 HPL later obtained final judgment in Suit 1248 on 20 February 2017, and it then filed an application against the Company for examination of the judgment debtor ("**EJD**"). In the EJD proceedings, the court made six orders between July and December 2017 for Ms Thuy (and others) to attend before the court and to be orally examined on the debts of the Company. However, Ms Thuy, who it appears was unaware of the fact that judgment had been entered against the Company, and therefore also of the EJD proceedings, failed to respond to any of the orders. The Respondent, who was appointed to act for the Company in Suit 1248 on 20 October 2017, knew of these proceedings but apparently failed to inform Ms Thuy of them. HPL eventually commenced committal proceedings against Ms Thuy.

11 At the hearing of the committal proceedings on 2 April 2018, both Ms Thuy and the Respondent were absent. By this stage, the Respondent was on record as representing Ms Thuy in Suit 1248, having apparently been appointed by the Company on Ms Thuy's behalf on 1 February 2018. A warrant of arrest was issued against Ms Thuy because of her absence at the committal hearing. According to Ms Thuy, she did not know about the orders made against her or that her attendance at the EJD proceedings was required until the warrant

was issued. On 12 September 2018, at the resumption of the committal hearing, Ms Thuy was found guilty of contempt and was ordered to pay a fine of $25,000, failing which she would be committed to prison for 14 days. Ms Thuy's passport was to be handed to the court by 25 September 2018 to be impounded until the fine was paid. This order was conveyed to Ms Thuy by the Respondent. Ms Thuy alleged that she could neither understand why the fine was imposed nor afford to pay it. She was also particularly troubled about surrendering her passport, as she needed to return to Vietnam for personal reasons. When she informed the Respondent of these concerns, he assured her that he would assist in obtaining the release of her passport.

12 An appeal was then filed by the Respondent on Ms Thuy's behalf against the order. Pending the hearing of the appeal, on 5 December 2018, the Respondent filed an application seeking permission for Ms Thuy's passport to be returned to her temporarily and for her to be allowed to travel to Vietnam for a period of not more than 30 days. According to the Respondent, Ms Thuy promised him that she would return to Singapore to attend court proceedings if required in the event her passport was released. The application was granted on 11 December 2018 on condition that a surety be provided to secure Ms Thuy's return to Singapore after 30 days. On 16 January 2019, the Respondent gave a personal undertaking to the court, under which he agreed to stand as surety for the sum of $25,000 in order to secure the release of Ms Thuy's passport ("**the Personal Undertaking**").

MC 16562

13 The Respondent in the meantime had been engaged by the Complainants in September 2017 to commence MC 16562 against two individuals, Ms Tran Thi Vinh and Mr Chong Kim Miaw ("**the Defendants**"), for the repayment of loans which the Complainants had allegedly extended to them. In those proceedings, the Defendants' solicitors requested copies of certain documents that were in the Complainants' list of documents.

14 These requests were not acceded to, apparently because the Respondent had failed to convey them to the Complainants, and this culminated in an application being made by the Defendants on 26 April 2018 for specific discovery against the Complainants. The court issued an order on 30 April 2018 directing that unless the Complainants filed and served an affidavit with the relevant documents that they had been directed to disclose, by 3 May 2018, their claims against the Defendants would be dismissed ("**the Unless Order**").

15 Despite being aware of the Unless Order, the Respondent did not inform the Complainants of its issuance. He also failed to arrange for the Complainants to depose the relevant affidavit that was required by the Unless Order. Instead, he filed a solicitor's affidavit on 3 May 2018 in purported compliance with the Unless Order. The court found that this did not comply with the Unless Order and that the Complainants were accordingly in breach of the order. MC 16562 was therefore dismissed on 14 May 2018 and the Complainants were ordered to pay the Defendants the costs of the suit.

16 The Respondent then filed two applications – a notice of appeal against the court's dismissal of MC 16562 (which was apparently filed out of time) and an application for an extension of time to file another notice of appeal – only to withdraw them both subsequently. This resulted in further costs orders being made against the Complainants. As a result, a Writ of Seizure and Sale ("**WSS**") was filed by the Defendants to enforce the costs orders, and this was duly executed when various assets belonging to the Complainants were seized at their property in October 2018. According to the Complainants, this was the first time that they learnt of the adverse costs orders or the execution proceedings. Some of the seized assets then had to be repurchased by Ms Thuy at the sale by public auction that was conducted by the bailiff.

Charges preferred against the Respondent

17 As mentioned at [2] above, the First and Second Charges pertained to the Respondent's conduct in relation to Ms Thuy's appointment as a director of the Company and the events following therefrom while the Third and Fourth Charges related to the Respondent's mismanagement of MC 16562. We reproduce the relevant portions of the charges as follows:

> **1st CHARGE**
>
> That you, **EZEKIEL PETER LATIMER**, are charged that, in or around 2016 (prior to 8 October 2016), whilst acting for [Ms Thuy], you failed to disclose to [Ms Thuy] information that would reasonably affect her interests, to wit :-
>
> (a) In or around 2015, [Ms Thuy] engaged you to act as her lawyer in an adoption matter.
>
> (b) In or around 2016, you approached Doan to ask if she would agree to be a director of [the Company].
>
> (c) Prior to Doan's appointment as a director of the Company, the Company had been sued […] by [HPL] *vide.* [Suit 1248] for *inter alia* the sum of US$1,600,000,

which HPL alleged was due and outstanding from the Company […] ("**Company Debt**").

