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

[2024] SGHC 224

Originating Application No 11 of 2023

Between

Law Society of Singapore

… *Applicant*

And

Seah Zhen Wei Paul

… *Respondent*

Originating Application No 12 of 2023

Between

Law Society of Singapore

… *Applicant*

And

Rethnam Chandra Mohan

… *Respondent*

GROUNDS OF DECISION

[Legal Profession — Professional conduct — Breach]

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Law Society of Singapore
v
Seah Zhen Wei Paul and another matter

[2024] SGHC 224

Court of 3 Supreme Court Judges — Originating Applications Nos 11 of 2023 and 12 of 2023
Belinda Ang Saw Ean JCA, Woo Bih Li JAD and See Kee Oon JAD
5, 9 April 2024

4 September 2024

Belinda Ang Saw Ean JCA (delivering the grounds of decision of the court):

Introduction

1 C3J/OA 11/2023 ("OA 11") and C3J/OA 12/2023 ("OA 12") were two applications brought by the Law Society of Singapore (the "Law Society") against Mr Seah Zhen Wei Paul ("Mr Seah") and Mr Rethnam Chandra Mohan ("Mr Mohan") (collectively, the "Respondents"), respectively, for them to be sanctioned under s 83(1) of the Legal Profession Act 1966 (Cap 161, 2009 Rev Ed) ("LPA"). Mr Seah was called to the bar in Singapore on 20 May 2006 and was an advocate and solicitor of the Supreme Court of Singapore for around 14 years. He was, at all material times, a partner in Tan Kok Quan Partnership ("TKQP"). Mr Mohan was called to the bar in Singapore on 21 March 1992 and was an advocate and solicitor of the Supreme Court of Singapore for around 28

years. At all material times, Mr Mohan was practising as a partner in Rajah and Tann Singapore LLP ("R&T").

2 The Law Society in OA 11 was represented by Mr Pillai Pradeep G ("Mr Pillai") and Mr Abraham Vergis SC ("Mr Vergis") appeared on behalf of Mr Seah. In OA 12, Mr Chan Kah Keen Melvin ("Mr Chan") represented the Law Society and Mr Davinder Singh s/o Amar Singh SC ("Mr Singh") appeared on behalf of Mr Mohan.

3 As with any application for disciplinary action, there were two potential issues that arose before this court: (a) whether due cause of sufficient gravity for disciplinary action against the Respondents had been shown; and (b) if so, what the appropriate sanction should be. One day before the hearing on 5 April 2024 before this court, TKQP informed the Supreme Court Registry that Mr Seah was reversing his prior position, which was to contest the charges, and was electing instead not to contest the charges against him. This was confirmed orally by his counsel, Mr Vergis, at the hearing on 5 April 2024. That left only the issue of the appropriate sanction to be determined. As for Mr Mohan, both issues were strenuously contested.

4 Notably, what was common in all the disciplinary charges against the Respondents was the relationship each Respondent had as an officer of the court with the court bearing in mind the court's core function of upholding the administration of justice. The key question was whether the settlement of High Court Suit No 965/2012 ("Suit 965") rendered the appeal in CA/CA 146/2019 ("CA 146") academic; and relatedly, whether the Respondents knew or ought to have known that, and whether they knowingly allowed CA 146 to continue before the Court of Appeal despite the settlement. An important aspect of this question related to the terms of the settlement agreement that were concluded

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by way of exchanges of e-mails on 28 November 2019 (the "Settlement Agreement"). Evident from the plain reading of the structure of the terms of settlement was the existence of a scheme that the Respondents had willingly acted upon to bring the appeal before the Court of Appeal. The factual issue common to both Respondents was of them embarking on the scheme which, *inter alia*, involved (a) not discontinuing Suit 965 and the counterclaim pending the outcome of CA 146 when Suit 965 was already settled; and (b) not informing the Court of Appeal about the settlement at the earliest opportunity, but only if it became necessary to do so. And the query common to both Respondents was whether all of that (*ie*, the scheme) was meant to mislead the Court of Appeal by giving the impression that the appeal was alive and that there was in existence a real controversy of importance between the parties to CA 146 for a five-judge *coram* to resolve. We will address the issue of whether the Court of Appeal was misled. To the extent that the Respondents as officers of the court knew that the court would be misled or that they were aware that there was a risk that it might be misled, they were required to take steps to avoid that result. Importantly, the Respondents, who participated in CA 146 as advocates conducting litigation and exercising rights of audience, undoubtedly owe a duty to the court in relation to an advocate and solicitor's crucial role in the legal system. It was within this context that the gravity of the disciplinary charges was examined, and the sanction ordered reflected the seriousness of the defaults in accordance with the principles on disciplinary sentencing to be applied to such defaults.

