

IN THE COURT OF THREE JUDGES OF THE REPUBLIC OF SINGAPORE

[2022] SGHC 79

Originating Summons No 7 of 2021

In the matter of Sections 94(1) and 98(1) of the Legal
Profession Act (Cap 161, 2009 Rev Ed)

And

In the matter of Thirumurthy Ayernaar Pambayan, an
Advocate and Solicitor of the Supreme Court of the
Republic of Singapore

Between

Law Society of Singapore

... Appellant

And

Thirumurthy Ayernaar
Pambayan

... Respondent

EX TEMPORE JUDGMENT

[Legal Profession — Show cause action]

[Legal Profession — Professional conduct — Grossly improper conduct]

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Law Society of Singapore
v
Thirumurthy Ayernaar Pambayan

[2022] SGHC 79

Court of Three Judges — Originating Summons No 7 of 2021
Sundaresh Menon CJ, Andrew Phang Boon Leong JCA and Judith Prakash
JCA
6 April 2022

7 April 2022

Sundaresh Menon CJ (delivering the judgment of the court *ex tempore*):

Introduction

1 This is an application by the Law Society of Singapore (“the Law Society”) for Mr Thirumurthy Ayernaar Pambayan (“Mr Thirumurthy”), an advocate and solicitor of about 21 years’ standing, to show cause as to why he should not be made to suffer punishment under s 83(1) of the Legal Profession Act (Cap 161, 2009 Rev Ed) (“the LPA”).

Background

2 The Law Society preferred a single charge of grossly improper conduct under s 83(2)(b) of the LPA against Mr Thirumurthy for falsely attesting that he had witnessed the signing of a Power of Attorney (“the POA”) by one Savarimuthu Pitchai (“the Complainant”). In fact, the Complainant had not

signed the POA in Mr Thirumurthy's presence. At the material time, Mr Thirumurthy was practising as a sole proprietor. Mr Thirumurthy did not contest the charge before the disciplinary tribunal.

3 The material facts relating to the charge are as follows. The Complainant engaged one Relax Services Pte Ltd ("Relax") to recover an investment which he had made in a UK company. Relax advised the Complainant that the POA was required for that purpose and it appointed Mr Thirumurthy to prepare the POA. The Complainant was instructed to attend at Mr Thirumurthy's office to sign the POA, and when he did so, it transpired that Mr Thirumurthy was away from his office attending to some other matters. The Complainant signed the POA in the presence of Mr Thirumurthy's secretary. When Mr Thirumurthy returned to the office later that day, he was told of the Complainant's visit to sign the document by his secretary, and he then appended his signature on the POA and attested that the Complainant had signed the POA in his presence. Mr Thirumurthy says that he thought about asking the Complainant to return to his office and execute the POA again, this time in his presence, but decided that he did not need to do so because his secretary had witnessed the Complainant signing the POA. Mr Thirumurthy accepts that regardless of the integrity and reliability of his secretary it was wrong of him to issue a false attestation.

4 There was much common ground between the parties. Specifically, they both accept, among other things, that:

- (a) there is due cause for sanctions to be imposed;
- (b) that Mr Thirumurthy acted dishonestly; and
- (c) that Mr Thirumurthy's dishonest act was a case of grave misjudgement, rather than one which indicated a character defect

rendering the solicitor unfit for the profession or which struck at the heart of the administration of justice. In *Law Society of Singapore v Chia Choon Yang* [2018] 5 SLR 1068, we considered that, in cases concerning dishonesty, where there is no indication of a defect of character rendering the solicitor unfit to remain a member of the profession, the presumptive penalty of striking off the rolls may be displaced.

5 In these circumstances, the only issue before us is what sanction is appropriate in this case.

6 Counsel for the Law Society, Mr Ajaib Hari Dass, submits that the appropriate sentence in this case is suspension for a period of between 12 and 15 months. On the other hand, counsel for Mr Thirumurthy, Mr R S Bajwa, submits that we should impose a shorter period of suspension, but supplement the punishment by imposing a fine pursuant to s 83(1)(e) of the LPA, which provides that the court can impose a fine under s 83(1)(c) “in addition” to a period of suspension imposed under s 83(1)(b). In the alternative, Mr Bajwa submits that a period of six months’ suspension would be appropriate.

