IN THE COURT OF 3 SUPREME COURT JUDGES OF THE REPUBLIC OF SINGAPORE

[2024] SGHC 218

Originating Application No 14 of 2023

Between

Law Society of Singapore

… *Applicant*

And

Nedumaran Muthukrishnan

… *Respondent*

GROUNDS OF DECISION

[Legal Profession — Disciplinary proceedings]

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Law Society of Singapore
v
Nedumaran Muthukrishnan

[2024] SGHC 218

Court of 3 Supreme Court Judges — Originating Application No 14 of 2023
Tay Yong Kwang JCA, Debbie Ong Siew Ling JAD and Judith Prakash SJ
4 July 2024

29 August 2024

Tay Yong Kwang JCA (delivering the grounds of decision of the court):

Introduction

1 Mr Nedumaran Muthukrishnan (the "respondent") was admitted as an advocate and solicitor of the Supreme Court of Singapore on 25 May 1996. He faced four charges before a Disciplinary Tribunal ("DT") constituted under s 90(1) of the Legal Profession Act 1966 (2020 Rev Ed) ("LPA").

2 The respondent claimed trial to all four charges. The charges were as follows:

1st CHARGE

> You, Nedumaran Muthukrishnan, are charged that you, as an Advocate and Solicitor of the Supreme Court of Singapore, did act in breach of Rule 5(2)(a) of the Legal Profession (Professional Conduct) Rules 2015 of the Legal Profession Act (Cap 161) to wit, you were not honest in your dealings with your client, Chan Yee Huat ("Your Client") in that between the period of 17 March 2020 and 17 April 2020, you had misled Your Client into

believing that you had or would shortly be posting and / or hand-delivering cheques for the payment of persons nominated by Your Client, in circumstances when you did not do so and/or had no intention to of doing do so, and as such, you are thereby guilty of improper conduct or practice as an advocate and solicitor within the meaning of Section 83(2)(b) of the Legal Profession Act (Chapter 161).

2nd CHARGE

You, Nedumaran Muthukrishnan, are charged that you, as an Advocate and Solicitor of the Supreme Court of Singapore, did act in breach of Rule 5(2)(a) of the Legal Profession (Professional Conduct) Rules 2015 of the Legal Profession Act (Cap161), to wit, you were not honest in your dealings with your client, Chan Yee Huat **("Your Client")**, when you applied the sum of S$160.395.96 (the **"Sum"**) received on behalf of Your Client pursuant to HC/S324/2016 and C/S325/2016 towards the settlement of your professional legal fees and costs in, inter alia, HC/S324/2016, HC/S325/2016 and HC/S52/2017 without obtaining Your Client's prior consent and/or without first informing Your Client of your intention to utilise the Sum in such a manner, and as such you are thereby guilty of improper conduct or practice as an advocate and solicitor within the meaning of Section 83(2)(b) of the Legal Profession Act (Chapter 161).

3rd CHARGE

You, Nedumaran Muthukrishnan, are charged that you, as an Advocate and Solicitor of the Supreme Court of Singapore, did act in breach of Rule 17(3)(a) of the Legal (Professional Conduct) Rules 2015 of the Legal Profession Act (Cap161), to wit, you failed to inform your client, Chan Yee Huat **("Your Client"),** of the basis on which your fees for your professional services would be charged and of the manner in which your fees and any disbursements in respect of, inter alia, H/S324/2016, HC/S325/2016 and HC/S52/2017 were to be paid by Your Client, and as such you are thereby guilty of improper conduct or practice as an advocate and solicitor within the meaning of Section 83(2)(b) of the Legal Profession Act (Chapter 161).

4th CHARGE

You, Nedumaran Muthukrishnan, are charged that you, as an Advocate and Solicitor of the Supreme Court of Singapore, did act in breach of Rule 7(1)(a)(iv) of the Legal Profession (Solicitors' Accounts) Rules of the Legal Profession Act (Cap 161), in that you withdrew the sum of S$160,395.96, being client's money (the **"Sum"**), from the client account in satisfaction of your solicitor's costs in, *inter alia*,

> HC/S324/2016, HC/S325/2016 and HC/S52/2017 in circumstances where:
>
> > (a) No bill of costs or other written intimation of the amount of solicitor's costs incurred in respect of HC/S324/2016, HC/S325/2016 and HC/S52/2017 was delivered to your client, Chan Yee Huat **("Your Client")**; and
> >
> > (b) You failed to notify Your Client that the Sum would be applied towards or in satisfaction of your legal costs
>
> and as such, you are thereby guilty of improper conduct or practice as an advocate and solicitor within the meaning of Section 83(2)(b) of the Legal Profession Act (Chapter 161).