(d) As at the time that [Ms Thuy] was appointed as a director of the Company, the proceedings in [Suit 1248] were still ongoing.

(e) At all material times prior to [Ms Thuy's] appointment as a director of the Company :-

(i) You and [Ms Thuy] were already in a solicitor-client relationship.

(ii) You were aware of the Company Debt owed by the Company to HPL, and that the Company was involved in ongoing litigation commenced by HPL against the Company in [Suit 1248].

(iii) The fact that the Company owed the Company Debt to HPL and was involved in ongoing litigation commenced by HPL against the Company in [Suit 1248] constituted information that would reasonably affect [Ms Thuy's] interests as a director of the Company.

(iv) You failed to inform [Ms Thuy] that the Company owed the Company Debt to HPL and was involved in ongoing litigation commenced by HPL against the Company in [Suit 1248], when you asked [Ms Thuy] to be a director of the Company.

(v) You were not *"precluded, by any overriding duty of confidentiality, from disclosing to* [Ms Thuy]*"* that the Company owed the Company Debt to HPL and was involved in ongoing litigation commenced by HPL against the Company in [Suit 1248], within the meaning of Rule 5(2)(b)(i) of the PCR. [Ms Thuy] also had not *"agreed in writing* [that S 1248 and/or the Company Debt] *need not be disclosed to* [her]*"*, within the meaning of Rule 5(2)(b)(ii) of the PCR.

And your aforesaid conduct constituted a breach of a rule of conduct amounting to improper conduct and practice as an advocate and solicitor under Section 83(2)*(b)* of the Legal Profession Act (Cap 161) read with Rule 5(2)(*b*) of the Legal Profession (Professional Conduct) Rules 2015 (Cap 161).

2nd CHARGE

That you, **EZEKIEL PETER LATIMER**, are charged that, whilst acting for [Ms Thuy] in respect of [Suit 1248] ("**Court Proceedings**"), you failed to withdraw from representing [Ms Thuy] in the Court Proceedings despite the fact that there was a reasonable expectation of a conflict between your duty to serve the best interests of [Ms Thuy] as your client and your own personal interest, to wit :-

> (a) On 1 February 2018, you filed a Notice of Appointment to act for [Ms Thuy] in the Court Proceedings.
>
> (b) On 16 January 2019, you gave [the Personal Undertaking] […]
>
> (c) Upon giving the Personal Undertaking, there was a reasonable expectation of a conflict of interest between your duty to serve [Ms Thuy's] best interests in the Court Proceedings, and your own personal interest, in that :-
>
> > (i) At all material times, you had a duty as [Ms Thuy's] lawyer to serve [Ms Thuy's] best interests in the Court Proceedings.
> >
> > (ii) By giving the Personal Undertaking, you agreed to be held personally liable as surety if [Ms Thuy] breached the terms / conditions upon which her passport had been released to her […]
> >
> > (iii) Therefore, upon giving the Personal Undertaking, there arose a reasonable expectation of a conflict of interest between your duty to serve [Ms Thuy's] best interest in the Court Proceedings, and your own personal interest to ensure that [Ms Thuy] complied with the terms / conditions upon which her passport had been released to her […]
>
> (d) At all material times, despite there being a reasonable expectation of a conflict of interest between your duty to serve [Ms Thuy's] best interests in the Court Proceedings and your own personal interest, you failed to take any of the following steps as required under Rule 22(3)(a) of the Legal Profession (Professional Conduct) Rules 2015 (Cap 161) […]

And your aforesaid conduct constituted a breach of a rule of conduct amounting to improper conduct and practice as an

advocate and solicitor under Section 83(2)*(b)* of the Legal Profession Act (Cap 161) read with Rule 22(2) of the Legal Profession (Professional Conduct) Rules 2015 (Cap 161).

3rd CHARGE

That you, **EZEKIEL PETER LATIMER**, are charged that, in or around 2017, whilst acting for [the Complainants] in respect of [MC 16562] against [the Defendants], you failed to act with reasonable diligence and competence in the provision of services to [the Complainants] in respect of [MC 16562], to wit :-

> (a) At all material times, you acted on behalf of [the Complainants] in [MC 16562].
>
> (b) On 26 April 2018, the Defendants filed an application for specific discovery against [the Complainants] […]
>
> (c) The Defendants' application […] was allowed, with [the Unless Order] granted […]
>
> (d) Despite being aware of the Unless Order, you failed to inform [the Complainants] that the Unless Order had been granted against them. You also failed to ensure that [the Complainants] filed the [relevant documents] by 3 May 2018 in compliance with the Unless Order.
>
> (e) As a result of your conduct in part (d) above, the Court found that [the Complainants] were in breach of the Unless Order, and dismissed their claims in [MC 16562] pursuant to […] the Unless Order. The Defendants consequently obtained judgment against [the Complainants] […]

And your aforesaid conduct constituted a breach of a rule of conduct amounting to improper conduct and practice as an advocate and solicitor under Section 83(2)*(b)* of the Legal Profession Act (Cap 161) read with Rule 5(2)(*c*) of the Legal Profession (Professional Conduct) Rules 2015 (Cap 161).