5 This court delivered its decision on 9 April 2024 after hearing the parties on 5 April 2024. We were satisfied that due cause sufficiently serious to warrant the imposition of disciplinary sanctions was made out in relation to the disciplinary charges for both OA 11 and OA 12. We duly imposed a suspension for a term of three years on both Mr Seah and Mr Mohan. In relation to OA 11, the term of suspension was to commence on 17 August 2024. In relation to OA

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12, the term of suspension commenced on 1 June 2024. We indicated to the parties on 9 April 2024 that full written grounds would be provided in due course, and we do so below.

History of the various proceedings and events leading to the filing of CA/CA 146/2019

6 The Respondents were the counsel involved in CA 146. Mr Seah represented the appellants, and Mr Mohan represented the respondent.

7 The appellants in CA 146 were the joint and several liquidators (the "Liquidators") of Sembawang Engineers and Constructors Pte Ltd, a company in compulsory liquidation ("SEC"). SEC was a Singapore-incorporated private limited company which was placed in compulsory liquidation on 7 August 2017. The respondent in CA 146 was Metax Eco Solutions Pte Ltd ("Metax"), a subcontractor in the construction industry.

High Court Suit 965/2012

8 Sometime in late 2010 or early 2011, SEC and Metax contracted for Metax to supply goods to SEC. On 25 July 2011, Metax purported to rescind this contract: *Tan Ng Kuang Nicky (the duly appointed joint and several liquidator of Sembawang Engineers and Constructors Pte Ltd (in compulsory liquidation)) and others v Metax Eco Solutions Pte Ltd* [2021] 1 SLR 1135 (the "GD") at [6]. SEC commenced Suit 965 in the High Court on 12 November 2012 for the wrongful repudiation of the contract claiming damages in the sum of $3,657,037.42. Metax counterclaimed against SEC for, *inter alia*, a sum of $2,134,196.66. Up until 24 October 2013, Metax was represented by Allen & Gledhill LLP, from which point on Mr Mohan and his team from R&T were appointed to act for Metax in Suit 965. SEC was initially represented by MPillay

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until 28 August 2015. Thereafter, there was no firm of solicitors on record until TKQP was appointed to act for SEC in Suit 965 on 16 October 2017.

9 After the parties had filed their written closing submissions on 3 April 2015, their written reply submissions on 6 May 2015 and their costs schedules on 8 May 2015, all that was left was the parties' oral closing submissions before the trial judge, Coomaraswamy J (the "Judge"). Before MPillay ceased to act for SEC, hearing dates for oral submissions were refixed several times following requests from MPillay. Eventually, SEC was placed under judicial management on 27 June 2016, and as for the hearing of oral closing submissions for Suit 965, it was adjourned to 23 and 30 October 2017.

HC/CWU 90/2017

10 On 7 August 2017, SEC was ordered to be wound up in HC/CWU 90/2017 ("CWU 90"). Mr Tan Chuan Thye SC and his team from R&T acted for the Liquidators. However, due to issues of conflict, TKQP was appointed to act for the Liquidators in all issues relating to Metax. On 8 September 2017, Metax filed a proof of debt with the Liquidators for the sum of $2,728,692.46. On 23 October 2017, the Judge in Suit 965 granted the Liquidators' application for a stay of proceedings in Suit 965 till 23 October 2018.