(collectively, the "Charges")

3 There were four corresponding alternative charges which were identical to the main charges save that they were framed under s 83(2)(*h*) of the LPA. At the commencement of the hearing before us, we pointed out to the parties that the wording of the alternative charges had adopted erroneously the wording of s 83(2)(*b*) of the LPA instead of s 83(2)*(h)*. Counsel for the Law Society of Singapore (the "Law Society"), Ms Teo Yi Hui, explained that this was a clerical error on her part. The respondent, who appeared in person, took no issue with this.

4 The DT received evidence over three days in November and December 2022. It issued its written report on 18 September 2023, holding that all four Charges were proved beyond reasonable doubt and accordingly found cause of sufficient gravity pursuant to s 93(1)(*c*) of the LPA for referral to this court: *The Law Society of Singapore v Nedumaran Muthukrishnan (formerly of N Nedumaran & Co)* [2023] SGDT 18.

5 On 18 October 2023, the Law Society applied by way of C3J/OA 14/2023 ("OA 14") for the Respondent to show cause why he should

not be sanctioned under s 83(1) of the LPA in respect of the Charges. The Law Society also sought an order for the costs of and incidental to the proceedings, including the costs of the proceedings before the DT, to be paid by the respondent.

Background facts

Circumstances forming the subject matter of the Charges

6 The complainant, Mr Chan Yee Huat (the "Complainant"), was acquainted with the respondent in 2012 as he was then seeking legal representation for himself and some of the members of his family in various personal injury matters. During the period from 2013 to 2019, the respondent represented the Complainant in various matters, of which three are relevant to OA 14 – HC/S 324/2016 ("Suit 324"), HC/S/325/2016 ("Suit 325") (collectively, the "Suits") and HC/S 52/2017 ("Suit 52"). The Complainant was the plaintiff in those three actions.

7 At the material time, the respondent was practising on his own under the name of M/s M Nedumaran & Co. The respondent's last valid practising certificate expired on 31 March 2020 and he confirmed before us at the hearing that he does not hold a valid practising certificate presently.

8 The Suits concerned the Complainant's claims for personal injuries arising from motor vehicle accidents. Settlements were reached and consent judgments were recorded before Tan Siong Thye J. In these judgments, the Complainant was awarded $120,000 and $660,000 (excluding costs and disbursements) in Suit 324 and Suit 325 respectively. The consent judgments also ordered that:

> 1. The Plaintiff's costs and disbursements of this action payable to his solicitor shall be determined in accordance with section 18(3) of the Motor Vehicles (Third-Party Risks and Compensation) Act and be deducted from the judgment sums and paid by the Defendant to the Plaintiff's solicitor; and
>
> 2. The balance of the judgment sums due to the Plaintiff be paid by the Defendant to the Plaintiff.

9 Section 18(3) of the Motor Vehicles (Third-Party Risks and Compensation) Act (Cap 189, 2000 Rev Ed) (the "MVA") provides that:

> (3) Notwithstanding the provisions of any other written law, a public officer or an advocate and solicitor, acting in respect of the matters referred to in subsection (2), shall not receive or accept any payment of money for so acting other than —
>
> (a) such costs as are agreed between him and the Public Trustee;
>
> (b) taxed costs, in default of such agreement with the Public Trustee; or
>
> (c) such costs that the Public Trustee may determine to be the costs of the public officer or advocate and solicitor, if the public officer or advocate and solicitor fails to begin proceedings for taxation of costs within 3 months after the relevant date unless before that time the public officer or the advocate and solicitor has agreed with the Public Trustee on costs.

10 It was not disputed by the Law Society that the respondent obtained the Public Trustee's approval for his costs in respect of Suit 325 on 6 December 2017 and Suit 324 on 4 May 2018 in accordance with s 18(3) of the MVA.

11 Upon receiving the Public Trustee's approval, the respondent wrote to the solicitors for the respective defendants in the Suits, seeking payment in the following manner:

(a) In respect of Suit 325, by way of a letter dated 6 December 2017, the respondent sought payment from Tan Kok Quan Partnership in the

form of two cheques – one in favour of the Complainant for $481,750.00 and the other in favour of the respondent's law firm for $102,002.83.