4th CHARGE

That you, **EZEKIEL PETER LATIMER**, are charged that, in or around 2017, whilst acting for [the Complainants] in respect of [MC 16562] against [the Defendants], you failed to keep [the Complainants] reasonably informed of the progress of [MC 16562], to wit :-

(a) At all material times, you acted on behalf of [the Complainants] in [MC 16562].

(b) On 26 April 2018, the Defendants filed an application for specific discovery against [the Complainants] […]

(c) The Defendants' application […] was allowed, with [the Unless Order] granted […]

(d) Despite being aware of the Unless Order, you failed to inform [the Complainants] that the Unless Order had been granted against them. You also failed to ensure that [the Complainants] filed the [relevant documents] by 3 May 2018 in compliance with the Unless Order.

(e) As a result of your conduct in part (d) above, the Court found that [the Complainants] were in breach of the Unless Order, and dismissed their claims in [MC 16562] pursuant to […] the Unless Order. The Defendants consequently obtained judgment against [the Complainants] […]

(f) Thereafter, the following costs orders were made against [the Complainants] (collectively, the "**Costs Orders**") […]

(g) Subsequently, on 30 August 2018, the Defendants filed a [WSS] against [the Complainants] […] to enforce the Costs Orders. Thereafter, the Defendants appointed a Bailiff to seize [the Complainants'] assets.

(h) On 17 October 2018, various assets belonging to [the Complainants] were seized by the Bailiff at their property […]. Shortly thereafter, [Ms Thuy] re-purchased the aforesaid seized assets at the Bailiff's sale by public action, in the total sum of S$4,500.

(i) At all material times throughout the course of [MC 16562], you failed to keep [the Complainants] *"reasonably informed of the progress of* [MC 16562]*"*, within the meaning of Rule 5(2)(*e*) of the Legal Profession (Professional Conduct) Rules 2015 (Cap 161), in that :-

> (i) You did not provide [the Complainants] with any timeous updates and/or details about the progress / status of [MC 16562] whilst it was ongoing, including *inter alia* that the Unless Order had been made against them, that they were found to be in breach of the Unless Order and that the Defendants had obtained judgment against them pursuant to the Unless Order.

> (ii) Subsequently, [the Complainants] only found out about the Costs Orders and that the Defendants had commenced enforcement proceedings against them, when the Bailiff arrived at their [property] on 17 October 2018 to seize their assets.
>
> And your aforesaid conduct constituted a breach of a rule of conduct amounting to improper conduct and practice as an advocate and solicitor under Section 83(2)*(b)* of the Legal Profession Act (Cap 161) read with Rule 5(2)(*e*) of the Legal Profession (Professional Conduct) Rules 2015 (Cap 161).
>
> [emphasis in original]

Alternative charges were also brought in respect of each of these charges under s 83(2)(*h*) of the LPA.

Findings of the DT

18 At the hearing before the DT, the Respondent, who was self-represented, pleaded *not guilty* to all four charges, but the DT found that all four charges were made out on the evidence. The Respondent's breaches of the relevant rules of the Legal Profession (Professional Conduct) Rules 2015 ("**the LPPCR**") were found to amount to improper conduct under s 83(2)(*b*) of the LPA. There was therefore no need for the DT to determine whether the alternative charges were made out. As the DT found that cause of sufficient gravity for disciplinary action existed under s 83 of the LPA with respect to the four charges, the matter came before us pursuant to s 93(1)(*c*) of the LPA. The DT also ordered costs in favour of the Applicant.

Parties' cases

19 Before us, the Applicant submitted that due cause had been made out under s 83(1) read with s 83(2)(*b*) of the LPA. This was because the Respondent's misconduct reflected in the four charges as a whole was egregious

and undoubtedly serious enough to warrant sanction. In particular, the Respondent was said to be in "utter dereliction of his duties which he owed to his client – these duties being some of the most basic duties that every advocate and solicitor is expected to uphold".

20 As for the appropriate sanction, in the light of his antecedents, the Applicant submitted that there was a pattern of recurring misconduct, which spanned multiple cases and clients, and that taken together, this reflected a character defect on his part rather than mere lapses in judgment. The presumptive penalty to be imposed was therefore a striking off order. Such an order would not only send a strong signal to the public and the profession that such misconduct is wholly unacceptable, but would also uphold and emphasise the applicable standards and safeguard public confidence in the legal profession. Further, it would be consistent with sentences meted out in past cases. In the alternative, the Applicant sought a suspension for a period of four years and nine months, following the end of the Respondent's present suspension term on 31 March 2024.

21 The Respondent, who appeared in person, did not file an affidavit in response to OA 7 and he indicated to us that he did not wish to contest the findings of the DT. However, he had filed written submissions on 22 January 2024, two days before the hearing, which set out some factors that he believed were mitigating and that he highlighted to us. He asked the court to impose a suspension term instead of striking him off the Roll of Advocates and Solicitors and contended that the various acts of misconduct had occurred within a particular period of a time when he was overworked and unable to cope. He also indicated that he had not been found guilty of financial dishonesty or

misappropriation, and that he had suffered great financial hardship as a result of his ongoing suspension.

Issues to be determined

22 Two issues arose for our determination:

(a) whether due cause was shown in respect of any of the four charges; and

(b) if so, what the appropriate sanction was.

