

Ong Jane Rebecca v Lim Lie Hoa and Others
[2002] SGHC 80

Case Number : OS 939/1991, SIC 600537/2002
Decision Date : 23 April 2002
Tribunal/Court : High Court
Coram : Choo Han Teck JC
Counsel Name(s) : Kannan Ramesh and Christina Choo (Tan Kok Quan Partnership) for the first defendant and third party; Arul Chandran and Ooi Oon Tat (C Arul & Partners) for the second defendant; Devinder K Rai (Acies Law Corp) for the third and fourth defendants
Parties : Ong Jane Rebecca — Lim Lie Hoa

Legal Profession – Discharge of counsel – Application to be discharged as solicitors – Application following assertions by another solicitor of conflict of interests – Whether solicitors can take neutral position as to whether they should continue to act – Role of court – Whether application should be allowed

(Inquiry pursuant to Judgment dated 16 July 1996)

Citation: OS No 939 of 1991

Jurisdiction: Singapore

**Date: 2002:04:23
2002:04:19; 2002:04:12; 2002:04:11**

Court: High Court

Coram: Choo Han Teck, JC

Counsel:

Plaintiff in person

Kannan Ramesh and Christina Choo (Tan Kok Quan Partnership) for the First Defendant & Third Party

Arul Chandran and Ooi Oon Tat (C. Arul & Partners) for the Second Defendant

Devinder K Rai (Acies Law Corporation) for the Third & Fourth Defendant

HEADNOTES

Legal Profession – solicitors cannot take a neutral position where allegations made by other solicitor of conflict of interest – the court can only make a ruling of conflict of interest after a full inquiry and not in proceedings for the discharge of a solicitor

Facts

This was an application by Tan Kok Quan Partnership to be discharged from acting as solicitors for the first defendant. The application followed a letter from solicitor for the second defendant taking the view that Tan Kok Quan Partnership, having acted as co-administrator for the first defendant's late husband's estate, may be in breach of rule 29 of the Legal Profession (Professional Conduct) Rules. At the resumed hearing, the applicant submitted that although he disputes the allegations of conflict of interests, his firm could not, in the meantime, continue to act without a resolution of the allegations.

Held

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A solicitor is entitled to caution his counterpart when he believes that a conflict of interest situation looms in the distance. Whether or not the solicitor concerned agrees with that perception, he must decide whether he is comfortable in continuing so to act. If he decides to continue acting for the client he must be prepared to justify his conduct if necessary. The question as to whether he is right or not may only be determined after a full inquiry; but this court, at this juncture, is not the proper forum to conduct such an inquiry. Following the applicant firm's statement that the firm could not continue to act without a resolution of the allegations, the application was allowed.

Judgment (Application for Discharge)

GROUND OF DECISION

1. This was an application by Tan Kok Quan Partnership as solicitors for the first defendant (Lim Lie Hoa) for an order declaring that Tan Kok Quan Partnership has ceased acting for the first defendant, and for the provision of costs although the prayer ought more accurately be for leave to be discharged as solicitors for the first defendant. The application was taken out on 8 April 2002. From the outset, it was a most peculiar application, but I shall have to set out the background leading to the application for a better understanding as to why that is so. The plaintiff is unrepresented in these, as well as the previous proceedings. The second defendant is now represented by Mr. Arul Chandran while the new parties, the third and fourth defendants are represented by Mr. Devinder Rai.

2. In 1991 the plaintiff (Jane Rebecca Ong) sued Lim Lie Hoa and the second defendant (Ong Siau Tjoan) in this action, that is, Originating Summons 939 of 1991. Ong Siau Tjoan was her estranged husband, and Lim Lie Hoa her mother-in-law (Ong Siau Tjoan's mother). The assets (generally believed to be substantial - declared at one point to be \$5,117,269 - by the parties concerned) of Lim Lie Hoa's deceased husband (Ong Seng King) lie at the heart of the dispute because Jane Rebecca Ong claimed that her rights to matrimonial assets included her husband's share in his father's estate. At all material times, Lim Lie Hoa and Ong Siau Tjoan were the administrators of the said estate. Matters proved far more complicated than it appeared. The first defendant was clearly and, it seems, intractably antagonistic towards the plaintiff and all that she proposed or said. Wavering between his wife and mother, the second defendant agreed to, and did, execute a deed of assignment of half his share of his father's estate to the plaintiff. However, he subsequently executed a deed of release in favour of the estate. In the deed of release he accepted that he had already taken and enjoyed what was, as he described in a letter he wrote, his "fair share" of the assets of the estate.

