The Law Society of Singapore v Arjan Chotrani Bisham
[2001] SGHC 24

Case Number : OS 1407/2000

Decision Date : 05 February 2001

Tribunal/Court : High Court

Coram : Chao Hick Tin JA; L P Thean JA; Yong Pung How CJ

Counsel Name(s) : Andrew Ong and Kendall Tan (Rajah & Tann) for the applicant; Respondent in person

Parties : The Law Society of Singapore — Arjan Chotrani Bisham

Legal Profession – Solicitor's lien – Misconduct unbefitting an advocate and solicitor -Respondent repeatedly failing to deliver documents – Standard of judgment – Appropriate sanction – s 83(2)(h)Legal Profession Act (Cap 161)

(delivering the gounds of decision of the court): Pursuant to an order made by Judicial Commissioner Chan Seng Onn, Mr Arjan Chotrani Bisham, an advocate and solicitor of the Supreme Court of 14 years` standing, was required to show cause why he should not be dealt with according to the provisions of s 83 of the Legal Profession Act (Cap 161, 1997 Ed) (`the Act`). Pursuant to s 98(5) of the Act, the Law Society of Singapore (`Law Society`) applied by way of motion to have the order to show cause made absolute.

The facts

The complainant, Mr Paviter Singh Bajaj, was Mr Arjan`s erstwhile client. In 1995, Mr Arjan had acted for Mr Paviter and one Mrs Mahtani in the attempted purchase of a property known as 72 Serangoon Road (`the first property`). Later that same year Mr Arjan was again instructed by Mr Paviter to act for him in the attempted purchase of 25 other properties (`the 25 properties`). The attempts to purchase these properties were unsuccessful and both Mr Paviter and Mrs Mahtani suffered substantial losses as a result.

On or about 20 April 1998 Mr Paviter sought advice from the firm of Drew & Napier (`D&N`) concerning his rights against Mr Arjan. D&N, through Mr Hri Kumar, asked Mr Paviter for a complete set of all the documents pertaining to the aborted purchases of all the properties. Mr Paviter informed him that he did not have the documents and D&N began what was to turn out to be an arduous attempt to obtain copies of all the relevant documents in Mr Arjan`s possession.

The saga began on 4 May 1998 when D&N wrote to Mr Arjan to ask for copies of all the relevant files. No response was received and a reminder was sent out on 9 May 1998. On 12 and 13 May 1998, D&N tried unsuccessfully to contact Mr Arjan through the telephone. On 18 May 1998, Mr Paviter himself wrote to Mr Arjan. On 21 May 1998, D&N sent another reminder to Mr Arjan. Following this, a meeting was arranged between Mr Paviter, Mr Kumar and Mr Arjan. This took place on 23 May 1998. At the meeting Mr Arjan informed the others that he was in the process of making copies of the files and that he would send the copies of the files he had already copied to D&N by 26 May 1998 while the rest would be copied and sent by 31 May 1998.

On 25 May 1998, a letter was sent to remind Mr Arjan of the deadline he had committed himself to at the meeting. However, the deadline passed without the delivery of any of the documents promised. On 28 May 1998, D&N wrote to Mr Arjan again and set him a deadline - he was to deliver the copies of the files he had already copied by 5pm on 29 May 1998 and he was to deliver the copies of the

files he had yet to copy by 5pm on 1 June 1998.

Nothing more was heard from Mr Arjan and on 5 June 1998 Mr Paviter again wrote to him and set 8 June 1998 as the next deadline. In that letter, Mr Paviter warned that he would refer the matter to the Law Society if the deadline was not met. Mr Arjan did not respond and D&N tried to contact him through the telephone on 9 and 10 June 1998. These attempts were unsuccessful and on 11 June 1998, D&N sent another letter reiterating the request for the copies of the files.

On 25 June 1998 another unsuccessful telephone call was followed by another letter from D&N. On 26 June 1998 Mr Paviter contacted D&N and told Mr Kumar that Mr Arjan had called him to say that the copies of the files relating to the attempted purchase of the first property were ready for collection. Mr Kumar duly collected these documents.

On 15 July 1998, D&N wrote to Mr Arjan again to ask for the documents pertaining to the 25 properties. There was no response to this letter. On 27 July 1998, D&N tried unsuccessfully to contact Mr Arjan through the telephone and on 28 July another letter was sent. In this letter, among other things, D&N informed Mr Arjan that Mr Paviter had lost his patience with him and had set 30 July 1998 as the final deadline, beyond which he would proceed to enforce his rights. On the same day another unsuccessful attempt was made to contact Mr Arjan on the telephone. The deadline passed without any response from Mr Arjan and on 5 August 1998, Mr Paviter made what was to become the first of two complaints to the Law Society concerning Mr Arjan`s conduct with regards to the documents pertaining to his attempted purchase of the properties.