Whether due cause was shown

23 Although the DT had found that "cause of sufficient gravity for disciplinary action" existed, it was for us to decide whether on the facts presented, the conduct in question fell within one or more of the limbs in s 83(2) of the LPA and, if so, to decide whether there was due cause for sanction: *Law Society of Singapore v Jasmine Gowrimani d/o Daniel* [2010] 3 SLR 390 at [35].

24 In such circumstances, the court must consider whether on the totality of the facts and circumstances, the solicitor's conduct is sufficiently serious to warrant the imposition of sanctions under s 83(1) of the LPA: *Law Society of Singapore v Udeh Kumar s/o Sethuraju and another matter* [2017] 4 SLR 1369 ("***Udeh Kumar***") at [30].

25 Applying these principles, we were satisfied that the First, Third and Fourth Charges were established on the evidence and the conduct in question fell within s 83(2)(*b*) of the LPA. However, we did not think the Second Charge

was made out on the evidence before us. It is therefore to this charge that we first turn.

The Second Charge: Breach of r 22(2) of the LPPCR

26 The Second Charge alleged that, while acting for Ms Thuy in Suit 1248, the Respondent failed to withdraw from representing her despite the reasonable expectation of a conflict between his duty to serve the best interests of Ms Thuy as his client and his personal interests. This expectation was said to arise because the Respondent provided the Personal Undertaking to the court, and this was allegedly in breach of r 22(2) of the LPPCR, which provides as follows:

> **Conflict, or potential conflict, between interests of client and interests of legal practitioner or law practice, in general**
>
> **22.**—…
>
> (2) Except as otherwise permitted by this rule, a legal practitioner or law practice must not act for a client, if there is, or may reasonably be expected to be, a conflict between —
>
> (a) the duty to serve the best interests of the client; and
>
> (b) the interests of the legal practitioner or law practice.

27 Under r 22(3) of the LPPCR, the Respondent was required in such circumstances to: (a) make full and frank disclosure of the adverse interest to Ms Thuy; (b) advise Ms Thuy to obtain legal advice; (c) ensure that Ms Thuy was not under an impression that the Respondent was protecting her interests; and (d) obtain Ms Thuy's informed consent in writing to his acting or continuing to act on her behalf.

28 The DT found that the Respondent had breached r 22. By providing the Personal Undertaking, the Respondent would be held personally liable for the sum of $25,000 for which he had agreed to stand as surety, in the event Ms Thuy breached any of the conditions upon which her passport had been released to her. In the premises, the DT considered that the Respondent had an interest in ensuring that she complied with those conditions. However, the DT found that this was in potential conflict with Ms Thuy's own interest. The DT thought that if Ms Thuy had a legitimate reason to remain in Vietnam beyond the 30 days and needed the Respondent to apply to the court to defer the date on which her passport was to be surrendered, this would have entailed "a degree of personal risk" to the Respondent as he would have been liable pursuant to his undertaking, in the event the court rejected any such request.

29 We were unable to follow the DT's reasoning on this point. If exigencies compelled Ms Thuy to remain in Vietnam beyond the 30-day period, her interests would, as observed by the DT, be furthered by seeking and securing a deferment of the date for her return and for the surrender of her passport. In this context, where would the Respondent's interests lie? Given that his financial stake in the matter would only be engaged upon a *breach* of the conditions imposed for the release of Ms Thuy's passport, it would have been entirely in his interests to assist Ms Thuy in striving to obtain the deferment she required, in all likelihood by seeking a variation of the order. If the court eventually decided against varying the order, the Respondent might have to forfeit the sum of $25,000, but this was a separate issue altogether, which we touch on below. We therefore could not see any potential conflicts of interests which arose solely as a result of the Respondent providing the Personal Undertaking to the court.

30 We were also not persuaded that the Respondent, guided by his desire to protect his financial interests, might have prevailed upon Ms Thuy to return to Singapore *regardless* of any legitimate reasons she might have had to prolong her stay. This was speculative to begin with. Further, the Respondent could only have countenanced Ms Thuy remaining away from Singapore if he had been able to secure the necessary variation of the terms and this was precisely what Ms Thuy's interests would have dictated in such circumstances. If the argument was to the effect that the Respondent might not apply himself sufficiently to securing such a variation, that simply had nothing to do with any question of a conflict of interest, and it would also be speculative.

31 However, the Respondent's decision to provide the Personal Undertaking was unwise. It should be noted that the Respondent took this on without first discussing the implications of such a position with Ms Thuy. This was appallingly poor practice. According to the Respondent, he decided to do this because there was an urgent need for Ms Thuy's passport to be released and no other person was available to do so. These were not persuasive reasons. To the extent there was urgency, that was so only because of a series of omissions on the Respondent's part and in truth, it was all to be seen in the light of his abject failure to keep his client informed of the matter and to seek and obtain the necessary instructions in a timeous manner. Perhaps, the best light in which to cast the Respondent's action was that he knowingly put himself at risk in order to mitigate a series of earlier failures on his part.