(b) In respect of Suit 324, by way of a letter dated 30 April 2018 and an email dated 4 May 2018, the respondent sought payment from M/s Ramdas & Wong in the form of two cheques – one in favour of the Complainant for $100,000 and one in favour of the respondent's law firm for $58,393.13.

12 The cheques for $102,002.83 and $58,393.13 made in favour of the respondent's law firm, totalling $160,395.96 (the "Sum"), were received by the respondent. He then used the Sum to set off the legal fees owed by the Complainant to him.

13 In February 2020, the Complainant, who believed that the Sum was held by the respondent on his behalf, contacted the respondent and instructed him to utilise the Sum to make payments to various persons that the Complainant owed money to for their assistance in the Suits, namely: (a) three medical doctors; (b) two physiotherapists; (c) the Complainant's previous counsel in the Suits; and (d) the Complainant's Private Trustee in bankruptcy.

14 Over the course of various email correspondence from 9 March 2020 to 25 April 2020, the respondent assured the Complainant multiple times that he had either made payment as instructed by the Complainant or that he was in the process of making the payments. However, these assurances turned out to be false as no payment was made to the intended recipients as instructed by the Complainant.

Procedural History

15 On 26 April 2021, the Complainant lodged a complaint with the Law Society (the "Complaint"), making various allegations against the respondent. The material portion of the Complaint alleged that there was suspected criminal breach of trust as the respondent failed to pay out the Sum as requested by the Complainant.

16 Before the Inquiry Committee, the respondent's explanation for not paying out the Sum as directed by the Complainant listed the following reasons, among others:

(a) he did not provide a solicitors' undertaking to pay the medical expert witnesses' fees;

(b) the Complainant owed him more than what he owed the Complainant;

(c) the Complainant instructed him not to pay the money that the respondent received; and

(d) the respondent was "exhausted" after working on the Complainant's cases and those of his family for seven years and decided to set off his outstanding fees against the Sum.

17 The respondent also confirmed before the Inquiry Committee that he did not inform the Complainant of his decision to set off the Sum against his legal fees. He also confirmed that he had issued only one invoice for his fees and that was in 2013.

18 When queried by the Inquiry Committee about the intention behind his correspondence with the Complainant in which he undertook to pay out the Sum as requested, the respondent explained that he was irritated by the Complainant's conduct and "just wanted to piss [the Complainant] off".

19 On 14 June 2022, the DT was convened to hear and investigate the complaints brought against the respondent.

The DT's findings

20 The DT found cause of sufficient gravity pursuant to s 93(1)(*c*) of the LPA in respect of all four Charges:

(a) On the First Charge, the DT found that the respondent was not honest and had strung the Complainant along by concealing the truth from him falsely and deliberately by representing in his multiple emails between 17 March 2020 and 17 April 2020 that he had posted or would shortly be posting or hand delivering cheques for the payments as requested by the Complainant.

(b) On the Second Charge, the DT framed the issue as whether the respondent, when he applied the Sum toward the settlement of his legal fees, obtained the Complainant's prior consent and/or first informed him of his intention to set off the fees. The DT found that the Complainant was never told about the set-off prior to it being effected and therefore found the respondent guilty on the Second Charge.

(c) On the Third Charge, the DT found that the respondent did not produce any evidence regarding the basis on which his professional fees would be charged as there was no invoice issued nor was there any letter

of engagement signed. Accordingly, the DT found the respondent guilty on the Third Charge.

(d) On the Fourth Charge, the DT accepted the respondent's concession that the Sum was client's money which was paid into the client's account and that he applied the Sum to set off his professional fees without issuing any bill of costs. Accordingly, the DT found the respondent guilty on the Fourth Charge.

21 Accordingly, the Law Society filed OA 14 on 18 October 2023 for the respondent to show cause in respect of the four Charges.

The Court's question to the parties

22 From the record of proceedings before the DT, it was evident that the gravamen of the Charges against the respondent was his conduct in respect of his handling of the Sum. Bearing in mind the subject matter of the Suits involved claims arising from motor vehicle accidents, the legislative framework of the MVA was relevant. The court was concerned that the parties in the DT proceedings might have overlooked a legal issue concerning the true nature of the Sum, in particular, whether the Sum belonged to the Complainant or to the respondent.