Our decision

7 At the hearing before us, we asked the parties where Mr Thirumurthy’s case stood in comparison with that of the first respondent solicitor (“Mr Sum”) in *Law Society of Singapore v Sum Chong Mun and another* [2017] 4 SLR 707 (“*Sum Chong Mun*”). In that case, Mr Sum was procured by the second respondent solicitor (“Ms Kay”) to certify and witness the execution of a lasting power of attorney (“LPOA”) on which the donor’s signature had already been affixed on the LPOA. The donee of the LPOA was Ms Kay’s sister. Mr Sum accepted Ms Kay’s assurance, which was given to him in a professional

capacity, that she had explained the contents of the LPOA to the donor and that she had personally witnessed the donor's signature on the LPOA. Mr Sum was later contacted by the police about the circumstances in which he came to witness the execution of the LPOA, and he came to learn that Ms Kay's representations were untrue. Mr Sum then made a statutory declaration stating that he had not witnessed the donor execute the LPOA and had certified the LPOA in reliance on Ms Kay's assurances. We considered that, while there were mitigating factors operating in favour of Mr Sum, who had demonstrated genuine remorse, there was nevertheless an overriding public interest that had been adversely affected. This was because the primary safeguard against abuse of the LPOA regime is the certification by an advocate and solicitor that he has witnessed its execution by a donor who understood the implications of the LPOA (see *Sum Chong Mun* at [45]). In the circumstances, we suspended Mr Sum from practice for one year (*Sum Chong Mun* at [52]).

8 Both parties accept that the facts in this case are less serious than in Mr Sum's case. In part, that is because the instrument in *Sum Chong Mun* was a LPOA that implicated serious public interest concerns, and in part, because there is no question that the Complainant here did want to sign the POA he signed, and did in fact sign it, albeit before Mr Thirumurthy's secretary and not before Mr Thirumurthy himself.

9 As we have noted above, both parties also accept that a term of suspension was appropriate. On this, the principal point of departure between the parties was the submission by Mr Bajwa that we could consider imposing a shorter period of suspension, but also accompany that with the imposition of a fine. Mr Bajwa relied on our judgment in *Law Society of Singapore v Andre Ravindran Saravanapavan Arul* [2011] 4 SLR 1184, where we observed that, especially with solicitors in small practices, a fine can have a strong deterrent

effect (at [34]–[37]). We do not accept the proposition that it is permissible to view the imposition of a fine as a substitute for the imposition of all or part of a period of suspension. A fine and a period of suspension are distinct sanctions and there is no meaningful way in which any part of a period of suspension can be substituted with the imposition of a fine. A fine may be imposed on its own where it is sufficient (see, for instance, *Law Society of Singapore v Tay Choon Leng John* [2012] 3 SLR 150 at [57]–[64]) or in addition to some other sanction including a period of suspension where this is warranted by other considerations, such as the desire to disgorge an illicit gain (see, for instance, *Law Society of Singapore v Chan Chun Hwee Allan* [2018] 4 SLR 859 at [53]).

Conclusion

10 In the present circumstances, having regard to the sentencing considerations and having regard to the mitigating circumstances, as well as the sentence that was imposed on Mr Sum in *Sum Chong Mun*, we consider that the appropriate sentence in this case is the imposition of a suspension for a period of nine months. On Mr Thirumurthy’s request, we also order that the suspension commence on 1 May 2022. By the agreement of the parties, we also order that Mr Thirumurthy pay the Law Society its costs fixed at \$5,000, together with disbursements fixed at \$1,200. We also wish to record our gratitude to both counsel for the measured way in which they presented their respective cases.

Sundaresh Menon
Chief Justice

Andrew Phang Boon Leong
Justice of the Court of Appeal

Judith Prakash
Justice of the Court of Appeal

Ajaib Hari Dass
(Haridass Ho & Partners) for the applicant;
R S Bajwa (Bajwa & Co) (instructed) and Mohan Das Naidu (Mohan
Das Naidu & Partners) for the respondent.