32 In any case, we take this opportunity to reiterate that the solicitor's undertaking has been described as a *sui generis* bond which is akin to a guarantee and practically equivalent to a sacred vow: *Law Society of Singapore v Naidu Priyalatha* [2023] 3 SLR 1401 ("***Naidu Priyalatha***") at [1]. This allows

those to whom such an undertaking is proffered (whether that is the court, other practitioners or members of the public) to assume that, once given, it will be scrupulously performed: *Briggs & Anor v The Law Society* [2005] EWHC 1830 (Admin) at [35]. It is against this backdrop that solicitors can be called to account for breaches of their undertakings, which includes both legal repercussions and possible disciplinary action: *Naidu Priyalatha* at [32].

33 Given the weighty implications which accompany the provision of a solicitor's undertaking, it is plain that solicitors would be well-advised to avoid giving an undertaking in relation to a matter that lies beyond their control. A solicitor should typically only give an undertaking with which he or she is able to comply: *Naidu Priyalatha* at [32]. And all eventualities which might affect the solicitor's ability to perform the undertaking should be carefully considered prior to giving it: see *The Guide to the Professional Conduct of Solicitors* (Nicola Taylor gen ed) (The Law Society, 8th Ed, 1999) at p 353. Should a solicitor choose to provide an undertaking in relation to matters outside his or her control, such as an undertaking pertaining to a third party's conduct, this is done at the solicitor's own peril. The fact that the undertaking pertains to actions that the solicitor has no control over will not change the nature of the undertaking. The solicitor may therefore face disciplinary action for any breaches of the undertaking even if it is occasioned by the acts of a third party.

34 For the same reason, an undertaking to pay a sum of money upon the happening of an event should, as a matter of prudence, be given on the basis that the relevant funds have been made available to the solicitors: see *United Bank of Kuwait Ltd v Hammoud and others* [1988] 1 WLR 1051 at 1063.

35 We turn to consider the other charges.

*The First Charge: Breach of r 5(2)(*b*) of the LPPCR*

36 The First Charge alleged that, while acting for Ms Thuy, the Respondent had failed to disclose information which would reasonably affect her interests. This included the fact that the Company was involved in ongoing litigation in Suit 1248 and that the Company owed a debt to HPL. The failure to disclose this was said to constitute a breach of r 5(2)(*b*) of the LPPCR, which reads as follows:

> **Honesty, competence and diligence**
>
> **5.—** …
>
> (2) A legal practitioner must —
>
> …
>
> (*b*) when advising the client, inform the client of all information known to the legal practitioner that may reasonably affect the interests of the client in the matter, other than —
>
> (i) any information that the legal practitioner is precluded, by any overriding duty of confidentiality, from disclosing to the client; and
>
> (ii) any information that the client has agreed in writing need not be disclosed to the client …

37 We agreed with the DT that the First Charge was made out.

38 First, we were satisfied that an implied retainer existed between the Respondent and Ms Thuy. It is important to note that there had been an ongoing solicitor-client relationship at the material time in that the Respondent had been acting as Ms Thuy's lawyer in relation to the adoption matter when he had

approached her and presented her with the directorship opportunity. More importantly, Ms Thuy sought legal advice, which was provided by the Respondent, on the question of the risks and responsibilities which accompanied directorship. As it turned out, the Respondent's advice that no liability could attach to Ms Thuy as long as she did not sign a personal guarantee was incorrect, but that does not detract from the fact that advice was sought and given in circumstances where it was to be expected that such advice would be relied on, and this was central to the existence of the retainer. His contention that he had merely interacted with Ms Thuy "as a friend" was rightly rejected by the DT. The duty under r 5(2)(*b*) of the LPPCR was therefore triggered.

39 Second, the Respondent was in breach of this duty as he provided Ms Thuy with *false* information that the Company was dormant and withheld material information in relation to its involvement in ongoing litigation. Before the DT, the Respondent argued that he was informed by Mr Lim that the Company had entered into a settlement with HPL in respect of Suit 1248 and that there were no ongoing proceedings against the Company.

40 Whilst the Company was indeed on the brink of entering into mediation proceedings with HPL at the time, such mediation proceedings *did not eventually materialise*. It therefore could not be disputed that the Respondent had withheld material information from Ms Thuy or provided her with incorrect information. The Respondent admitted that he had not bothered to confirm or check that his understanding of the status of Suit 1248 was correct. Instead, he had relied solely on what Mr Lim, who in fact was not even a director of the Company, had told him. In the light of Ms Thuy's concerns over the potential risks attaching to the directorship, such information would reasonably have been expected to have affected Ms Thuy's interests. There was thus an abject lack of

candour and care in the Respondent's dealings with Ms Thuy which ultimately led to committal proceedings being instituted against her.

41 The severity of the Respondent's conduct was also exacerbated by the fact that Ms Thuy was a layperson who was neither legally trained nor well-versed in English. She would therefore have required clear and comprehensible advice for even simple matters (see *Law Society of Singapore v K Jayakumar Naidu* [2012] 4 SLR 1232 at [1]), and this would have been considerably more pertinent in a matter involving the duties and responsibilities of directorship.

42 We were therefore amply satisfied that there was a breach of r 5(2)(*b*) of the LPPCR and that due cause for sanction existed.

The Third Charge: Breach of r 5(2)(c) of the LPPCR

43 The Third Charge alleged that, while acting for the Complainants in MC 16562, the Respondent failed to act with reasonable diligence and competence. Specifically, he failed to inform them about the Unless Order and failed to ensure that they complied with it, which resulted in the dismissal of their claim. This amounted to a breach of r 5(2)(*c*) of the LPPCR, which requires a legal practitioner to act with reasonable diligence and competence in the provision of services to the client.