11 On 18 July 2018, Metax's solicitors from R&T wrote to the Liquidators' solicitors from TKQP requesting an update regarding the adjudication of Metax's proof of debt and whether the Liquidators intended to proceed with Suit 965. During discussions, Metax rejected the Liquidators' proposal to have Suit 965 be determined solely based on the written closing submissions. Accordingly, the Liquidators had to decide whether to proceed with oral closing submissions, which could lead to costs being payable to Metax and these costs would stand in priority to other claims against SEC. Moreover, the Liquidators

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would also have been exposed to the risk of bearing the costs of the litigation personally.

HC/SUM 79/2019 filed in CWU 90

12 On 4 January 2019, the Liquidators filed an *ex parte* application in HC/SUM 79/2019 ("SUM 79") pursuant to s 273(3) of the Companies Act (Cap 50, 2006 Rev Ed) ("Companies Act") for directions on, amongst other things, the following:

> (a) should the Liquidators decide to continue legal proceedings against a defendant (which were commenced before the winding up order was made), and the defendant ultimately succeeds in these legal proceedings, would the successful defendant be entitled to be paid its costs in priority to the other general expenses of the liquidation (*ie*, including the remuneration and expenses of the Liquidators); and
>
> (b) in such event:
>
> > (i) would the successful defendant be entitled to be paid such costs only from the point in time when the Liquidators expressly elect to continue the legal proceedings; or
> >
> > (ii) would the successful defendant be entitled to be paid its entire costs from the beginning of the legal proceedings?

13 SUM 79 was, in effect, an application to clarify the operation of the estate costs rule, which provides that a successful litigant against a company in liquidation is entitled to be paid his costs in priority to the other general expenses of the liquidation, including the costs and remuneration of the liquidator: *Ho Wing On Christopher and others v ECRC Land Pte Ltd (in liquidation)* [2006]

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4 SLR(R) 817 at [9]. On 18 February 2019, Metax filed an application to intervene in SUM 79. The Judge allowed Metax's application to intervene on 29 April 2019.

14 The hearings for SUM 79 took place over two half-days on 29 April and 6 May 2019 before the Judge who was also presiding over Suit 965. At the end of the hearing on 6 May 2019, the Judge directed as follows:[1]

> (1) The court gives the following directions on matters which have arisen under the winding up of Sembawang Engineering and Constructors Pte Ltd (in compulsory liquidation) ("the Company"):
>
> (a) if the Liquidators decide to continue legal proceedings against a defendant (which legal proceedings were not commenced by the Liquidators), and the defendant ultimately succeeds in these legal proceedings, the successful defendant is entitled to be paid its costs in priority to the other general expenses of the liquidation (i.e. including the remuneration and expenses of the Liquidators); and
>
> (b) the successful defendant is entitled to be paid its entire costs from the beginning of the said legal proceedings.
>
> …

15 The Liquidators initially did not file an appeal against the Judge's decision in SUM 79 by the stipulated deadline of 6 June 2019. As such, they filed an application to the Court of Appeal for an extension of time to file their Notice of Appeal *vide* CA/OS 16/2019 ("OS 16") on 11 June 2019. This application was allowed on 22 July 2019. The Liquidators filed an appeal against the whole of the Judge's decision on 26 July 2019. This appeal was CA 146, which underpinned the disciplinary proceedings brought by the Law Society against the Respondents.

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[1] Notes of Argument for HC/CWU 90/2017 dated 6 May 2019 at 34.

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16 We digress from our narration of the history of the various proceedings to set out the specific exchange between the Judge and counsel for the Liquidators, Mr Seah, which showed that the Judge in granting the directions at [14] above, had the specific dispute, Suit 965, in mind. The sole material fact of relevance to SUM 79 was the undisputed status of the pending proceedings, namely the hearing of oral closing submissions. Plainly, Suit 965 was the subject matter of SUM 79, and, factually, its status was of a pending action with oral closing submissions not yet heard. We will come to this later when we address the Respondents' contention that the subsequent settlement of Suit 965 did not render CA 146 moot because SUM 79 was filed in CWU 90, and it was a set of proceedings that was separate and independent of Suit 965.