23 The court therefore invited further submissions from the parties on the question set out below. The further submissions could be in the form of written submissions or oral arguments in court. The question was:

> To whom did the "Sum" (*ie*, the costs amounting to $160,395.96) paid by the defendants' solicitors in HC/S 324/2016 and HC/S 325/2016 belong, bearing in mind the Motor Vehicles (Third Party Risks and Compensation) Act 1960 (2020 Rev Ed), in particular ss 6 and 18?

The parties' submissions before the Court

The Law Society's submissions

24 In its written submissions filed prior to the invitation for further submissions, the Law Society submitted that the reasons and findings of the DT on all the Charges should be accepted. In respect of the appropriate sanction, the Law Society submitted on the authority of *Law Society of Singapore v Chia Choon Yang* [2018] 5 SLR 1068 ("*Chia Choon Yang*") at [19(b)] (which affirmed *Law Society of Singapore v Udeh Kumar s/o Sethuraju and another matter* [2017] 4 SLR 1369 at [105]–[108]) that the respondent's conduct in respect of the First and Second Charges fell squarely within the categories of dishonest conduct in relation to client moneys and that the presumptive sanction would be striking off the Roll of Advocates and Solicitors (the "Roll").

25 At the hearing before us, however, the Law Society conceded in oral arguments that the Sum belonged to the respondent. Counsel also accepted that the Second and Fourth Charges (and their respective alternative charges), which were premised on the Sum being "received on behalf of [the Complainant]" and "client's money" respectively, could not stand in the light of this concession.

26 However, the Law Society maintained that the First and Third Charges were proved beyond reasonable doubt. It also maintained that the appropriate sanction for the First and Third Charges was for the respondent to be struck off the Roll, even though the Second and Fourth Charges could not stand.

The Respondent's submissions

27 The respondent did not file written submissions although he was reminded to do so on several occasions in correspondence from the Supreme

Court Registry. At the hearing before us, the respondent explained that he was relying on the written submissions which he had made before the DT.

28 In his oral submissions, the respondent explained that the Complainant had many insurance claims for hospitalisations, accidents and illnesses for himself and his family. Further, as the Complainant was allegedly impecunious, the respondent agreed to a "flexible sort of an agreement" under which the Complainant would make payments to him as he wished and the respondent would only take what he could pay.

29 In relation to the First Charge, the respondent accepted that his conduct was unprofessional but explained that it was borne out of a lapse in judgment due to his harbouring of feelings of having been betrayed by the Complainant. The respondent further submitted that his conduct was not dishonest as alleged in the First Charge because "the natural ordinary meaning of dishonesty involves being dishonest to a victim". According to him, the Complainant was not a victim because he knew what was going on and was not deceived, seeing that he was able to provide a tabulation of the legal costs paid to the respondent.

30 In relation to the Third Charge, the respondent submitted that he had complied with the requirements set out in r 17(3)(*a*) of the Legal Profession (Professional Conduct) Rules 2015 ("PCR") because he had informed the Complainant verbally about the basis on which his fees would be charged. This included the mechanism under the MVA. However, the respondent accepted that he did not produce any documentary evidence supporting this assertion before the DT and that he could not point to any contemporaneous documents such as attendance notes or a warrant to act mentioned in his submissions in OA 14. As we pointed out to the respondent at the hearing, these factual

submissions regarding the verbal information given to the Complainant were evidence from the bar which we could not accept.

31 In respect of the appropriate sanction, the respondent made no submission and was content to leave it to the court's decision.

The issues before this Court

32 Two issues arose for our determination in OA 14, namely:

(a) Is there due cause, in respect of the Charges, for the respondent to be sanctioned under s 83(1) of the LPA?

(b) If so, what is the appropriate sanction that ought to be imposed on the respondent under s 83(1) of the LPA?

Our decision

Second and Fourth Charges were not made out

33 We agreed with the concession made by the Law Society that the Sum belonged to the respondent and accordingly, the Second and Fourth Charges could not stand. In our view, pursuant to the legislative framework of the MVA, the Sum belonged to the respondent after it was approved by the Public Trustee and paid by the solicitors representing the respective defendants in the Suits to the respondent.

34 The relevant provisions of the MVA, namely, ss 6 and 18 provide that:

> **Payment of compensation under settlement agreements**
>
> 6.—(1) This section applies to every payment (excluding any sum payable in respect of costs and interest) exceeding the relevant amount that —

(*a*) is made by way of compensation by an insurer or the owner of a motor vehicle pursuant to a settlement agreement in respect of the death or bodily injury to a person arising out of the use of a motor vehicle on a road in Singapore or in any territory specified in the Schedule; and

(*b*) is not a liquidated sum specified in a policy of insurance.