44 The DT held that the Third Charge was made out. The Complainants were not notified of the Unless Order before the deadline for compliance. Further, the order was breached even though the documents that were required to be furnished were in the Respondent's possession at the material time. Hence, the breach of the Unless Order was occasioned solely by the Respondent's failure to take the requisite instructions and/or to act upon them.

45 We agreed with the DT's conclusion. The Respondent himself conceded that he should have ensured that the Complainants complied with the Unless Order. His only contention was that the Complainants knew about the Unless Order and were involved in the process of attempting to set aside the order. To this end, he relied on a signed affidavit deposed by the Complainants in support of the appeal against the striking out of the claim in MC 16562, dated 28 May 2018. However, given that the claim was dismissed on 14 May 2018, the affidavit did not (as the Respondent contended) show that the Complainants were aware of the existence of the Unless Order and the need to comply with it *before* the relevant deadline. More importantly, the Respondent's contention pertained to efforts to set aside the striking out of MC 16562, and not to compliance with the Unless Order which was an anterior matter.

46 The Third Charge centred around the Unless Order, which would have been enforced by the court only if the Complainants had been found to have breached the order both intentionally and contumeliously or contumaciously: see *Wellmix Organics (International) Pte Ltd v Lau Yu Man* [2006] 2 SLR(R) 117 at [2]. Despite knowing that unless orders are only granted by the court as a last resort, the Respondent failed to adduce any evidence to show that he had informed the Complainants of matters leading to the grant of the Unless Order or of the gravity and consequences of the Unless Order having been made and consequently, of the very real need to comply with it. On this basis, we agreed that r 5(2)(*c*) of the LPPCR was breached by the Respondent and that due cause for sanction was shown.

The Fourth Charge: Breach of r 5(2)(e) of the LPPCR

47 The Fourth Charge alleged that, while acting for the Complainants in MC 16562, the Respondent failed to keep them reasonably informed of the progress of the suit. He failed to inform them about the Unless Order and to ensure they complied with it. His mishandling of the suit led to the dismissal of the Complainants' claim, costs orders being made against the Complainants, and ultimately to their assets being seized pursuant to the WSS. At all material times, he did not give them timeous updates on MC 16562. This was contrary to r 5(2)(*e*) of the LPPCR, which stipulates that a legal practitioner must keep his clients reasonably informed of the progress of their matters. This amounted to improper conduct under s 83(2)(*b*) of the LPA.

48 The DT found that the Fourth Charge was made out. There was firstly no evidence that the Complainants were aware of the Unless Order at the time their claim was struck out by the court. Even if they had in fact known about the order, the Respondent did not adduce any contemporaneous correspondence which showed that he had updated them in due time on the status of MC 16562, or the appeal against the striking out of the claim or the application to file the appeal out of time.

49 We noted that there was some overlap in the facts which formed the basis for the Third and Fourth Charges. This was specifically in relation to the Respondent's mismanagement of the Unless Order which resulted in the dismissal of the Complainants' claim in MC 16562. Whereas the Third Charge was concerned with the Respondent's mismanagement of MC 16562 which resulted in the Unless Order being made, the Fourth Charge was directed at his abject failure to keep the Complainants informed of the developments leading

to the Unless Order, *which then continued in its aftermath and culminated in the seizure of the Complainant's assets*. As we indicated to counsel for the Applicant at the hearing, charges should be drafted precisely so as to avoid having separate charges each with factual elements that overlap. This is significant to ensure that an errant solicitor who carries out an act or omission which may constitute a breach is not punished twice for the same conduct: see, as a matter of analogy with criminal charges, s 40 of the Interpretation Act 1965 (2020 Rev Ed). Nonetheless, we were satisfied that the Fourth Charge was sufficiently distinct in that it was founded upon the broader factual substratum concerning the Respondent's management of MC 16562 as a whole with a focus on the wholly unacceptable consequences that befell the Complainants *after* the Unless Order was made because the Respondent had failed to keep them informed of developments.

50 On this basis, we agreed with the DT's findings. We found it astounding that as the Complainants' solicitor in MC 16562, the Respondent was unable to produce a *single piece* of written correspondence showing that he had updated the Complainants on the progress of their case. The Respondent's claims that he had lost access to both his Hotmail account and the physical file were convenient but not credible. He did not provide *any* evidence whatsoever of steps taken to regain access to his Hotmail account or to recover the physical file. On the contrary, the Complainants pointed to a single blank email from the Respondent on 21 July 2018 (with the summons for an extension of time to file the Notice of Appeal attached) as the only update which they allegedly obtained from the Respondent. It was also clear to us that the Respondent's failure to update the Complainants directly resulted in the dismissal of their claim in MC 16562 and in further adverse costs orders being made against them. On the totality of these circumstances, we found that not only had r 5(2)(*e*) of the

LPPCR been breached (and s 83(2)(*b*) of the LPA made out), but that due cause for sanction had also been shown.

The appropriate sanction

51 Having found that due cause had been shown in respect of each of the First, Third and Fourth Charges, we concluded that the Respondent's misconduct taken as a whole warranted his being struck off the Roll of Advocates and Solicitors.