The complaint was referred to the Chairman of the Inquiry Panel and an Inquiry Committee (`IC`) was duly constituted. Mr Arjan did not avail himself of the opportunities to explain his conduct to the IC and on 29 October 1998, the IC determined, in IC Proceedings No 42 of 1998 and in Mr Arjan`s absence, that a formal investigation by a Disciplinary Committee was not necessary and, pursuant to s 86(7) of the Act, recommended to the Council that Mr Arjan be made to bear a penalty of $5,000.

On 5 December 1998, the Law Society wrote to Mr Arjan to inform him of the IC`s recommendation and to ask if he wanted to make any submissions to the Council before it deliberated on the imposition of the penalty. Mr Arjan did not respond to this letter and the Law Society sent a reminder on 4 January 1999 giving him until 14 January 1999 to state if he wished to be heard on the question of the imposition of the penalty. A further reminder was sent on 18 January 1999. Apparently Mr Arjan had indicated verbally that he wished to tender written submissions for the Council`s consideration and that he would do so by 20 February 1999. On 23 February 1999, the Law Society wrote to confirm this verbal indication.

The Council`s meeting was postponed to 19 March 1999 and Mr Arjan was duly reminded to submit his written submissions by 8 March 1999. Mr Arjan failed to do so and the Council determined, on 19 March 1999 and in accordance with s 87(1)(b) of the Act, `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 section 88`. Section 88 gave the Council the power to order a penalty of not more than $5,000.

Mr Arjan was notified of this decision on 23 March 1999. He paid the full sum by way of a cheque dated 22 April 1999. However, Mr Arjan continued to withhold copies of the files pertaining to the 25 properties until 25 May 1999 when he wrote to D&N to inform them that they could collect the copies on 31 May 1999 or 1 June 1999. However, there was a further delay when, on 31 May 1999, Mr Arjan informed D&N that he was not ready to hand over the documents that day but that he would be ready on 2 June 1999. On 2 June 1999, D&N collected the documents from Mr Arjan`s office.

In the meantime, on 15 January 1999, Mr Paviter had made another complaint to the Law Society about Mr Arjan`s failure to deliver the copies of the files pertaining to the 25 properties in spite of the IC`s recommendations in IC Proceedings No 42 of 1998.

A second IC was duly constituted (IC Proceedings No 14 of 1999). This IC invited Mr Arjan on 7 and 22 April 1999 to give a written explanation of his conduct but he failed to respond. Mr Arjan also failed to appear at this IC`s hearing on 13 May 1999, despite having been informed by way of a notice of the hearing.

Pursuant to s 86(7) of the Act the IC recommended that there should be a formal investigation by a Disciplinary Committee into the second complaint. The Council of the Law Society, pursuant to s 87(1)(c), determined that there should be a formal investigation by a Disciplinary Committee.

A Disciplinary Committee (`DC`) was duly constituted on 23 September 1999 to hear the parties on the following charge:

> *That Arjan Bisham Chotrani is guilty of grossly improper conduct in the discharge of his professional duty within the meaning of s 83(2)(b) of the Legal Profession Act (Cap 161) and/or of misconduct unbefitting an advocate and solicitor as an officer of the Supreme Court or as a member of an honourable profession within the meaning of s 83(2)(h) of the Legal Profession Act (Cap 161) in that he, between the period 19 March 1999 to 2 June 1999, failed to deliver copies of the files pertaining to the conveyance of 25 properties of which he had previous conduct despite repeated requests made by his previous client Mr Paviter Singh Bajaj and/or his solicitors from about 4 May 1998; and despite having been imposed a penalty of S$5,000 by the Council of the Law Society on 19 March 1999 for his failure and/or misconduct prior to 19 March 1999 in failing to respond to the numerous requests for delivery of copies of such files.*

The Disciplinary Committee`s determination

The DC began by setting out the proper conduct expected of a solicitor in a situation where he finds himself being sued for negligence by a client. The DC referred to a paragraph from p 29 of The Professional Conduct of Solicitors in UK, 1974 which states:

> *14.8 A solicitor who becomes aware of a potential claim for negligence against him, must, after reference to his insurers as mentioned above, inform his client that he can no longer act for him in relation to the subject matter of the possible claim and that the client should seek independent advice with regard thereto. The original solicitor in such a case who is requested to hand over the papers to the new solicitor instructed by the client should, as a matter of prudence, take copies of relevant documents which may be material in his defence.*

The DC also referred to para 19(b) of the Law Society`s Practice Directions and Rulings:

> *A solicitor retains documents that come to his possession in the course of his professional services in his capacity as his client`s agent.* ***The property in***

> ***respect of such documents remains with his client, as otherwise there cannot be a solicitor`s lien. Once a solicitor`s services are discharged and his fees paid, he cannot refuse a client`s request for release of those documents that are the property of his client****. If he requires to retain a set of the documents in anticipation of future complications arising over that matter with his client, he may make copies but he must bear the copying expenses. Documents prepared by the solicitor for his own benefit that belong to him and not the client include his attendance notes, his notes on his work, his accounts sheet in the file and his file cover. It is no excuse for the solicitor to refuse release to the client of documents that are the property of the client just because the client has previously been provided with copies and/or that the matter is completed. [Emphasis by the DC.]*

From these paragraphs, the DC distilled a four step procedure which, in its opinion, constituted the proper procedure for all parties to take in such a situation.

The first step was for the solicitor to inform his client that he cannot continue to act for him. In this regard, Mr Arjan had informed his liability insurers promptly but it was unclear whether or not he had informed Mr Paviter that he could no longer act for him and that he should seek independent legal advice. Nevertheless, all the parties proceeded on the basis that Mr Arjan`s retainer had been terminated in either April or May 1998. Furthermore, Mr Paviter had, in fact, sought independent advice from D&N and this negated any prejudice which he might have suffered if indeed Mr Arjan had not done as he should.

The second step was for Mr Paviter to appoint new solicitors to take over from Mr Arjan. The DC concluded that Mr Paviter had merely engaged D&N to advise him but had not appointed new solicitors to take over from Mr Arjan.

The third step was for the newly appointed solicitors to request the original papers. The DC concluded that Mr Paviter had failed to appoint new solicitors and therefore there was no request for the original documents. The evidence showed that Mr Paviter was content to leave the originals with Mr Arjan and that he only asked for copies.

The DC was inclined to accept Mr Arjan`s testimony that he was ready and willing to hand over the originals to D&N but that they refused his offer, insisting instead on photocopies. Therefore, `[s]uggestions that the respondent`s failure to provide copies hindered or delayed the Complainant in proceeding against the Respondent had ... a hollow ring ... As the Committee saw it, the complainant`s difficulty was to a large extent self-created`.

The fourth step was for the originals to be handed over to the new solicitors. From the foregoing, this step was clearly not taken. The DC asked rhetorically: `As much of the problem was evidently created by the complainant, where then did the respondent go wrong?`

According to the `proper procedure` set out above, Mr Arjan could have ignored the request for copies and instead could have insisted that the originals be accepted by D&N upon the payment of his fees or the protection of his lien. Mr Arjan`s fault lay in not insisting upon his rights and allowing numerous letters from D&N to be written to him between 4 May 1998 and 21 May 1998, `without one single reply informing them of his own rights in the matter or, for that matter, any kind of reply`. Instead Mr Arjan even agreed at the meeting on 23 May 1998 to supply copies.

The DC found that Mr Arjan had sufficient reason to back out of his agreement to supply the

requested copies or even to justify the delay in supplying them because of his `continuing duty to avoid conflict of interests`. The DC said:

> *The problem for the respondent, however, was that these reasons remained as `thoughts` in his mind. Indeed, the point that weighed against the respondent was that not once did he articulate his reasons in writing or otherwise to the complainant or M/s Drew & Napier for not following through his agreement with reasonable despatch to supply copies to them.*

In the DC`s opinion, Mr Arjan`s fault lay in unnecessarily delaying handing over the copies he promised:

> *The whole saga on the copies lasted for slightly over a year, from 4 May 1998 to 2 June 1999. And in the Committee`s opinion, unnecessarily so. The best label we could find for his conduct is a kind of knowing (ie knowing his rights) reticence and the worst, defiance, neither of which augured well for the respondent.*

`The root of the problem` concluded the DC, `was that he was unwilling or unable to decide whether the complainant was friend or foe`. The resulting ambivalence resulted in behaviour `not consonant with behaviour expected of an officer of the Supreme Court`.

However, `[i]n fairness to the respondent, the Committee did not find him defiant at all, though we had difficulty keeping up with his attitude towards the proceedings`.