(2) Subject to subsections (3) and (4), the insurer or the owner of a motor vehicle must make the payment, together with any sum payable in respect of costs and interest under the settlement agreement, directly to —

(*a*) the Public Trustee as trustee for the person entitled to the benefit of the payment if the person is a specified person; or

(*b*) in any other case, the person entitled to the benefit of the payment in accordance with the law for the time being in force and with any rules made under this Act.

(3) Subject to subsection (5), no payment under subsection (2) shall be made until —

(a) in the case where the person entitled to the benefit of the payment is a person referred to in paragraph (*a*)(i) of the definition of "specified person" in section 2, the insurer or the owner of the motor vehicle obtains —

(i) the approval of the Public Trustee of the adequacy of the payment to be made; or

(ii) where the Public Trustee considers it to be manifestly inadequate, the approval of the court of its adequacy; and

(b) the costs payable to any public officer or any advocate and solicitor who acts or has acted in respect of the claim for compensation on behalf of the person entitled to the benefit of the payment have been determined in accordance with section 18(3).

(4) Before making any payment under subsection (2), the insurer or the owner of a motor vehicle shall deduct from it the costs referred to in subsection (3)(*b*) and pay the costs directly to the public officer or the advocate and solicitor entitled to it.

Prohibition of solicitation in respect of claims

> 18.— …
>
> (3) Notwithstanding the provisions of any other written law, a public officer or an advocate and solicitor, acting in respect of the matters referred to in subsection (2), shall not receive or accept any payment of money for so acting other than —
>
> (a) such costs as are agreed between him and the Public Trustee;
>
> (b) taxed costs, in default of such agreement with the Public Trustee; or
>
> (c) such costs as the Public Trustee may determine to be the costs of the public officer or advocate and solicitor, if the public officer or advocate and solicitor fails to begin proceedings for taxation of costs within 3 months after the relevant date unless before that time the public officer or the advocate and solicitor has agreed with the Public Trustee on costs.

35 Section 6(3) of the MVA provides that whenever a settlement agreement is reached in respect of claims concerned therein, no payment of compensation can be made under that settlement agreement to the person entitled to compensation until, among other matters:

> (a) the costs payable to any public officer or any advocate and solicitor who acts or has acted in respect of the claim for compensation on behalf of the person entitled to the benefit of the payment have been determined in accordance with s 18(3) of the MVA: s 6(3)(*b*) of the MVA; and
>
> (b) such costs as determined must be deducted from the agreed compensation sum and be paid directly to the public officer or the advocate and solicitor entitled to it: s 6(4) of the MVA.

36 As we noted above (at [10]), the respondent complied with the prescribed procedure under the MVA. He had obtained the approval of the Public Trustee for the solicitor and client costs payable to him in respect of the

Suits. He then requested the respective solicitors in the Suits to pay such costs as approved by the Public Trustee directly to him and directed that the remainder be made payable to the Complainant.

37 Section 6(4) of the MVA makes it clear that the payments made by the other solicitors in the Suits bore the nature of solicitor and client costs payable to the advocate and solicitor who acted in respect of the claim for compensation within the meaning of s 6(3)(*b*). Therefore, the respondent was the beneficial owner of the Sum stated in the cheques of $58,393.13 in Suit 324 and $102,002.83 in Suit 325. In the circumstances, we found that the Second Charge, which was premised on the respondent having received the Sum on behalf of the Complainant, was not made out.

38 In the same vein, we found that the Fourth Charge was also not made out because a key element of this charge was that the Sum was "client's money" within the meaning ascribed to that term by the Legal Profession (Solicitors' Accounts) Rules ("SAR"). Before the DT, the respondent admitted under cross examination that the Sum was client's money and that it was deposited into the client's account. The DT appeared to have taken this to be dispositive of the issue and proceeded on the basis that the Sum was client's money. However, notwithstanding the concession made by the respondent, the issue of whether the Sum was client's money is a legal issue which must be determined in accordance with the definition of "client's money" under the SAR.