52 The general sentencing principles underlying the determination of the appropriate penalty in cases of disciplinary proceedings are well established and may be summarised as follows (see *Law Society of Singapore v Ravi s/o Madasamy* [2023] 4 SLR 1760 at [114]):

(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 for his misconduct.

Of the four principles above, the paramount considerations are the protection of the public and the upholding of public confidence in the integrity of the legal profession.

53 It was not disputed before us (or indeed the DT) that the Respondent's misconduct in relation to the four charges did not involve dishonesty. Even so, a striking off order would be warranted if the Respondent's misconduct indicated that he lacked the qualities of character and trustworthiness which are the necessary attributes of a person entrusted with the responsibilities of a legal practitioner or if it brought grave dishonour to the profession. The ultimate question which the court will address its mind to is "whether the solicitor in question is a fit and proper person to be an advocate and solicitor of the court": *Law Society of Singapore v Ravindra Samuel* [1999] 1 SLR(R) 266 at [13]. The applicable approach to this inquiry was set out in *Law Society of Singapore v Seow Theng Beng Samuel* [2022] 4 SLR 467 ("***Samuel Seow***") at [36]–[41], to guide the court in deciding whether a striking off order should be made in cases not involving dishonesty or conflicts of interest:

> (a) First, the court will consider whether the misconduct in question attests to any character defects rendering the solicitor unfit to be a member of the legal profession. This will depend on the particulars of the misconduct, and the court should consider, taking into account all the circumstances of the misconduct, whether the misconduct stemmed from a *lapse of judgment* rather than a *character defect*.
>
> (b) Second, the court will consider whether the solicitor, through his misconduct, has caused grave dishonour to the standing of the legal profession.
>
> (c) If the answer to (a) or (b) is yes, striking off will be the presumptive penalty. This presumption will only be rebutted in exceptional cases.

(d) Even if the answer to (a) and (b) is no, the court will consider whether there are circumstances that nonetheless render a striking off order appropriate. The court should compare the case with precedents to determine the appropriate sentence, taking into account any aggravating and mitigating factors.

54 On the first element of the *Samuel Seow* framework, we considered that given the sustained pattern of offending conduct, there was sufficient basis for us to conclude that this pointed to a defect of character rendering the Respondent unfit to be a member of the legal profession. In coming to this conclusion, we also took into consideration how such instances of misconduct had been approached in prior cases.

55 We first considered the case of *Law Society of Singapore v Ooi Oon Tat* [2023] 3 SLR 966 ("***Ooi Oon Tat***"), which the Applicant relied on before the DT and at the hearing before us. Even though we agreed that the facts of that case bore, at first glance, some similarity to the Respondent's misconduct in relation to the Third and Fourth Charges, there were nevertheless important points of distinction.

56 In *Ooi Oon Tat*, the respondent was engaged by his client at the assessment of damages stage. This was *after* the client had already obtained interlocutory judgment against his opponent with liability fixed at 100 per cent. The respondent failed to respond to multiple discovery requests made by the client's opponent, which eventually led to a breach of an unless order and the striking out of his client's claim. By that time, the claim had been time-barred and a fresh claim could not be recommenced. Three charges were brought against the respondent for failing to keep his client reasonably informed of the

progress of the suit, failing to act with reasonable diligence and failing to provide timely advice in relation to the suit and to follow the instructions given by the client. The DT in that case found that all three charges had been made out.

57 Whilst this was found to be a "deplorable case of a solicitor who was in grave dereliction of duty to his client", which transformed a complete victory into a complete defeat, a striking off order was not made. Pertinently, on the first element of the *Samuel Seow* framework, the court took the view that the respondent's misconduct did not reach the threshold of disclosing a character defect rendering him unfit to be a member of the legal profession. Although the respondent's misconduct spanned a period of about six months (from June 2016 to January 2017) and there was an antecedent of a one-year suspension for having failed to deposit client moneys into the appropriate account, there was no finding of a persistent pattern of offensive conduct. A five-year suspension was imposed instead.

58 It is significant to highlight that in *Ooi Oon Tat*, the court did observe at [36] that, on the facts, it was "not outside the realm of possibility for an order of striking off to have been made". In other words, that case teetered on the border between an order for the maximum suspension and one for striking off. The respondent had failed to take the necessary follow-up actions with respect to two court orders, three letters sent by his client's opponents and multiple e-mails from his client over a period of about six months, although he did reply to some of the relevant letters and e-mails and attended the hearings pertaining to the two court orders. No restitution was made for the losses suffered by his client. Considering all the circumstances in the round, the court concluded that the evidence fell just shy of showing a sustained pattern of offensive conduct.

The misconduct in the present case spanned a longer period, and there were more antecedents.