The charge referred to the delay from the date the penalty was imposed (19 March 1999) to the date the documents were finally and fully handed over (2 June 1999); a period of about two and a half months. Counsel for the Law Society however, submitted that the DC should look at the delay cumulatively:

> *By that he meant that if we were to take cognisance that the complainant had **already** been denied the copies for ten months, we should view this further delay of two and a half months more seriously or of greater magnitude; or to put it another way, the longer the past delay, the more serious would the continuation of that delay be. The Committee accepted this submission as being sound. [Emphasis in original.]*

The DC recorded the mitigating fact that Mr Arjan`s sister had been diagnosed, at the beginning of 1998, with cancer from which she died on 15 August 1999. Also of mitigating value was the fact that Mr Arjan himself had been so stricken and was undergoing chemotherapy at the end of 1999. They also recorded that Mr Paviter `himself was not exactly without fault in the events leading to the delay`. However, the DC nevertheless concluded that the charge under s 83(2)(h) had been made out. Therefore:

> *That recorded, the Committee found that the delay by the respondent, viewed against the background of the earlier delays, in supplying the copies to M/s Drew & Napier when a clear agreement to do so had been reached does provide cause of sufficient gravity for disciplinary action against the respondent under s 83 of the Legal Profession Act (1997 Ed).*

This determination by the DC was made under s 93(1)(c). Therefore, the Society was obliged, under s 94(1), `to proceed to make an application in accordance with section 98`

Is there due cause under s 83(2)(h) of the Act?

Before this court, counsel for the Law Society, Mr Andrew Ong, argued that Mr Arjan was guilty of `misconduct unbefitting an advocate and solicitor` because of the unprofessional manner in which he had conducted himself. In particular, he had made a promise at the meeting on 23 May 1998 which he failed to honour. He had also behaved improperly when he failed to respond to the numerous telephone calls and letters made and sent to him.

It is established that under s 83(2)(h) the solicitor`s misconduct has to be unbefitting an advocate and solicitor and that the standard of judgment to be applied is fixed by the court and is not the standard of peer judgment (**Law Society of Singapore v Heng Guan Hong Geoffrey** [2000] 1 SLR 361).

It is also established that s 83(2)(h) is a catch-all provision which can be invoked when the solicitor`s conduct does not fall within any of the other grounds but is nevertheless unacceptable. But the standard of unbefitting conduct is less strict than the standard of `grossly improper conduct` ( **Law Society of Singapore v Ng Chee Sing** [2000] 2 SLR 165 ). In **Re Weare** [1893] 2 QB 439 it was said that a solicitor need only be shown to have been guilty of `such conduct as would render him unfit to remain as a member of an honourable profession`.

Bearing in mind these principles, the question was whether or not Mr Arjan`s conduct in this case amounted to `misconduct unbefitting an advocate and solicitor`. Upon a careful examination of the facts of this case, it became quite obvious that Mr Arjan`s conduct fell short of that which was expected of him as a professional man.

He tried to excuse his conduct by pointing to his difficult personal circumstances at the time the events in question were unfolding. While this court was sympathetic, we could not accept that these personal difficulties were valid reasons to excuse his misconduct. To be able to uphold a high standard of behaviour, even in the face of personal adversity and crisis, is one of the characteristics that makes a man a professional. In any event, what was expected of him was not unduly onerous. It was therefore without hesitation that we found that due cause had been shown.

The appropriate penalty

Turning now to the question of the appropriate penalty, in ***Heng Guan Hong Geoffrey*** the guidance, with respect to disciplinary sentencing, laid down by Sir Thomas Bingham MR in the English Court of Appeal in **Bolton v Law Society** [1994] 2 All ER 486 at pp 491-492 was adopted:

> *Any solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon him by the Solicitors Disciplinary Tribunal. Lapses from the required high standards may, of course, take different forms and be of varying degrees. The most serious involves proven dishonesty, whether or not leading to criminal proceedings and criminal penalties. In such cases the tribunal has almost invariably, no matter how strong the mitigation*

advanced for the solicitor, ordered that he be struck off the Roll of Solicitors ... If a solicitor is not shown to have acted dishonestly, but is shown to have fallen below the required standards of integrity, probity and trustworthiness, his lapse is less serious but it remains very serious indeed in a member of a profession whose reputation depends upon trust. A striking-off order will not necessarily follow in such a case, but it may well. The decision whether to strike off or to suspend will often involve a fine and difficult exercise of judgment to be made by the tribunal as an informed and expert body on all the facts of the case. Only in a very unusual and venial case of this kind would the tribunal be likely to regard as appropriate any order less severe than one of suspension.

Mr Arjan had not acted dishonestly but had shown himself to be less than trustworthy. He had broken his word many times and his integrity was thus called into question. According to the guidance above, the minimum punishment that is appropriate is a term of suspension, unless the case is `very unusual and venial`. The facts of this case revealed nothing `very unusual and venial` and, having considered all the facts and arguments, we were of the opinion that a suspension from practice for a period of six months was the appropriate order. We also ordered that Mr Arjan bear the costs of these proceedings.

Outcome:

Order accordingly.

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