39 Rule 2 of the SAR defines client's money as:

> "client's money" means money held or received by a solicitor on account of a person for whom he is acting (in relation to the holding or receipt of such money) either as a solicitor, or in connection with his practice as a solicitor, an agent, a bailee or a stakeholder or in any other capacity, other than —

> (a) money held or received on account of the trustees of a trust of which the solicitor is solicitor-trustee;
>
> (b) money to which the only person entitled is the solicitor himself or, in the case of a firm of solicitors, one or more of the partners in the firm; or
>
> (c) conveyancing money or anticipatory conveyancing money;

40 The definition of client's money in the SAR specifies that it must be money "held or received by a solicitor on account of a person for whom he is acting". For the reasons which led us to conclude that the Sum was not held "on behalf of" the respondent, we found that the Sum was not client's money within the meaning given to it in r 2 of the SAR. Accordingly, the Fourth Charge, premised on a breach of r 7(1)(*a*)(iv) of the SAR, where a necessary element is that client's money was withdrawn, was not made out.

Due cause is established on the First Charge

41 We found that due cause was established in respect of the First Charge. Despite the respondent's assertion at the hearing before us that he had explained the mechanism of the MVA to the Complainant, the respondent did not appear to have understood the mechanism. The respondent admitted under cross-examination that the Sum was client's money and that he had paid it into the client's account. Moreover, when asked by the DT on the legislative position for solicitor and client costs in motor vehicle accidents, the respondent did not show a proper understanding of the operation of the MVA. Even after the DT directed the respondent to address this legal point in written submissions if he wished to, the respondent neglected to do so. If he had understood the correct legal position, all that he needed to do was to explain to the Complainant that the Sum did not belong to the Complainant and therefore there was no basis for the Complainant to ask him to use the Sum to pay the specified recipients.

42 Instead, the respondent elected to tell a series of untruths to the Complainant. Based on the email correspondence, the respondent undertook as early as 26 February 2020 to make payment within five working days to the Complainant's specified recipients. On 12 March 2020, following three separate email reminders, the respondent replied to the Complainant, assuring him that "Cheques ready to be released after client account formalities". On 17 March 2020, the respondent represented that the "account formalities being done, payments will be released this week".

43 On 27 March 2020, the respondent represented in writing that "all the cheques were posted yesterday". The Complainant wrote to all his specified recipients to inquire if they had received payment and by 3 April 2020, it became clear that no cheques had been issued or mailed by the respondent. On 4 April 2020, the respondent cited a newspaper article about delays by post and that he would arrange for replacement cheques to be hand delivered. However, despite several email reminders, no cheques were mailed. On 17 April 2020, the respondent changed his position again, stating that he would send the cheques by registered post.

44 In the course of cross-examination, the respondent admitted that he had represented to the Complainant that the cheques were mailed to the intended recipients when he had not done so. He also admitted that he had misled the Complainant intentionally and that in writing the untruthful emails to the Complainant, he would be exposing himself to problems in the nature of professional misconduct. Before the DT, the respondent offered no justification for his conduct other than to say that it was "poor judgment" on his part due to his anger and frustration with the Complainant at the material time and that he wanted to "piss [the Complainant] off".

45 It was clear that the respondent misled the Complainant into believing that he would pay out the Sum to the recipients specified by the Complainant without any intention of doing so. We see no merit in the respondent's argument that his conduct was not dishonest because the Complainant was not a victim who was deceived. An advocate and solicitor, so long as he asserts a fact or state of affairs that he knows to be untrue, is guilty of being dishonest: *Chia Choon Yang* at [15]. The respondent, a solicitor of 25 years' standing at the material time, stated untruths knowingly, intentionally and continually to his client over some four weeks. Anger and frustration with his client, however irritating the client was perceived to be, could never justify such outright lies. His conduct was plainly dishonest and constituted, without a doubt, highly improper conduct as an advocate and solicitor.

46 There was no evidence of actual harm caused by the respondent's dishonest responses. However, there was definitely potential harm to the Complainant. During the material time, the Complainant was assured by his lawyer that his bills had been or would be paid out of the Sum. He could have been sued by the respective recipients for non-payment. In any case, he could suffer some reputational damage with the creditors in question, although at the material time, he had been adjudicated a bankrupt for reasons not related to these creditors.

47 We were of the view that the respondent's conduct was plainly dishonest and such conduct was clearly improper for an advocate and solicitor. The First Charge was therefore proved beyond reasonable doubt and due cause for sanction was established.

Due cause is established on the Third Charge

48 Turning to the Third Charge, we found that due cause for sanction was also established. Rule 17(3)(*a*) of the PCR states that:

> (3) A legal practitioner must –
>
> > (*a*) inform his or her client of the basis on which fees for professional services will be charged, and of the manner in which those fees and disbursements (if any) are to be paid by the client.