59 We next considered the decision of this court in *Law Society of Singapore v Seah Choon Huat Johnny and another matter* [2024] SGHC 19 ("***Johnny Seah***"). There, two separate complaints were brought against the respondent resulting in a total of five charges. The two charges relating to the first complaint pertained to the respondent's firm having wrongly filed a notice of discontinuance in respect of a client's suit and the respondent's subsequent mismanagement of the suit. The three charges relating to the second complaint involved a separate matter where (a) the respondent failed to act timeously on his client's instructions to vary certain orders and to keep his client reasonably informed of the progress of her application, (b) the respondent failed to attend a case conference without reasonable justification or notice to his client, and (c) the respondent failed to respond to or comply with the requests of his client's new solicitors to take over the matter. The C3J imposed a suspension for a period of six months for the charges relating to the first complaint, and a further suspension for a period of four years for the charges relating to the second. In respect of the latter, a three-year suspension was imposed for the two charges relating to his failure to act timeously on instructions, to keep his client reasonably informed of her application and to attend the case conference. A one-year suspension was imposed for the third charge.

60 The court did not consider that the case warranted a striking off even though it found that the respondent had demonstrated a "pattern of irresponsibility and a cavalier disregard for his client's interests" and that his misconduct spanned a period of about five years. Whilst the respondent's client had been prejudiced by his misconduct, the respondent in that case had (a) no

relevant antecedents and (b) made full compensation for the loss suffered by his client. In the present case, the Respondent has a number of antecedents which, taken together with the present charges, pointed clearly to a pattern of behaviour that suggested a defect of character incompatible with membership of the profession. There had also not been restitution of the losses incurred by his client (see [65] below).

61 Finally, we considered *Udeh Kumar*. The respondent there faced 11 charges before the C3J, which fell within three broad categories: (a) a failure to use his best endeavours to avoid unnecessary adjournments, expense and wastage of the court's time, (b) deceiving or misleading the court by making false and inaccurate statements, and (c) advising his client to obtain a medical certificate under false pretences to excuse the client's absence from court. Considering the misconduct in totality, the court struck the respondent off the Roll of Advocates and Solicitors.

62 Although *Udeh Kumar* was decided prior to the formulation of the *Samuel Seow* approach, the court's analysis and conclusion in *Udeh Kumar* were nevertheless consistent with the principles set out in *Samuel Seow*. With respect to the charges falling within the first category, the court noted the existence of a string of previous disciplinary offences which the respondent in *Udeh Kumar* had been convicted of and punished for. This included two instances in which he failed to keep his clients reasonably informed of their matters and more than 30 instances where the respondent had either been late for court proceedings or failed to attend altogether. He was therefore found to have been "recalcitrant in being utterly disrespectful to the courts over a prolonged period of time". Further, the fact that the charges under the second

and third categories involved findings of dishonesty fortified the conclusion that the proper order was to strike the respondent off the roll.

63 Having considered the application of the relevant principles in the three cases above, we were satisfied that the Respondent had demonstrated a sustained pattern of offensive conduct which pointed to a character defect rendering him unfit to remain as an Advocate and Solicitor. In our judgment, the nature of his collective misconduct fell somewhere between that of the solicitors in question in *Ooi Oon Tat* and *Udeh Kumar*.

64 Unlike in *Ooi Oon Tat*, where the wrongdoing pertained to a single matter and spanned a period of six months, the Respondent's misconduct with respect to the First, Third and Fourth Charges involved his failure to manage appropriately two distinct matters across a period of several years. Moreover, whilst the respondent in *Ooi Oon Tat* had been previously sanctioned once for failing to deposit client monies in the appropriate account, there were two antecedents against the Respondent as set out at [5] above. Considering the totality of the Respondent's misconduct across the three charges here as well as his antecedents, it was clear to us that there was a persistent lack of understanding of the nature of his duty to his clients and a *persistent* disregard for their interests. His misconduct could not be characterised as lapses in judgment by any measure.

65 There was also no evidence that the Respondent had compensated Ms Thuy in respect of any of the losses which she had suffered in relation to his misconduct in the First Charge, although there was some indication that he had compensated the Complainants with respect to some of the costs which they were ordered to pay following the dismissal of MC 16562. However, unlike in

Johnny Seah, there was no full restitution made to his clients to minimise the damage which they have suffered. We were therefore satisfied that the Respondent's misconduct constituted a sustained pattern of offensive conduct which attested to a fundamental lack of regard for his duty as a solicitor and a lack of concern for his clients. Striking off was therefore the presumptive penalty.

66 Finally, there were no circumstances which warranted deviating from this presumptive penalty. The Respondent's primary submission before us was that the breaches occurred at a time when he was overwhelmed by work. This contention was entirely without merit, as it is trite that the onus lies on the solicitor to ensure that his schedule and workload (being matters wholly within his control) do not affect his ability to discharge his duties and responsibilities as an advocate and solicitor: see for instance, *Udeh Kumar* at [25]. On the contrary, the presence of aggravating factors such as the seniority of the Respondent further justified the imposition of a striking off order.

Conclusion

67 For these reasons, we found that there was due cause under the First, Third and Fourth Charges for the Respondent to be sanctioned under s 83(1) of the LPA. As his misconduct, taken together with his antecedents, revealed a clear defect of character rendering him unfit to be a member of the legal profession, we were satisfied that the proper sanction was to strike the Respondent off the roll and ordered accordingly. We also ordered that costs here

and below (inclusive of disbursements) in the aggregate sum of $25,000 be paid to the Applicant.

Sundaresh Menon
Chief Justice

Tay Yong Kwang
Justice of the Court of Appeal

Woo Bih Li
Judge of the Appellate Division

Thng Yu Ting, Angelia, Tang Kai Qing and Nicole Lee Man Ruo
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the respondent in person.