3. This Originating Summons was taken out by the plaintiff for a court declaration that the deed of release was void and unenforceable, and for an order for an inquiry into the estate of Ong Seng King so as to determine its true assets. At the end of the trial in 1996, Justice Chao Hick Tin granted the plaintiffs the orders sought. Consequently, the parties began to set in motion the steps necessary for the inquiry into the assets of the estate and the plaintiff's share of it. The inquiry proper has not commenced but the parties have been busy with various ancillary proceedings such as the joinder of the third and fourth defendants as parties, naming the first defendant as a third party, applications for interim payments, mareva injunctions, and now, this application for an order that the solicitors for the first defendant to cease acting for her.

4. The grounds of the application are set out in the affidavit of Choo Chen Chen, a solicitor of Tan Kok Quan Partnership. The affidavit drew reference to a letter of 4 April 2002 by C Arul & Partners the current solicitors for the second defendant addressed to the first defendant's solicitors. The letter reminded the firm that Tan Kok Quan SC, who is the principal partner in Tan Kok Quan Partnership,

was a partner in the firm of Lee & Lee which acted for the estate of Ong Seng King. Consequently, the writer of this letter takes the view that Tan Kok Quan Partnership cannot now act for the first defendant in the current proceedings against the second defendant because the latter was a co-administrator of Ong Seng King's estate since that will require the firm to act against one of its former clients, and be thus in breach of r 29 of the Legal Profession (Professional Conduct) Rules (the Rules). Secondly, as the assets of the estate are being questioned, Tan Kok Quan SC may have to give evidence himself, and on that account, he will be in breach of r 31 of the Rules. Tan Kok Quan Partnership then wrote to the first defendant by telefax dated 5 April stating that in view of the second defendant's objections it would be prudent for the firm to cease acting for her. The first defendant sent a curt reply stating: "I do not wish to discharge M/s Tan Kok Quan Partnership."

5. Mr. Ramesh, from Tan Kok Quan Partnership, making the application on behalf of his firm expressed the opinion of his firm that they do not think that there is any merit in Arul Chandran's assertions of conflict of interests. He initially took the view that the firm was "neutral" on the question posed in this application as to whether or not they should continue to act for the first defendant and decided to leave it to the court to make whatever order it deems fit. He added that the first defendant does not wish to discharge them. He then asked for the matter to be stood down so that the first defendant could appear in person or engage an independent solicitor to advise her on this matter of discharging her present solicitors. Before adjourning I indicated to counsel that in such circumstances the applicant (the solicitors) cannot take a neutral position. When the hearing resumed on 19 April Mr. Ramesh retracted from his neutral position and submitted that although he disputes the allegations of conflict of interests, his firm cannot, in the meantime, continue to act without a resolution of the allegations. In the circumstances, I granted an order in terms of their application and the proceedings were explained to the first defendant who asked for, and was given, one month to engage another firm of solicitors to take over her case. I now give my reasons.

6. I am mindful of the history of the personal relationship of the parties in this action is steeped in acrimony and shall hope to be alert against any creeping shadow of mischief from the parties. There are already several pending applications that seems to me to be steps in the wrong direction. Some of them may be necessary, but they must be dealt with swiftly by all concerned because everyone must focus on proceeding as expeditiously as possible to get the inquiry underway. One of the abovementioned applications is this application by Tan Kok Quan Partnership to be discharged as solicitors for the first defendant. The application was precipitated by the letter from Arul Chandran that I had referred to above. A solicitor is entitled to caution his counterpart when he believes that a conflict of interest situation looms in the distance, if it was not already upon the other. The solicitor concerned may or may not agree with that perception. But he must decide whether he is comfortable in continuing so to act. If he decides to continue acting for the client he must be prepared to justify his conduct if necessary. The question as to whether he is right or not may only be determined after a full inquiry; but this court, at this juncture, is not the proper forum to conduct such an inquiry. The judge in any proceedings before him, sits as an adjudicator, not as an advisor. That is why I indicated to Mr. Ramesh that he cannot take a neutral position in the circumstances. He must decide whether he can continue to act for the first defendant. If he believes so he ought to withdraw his firm's application. If he does not feel that he or his firm can continue under the circumstances, it will only be fair to allow the application, and not compel him or his firm to carry on under the threat of disciplinary or other proceedings against them. But the court cannot make that election on the firm's behalf. Neither can it declare the propriety or otherwise of the firm should they decide to carry on because a declaration of this nature can only be made, as I have said, after a full inquiry into a specific complaint. It is not the function of this court to usurp the role an inquiry or disciplinary committee who would ordinarily be the appropriate body to determine questions of the kind that have arisen here.

7. In view of Mr. Ramesh's statement that his firm cannot continue to act in the face of the assertions being made against them, I granted Tan Kok Quan Partnership the discharge prayed for.

Sgd:

Choo Han Teck
Judicial Commissioner

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