49 It is evident in the adoption of the future tense in r 17(3)(*a*) of the PCR that the duty to inform a client of the basis for charging fees is a prospective one. This duty arises at the start of the professional relationship and is not something that arises only at the billing stage.

50 As explained by Jeffrey Pinsler *SC* in *Legal Profession (Professional Conduct) Rules 2015: A Commentary* at [17.021], the purpose of r 17 is:

> "...the client must be fully informed so that he is absolutely clear about the extent of his actual or potential liability for fees and expenses related to retainer. The lawyer must be entirely transparent and clearly explain the basis of the fees, disbursements, and any other necessary and foreseeable payments (see Rules 17(3)(*a*) and 17(3)(*b*) of the PCR. Regarding the basis on which fees are charged (see rule 17(3)(*a*)), if a time-based rate (hourly rate) applies (as is a common practice), the client should be informed that the rate applies to all time spent in the conduct of the retainer (if this is the agreement), whether it concerns legal research, communications, correspondence, attendance at meetings or any other form of engagement. Such information is important to the client because it gives him a measure of control in deciding the type and extent of work he wants the legal practitioner to undertake. Indeed, this is consistent with the lawyer's responsibility to evaluate with a client whether the consequence of a matter justifies the expense or the risk involved..."

51 In the present case, the Suits were commenced in 2016 and Suit 52 was commenced in 2017. The respondent's position before the DT, which he

maintained before us, was that he "only took what the complainant could pay as and when he could pay". He explained that he prioritised applying such payments toward disbursements and only applied them toward legal fees when the Complainant could afford it. In support of this, he referred to a tabulation done by the Complainant which contained a record of all the fees and disbursements paid by him to the respondent. The respondent also submitted that he had explained the basis for his fees to the Complainant at the beginning of their relationship. As pointed out earlier, the respondent was not able to substantiate this because there was no formal letter of engagement or other documentary proof.

52 Clearly, the respondent's conduct in relation to the fee arrangements with the Complainant fell far short of the standard required under r 17(3)(*a*) of the PCR. The DT found, and the respondent did not dispute, that apart from one invoice issued in 2013, no invoice was issued in respect of the Suits and Suit 52. In the absence of any other documentary proof over the years of his engagement as the Complainant's lawyer, we could not accept the respondent's assertion that he had explained everything to the Complainant.

53 Even if we were to accept at face value the respondent's explanation that the arrangement was for him to take only what the Complainant could pay as and when he could, this would not satisfy the requirements of r 17(3)(*a*) of the PCR. There was no basis stated on how the respondent's fees would be charged. The fact that the Complainant kept a record of the fees paid by him therefore did not assist the respondent.

54 For completeness, we add that the Third Charge had nothing to do with the fact that, in law, the Sum belonged to the respondent or that the Complainant was aware that it was paid to the respondent with the approval of the Public

Trustee. As we have explained above, the duty imposed under r 17(3)(*a*) of the PCR is a prospective duty which arises at the start of the professional relationship. The events that led eventually to the payment of the Sum to the respondent took place long after the duty imposed by r 17(3)(*a*) should have been complied with. The misconceived belief about whom the Sum belonged to therefore did not have any impact on the Third Charge. Accordingly, we held that the Third Charge was proved beyond reasonable doubt.

The appropriate sanction

Applicable legal principles

55 Section 83(1) of the LPA sets out the sanctions that the Court may impose when due cause is shown:

> **Power to strike off roll, etc.**
>
> **83.**—(1) All advocates and solicitors are subject to the control of the Supreme Court and shall be liable on due cause shown —
>
> (*a*) to be struck off the roll;
>
> (*b*) to be suspended from practice for a period not exceeding 5 years;
>
> (*c*) to pay a penalty of not more than $100,000;
>
> (*d*) to be censured; or
>
> (*e*) to suffer the punishment referred to in paragraph (*c*) in addition to the punishment referred to in paragraph (*b*) or (*d*).

56 Where an advocate and solicitor's misconduct involves dishonesty, it will almost invariably lead to an order that the practitioner be struck off the Roll: *Chia Choon Yang* at [18]. However, this court also observed (*Chia Choon Yang* at [38]) that not all cases involving dishonesty would invariably lead to striking off, especially where the dishonest act "does not reveal a character defect

making the solicitor unfit for the profession or where it undermines the administration of justice … and may be fairly said to reveal an error of judgment (even if a serious one) rather than a grave character defect…".

57 In such cases where the presumptive sanction of striking off does not apply, the court should have regard to the following non-exhaustive factors in determining the appropriate sanction (*Chia Choon Yang* at [40]):

(a) the real nature of the wrong and the interest that has been implicated;

(b) the extent and nature of the deception;

(c) the motivations and reasons behind the dishonesty and whether it indicates a fundamental lack of integrity on the one hand or a case of misjudgment on the other;

(d) whether the errant solicitor benefited from the dishonesty; and

(e) whether the dishonesty caused actual harm or had the potential to cause harm that the errant solicitor ought to have or in fact recognised.

Application of legal principles

Presumptive sanction of striking off not warranted

58 The gravamen of the Second and Fourth Charges, which the Law Society has conceded could not stand, was that the dishonesty pertained to the use of client's money. Since we held that the Sum did not belong to the Complainant, there was in fact no dishonest misappropriation or mishandling of client's money. In the light of our decision to acquit the respondent on the Second and Fourth Charges, we did not agree with counsel for the Law Society

that the present case fell into the categories of cases warranting a presumptive sanction of striking off.

No actual harm caused to the Complainant

59 As we have stated above, no actual harm was caused to the Complainant. By way of comparison, in *Law Society of Singapore v Suresh Kumar Suppiah* [1999] 2 SLR(R) 1203 ("*Suresh Kumar Suppiah*"), the practitioner agreed to act for the complainant there but took no steps to defend the matter. As a result, interlocutory judgment was entered against the complainant. The practitioner undertook to pay the judgment debt on her behalf by way of instalments. However, the practitioner defaulted on the second instalment. Despite the complainant demanding in writing that the practitioner resolve the matter, the practitioner neglected to take any steps, resulting in the complainant being made a bankrupt. The practitioner was struck off the Roll.

The nature and extent of the dishonesty

60 The extent of the respondent's dishonesty in the First Charge was protracted and was not a mere one-off incident. The untruths were repeated continually over some four weeks.

61 It was obvious that, at all material times, the respondent communicated with the Complainant on the basis that the Sum belonged to the Complainant. The fact that the respondent would engage in such dishonest communication, while believing erroneously that the Sum belonged to the Complainant, revealed a defect in character as a practitioner.

Motivations and reasons behind the respondent's dishonesty

62 Based on the respondent's statement that the purpose of his dishonest answers and assurances was to "piss [the Complainant] off", it followed that the month-long deception was calculated to annoy or to irritate the Complainant, probably as retribution for the annoyance and irritation that the respondent felt the Complainant had inflicted on him over the years. The respondent's conduct fell far short of the standard of professionalism expected of an advocate and solicitor as the deliberate untruths emanated from a person whose words the Complainant as his client was entitled to rely on. Nevertheless, the untruths did not affect the administration of justice or any third party and apparently did not cause actual harm or hardship to the Complainant.

Our decision

63 To summarise, we acquitted the respondent on the Second and the Fourth Charges. We convicted him on the First and the Third Charges.

64 Considering all the facts of this case, we decided that a lengthy period of suspension of four years would be the appropriate sanction in respect of both the First and the Third Charges. We therefore ordered that the respondent be suspended from practising as an advocate and solicitor for four years with effect from 4 July 2024, the date of our order.

65 The respondent has not been a practising lawyer since 2020. He informed us that he is presently working as an in-house counsel. The effect of our order therefore is that the respondent will not be able to apply for a practising certificate for the next four years.

Costs

66 The Law Society submitted that costs of OA 14 should be fixed at $14,000 and disbursements at $971.90. The respondent submitted that the costs of OA 14 and of the DT proceedings should be halved because the DT's findings on only two of the four charges were eventually upheld.

67 Having regard to the fact that the Law Society succeeded on only two of the four charges, we fixed costs of OA 14 at $12,000 inclusive of disbursements to be paid by the respondent to the Law Society. We ordered the costs orders made by the DT ($10,000 and disbursements) to stand as the respondent did not raise the legal issue concerning the MVA in the DT proceedings.

Tay Yong Kwang
Justice of the Court of Appeal

Debbie Ong Siew Ling
Judge of the Appellate Division

Judith Prakash
Senior Judge

Teo Yi Hui (Pointer LLC) for the applicant;
Respondent in person.