17 We begin with Mr Seah's clarification. At the hearing on 29 April 2019 before the Judge, Mr Seah clarified that the questions asked in SUM 79 centred on the following issue: "should protection be afforded to *all* of Metax's costs, incurred from the very *start* of the proceedings? Or only from such time as the liquidator decides to continue or adopt the proceedings" [emphasis in original].[2] Mr Seah had referred to all of Metax's costs in Suit 965 because Metax had intervened in SUM 79 to oppose the Liquidators' application.

18 During the second hearing on 6 May 2019, the Judge questioned Mr Seah on why the questions asked in SUM 79 were phrased generally as opposed to requesting for directions specific to the facts of the case. Mr Seah repeatedly made the point that SUM 79 was argued against the factual substratum of Suit 965 – the case involving Metax – as opposed to it being a general question of law. Mr Mohan also agreed that the application was confined to the specific facts of the case (*ie*, Suit 965 where oral closing

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2 Notes of Argument for HC/CWU 90/2017 dated 29 April 2019 at 4.

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submissions had not been heard). On this point, we consider it important to reproduce the relevant exchanges between the Judge ("Ct" in the Notes of Argument), Mr Seah ("PS" in the Notes of Argument) and Mr Mohan ("CM" in the Notes of Argument):[3]

> PS: I see what Your Honour is saying. But we have also tried to make it clear in the summons why we have asked this question. The liquidator thought this was an important question to be answered, to give guidance to the insolvency community at large. We have tried to make clear from our affidavits and submissions the factual substratum from which the general question arises.
>
> Just two points to close this point off. We did this because we felt that the general question needed to be tackled in order to give the directions. Second, the liquidators felt that the answer to this question would be very important for the development of insolvency law in Singapore.
>
> Ct: That's not how the common law develops. You may think that a general question of law is very important. But the common law develops bottom up, not top down. It goes from specific facts to general principles. Not the other way around. So it is possible for me to answer those two questions, but that is not the role of a common law judge: to answer general questions of law.
>
> I am not just taking a technical point on this: there is a practical consequence. It would be possible for me to answer these questions at the level of general principle and then have other cases say that the value of my decision as a precedent is undermined because it states the law at too high of a level of generality, unneceasry [*sic*] for deciding the case before me. In other words, this application is almost like you're seeking a legal opinion from me rather than a fact-specific solution to an actual problem or a fact-specific resolution of an actual dispute.
>
> PS: I hear Your Honour on that. *But that is why we also underpinned our application with the actual facts of this case, and made sure that our affidavit and written submissions, the liquidator has made clear the factual substratum from which the general questions arise.*

[3] Notes of Argument for HC/CWU 90/2017 dated 6 May 2019 at 11, 15–16, 22 and 30.

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Ct: Ok.

…

PS: Your Honour, that is because, *although the questions are phrased as general questions of law, we have been arguing this application against the factual substratum of this case, which is set out in the affidavits and in the written submissions*.

Ct: I know. But to answer those general questions, I don't need to make any reference to the facts of this case. I don't need to make any findings of fact at all.

…

PS: I hear Your Honour's concerns. And to meet those concerns, I will have to take instructions of course, but Your Honour has heard my arguments on why the liquidators have phrased the application in this way. Subject to their instructions, I *can make an amendment application to narrow it down to the facts of this case. Because that has been the factual substratum against which my learned friend and I have been arguing this application before Your Honour*.

…

PS: Yes, that is what I am saying. But at the end of this hearing, what I will be asking Your Honour for, is for permission for me – subject to my learned friend's submissions, of course – to take instructions to see if we can narrow down the question. And *I will make an application to amend the summons to narrow down the questions*.

…

CM: I will be objecting to my learned friend's proposal to take instructions from the liquidators to amend the summons at this late stage. We have spent two half days arguing this matter. And we have now concluded the hearing. This cannot be allowed to drag on indefinitely. The summons is before you, Your Honour, and arguments have been made. *In response to a specific question, they are looking to a general principle which will apply to the specific facts of this case*. The court should decide the summons as it stands. If not, it should be dismissed and a costs order made. My client cannot be expected to be funding my legal costs with absolutely no benefit when they are faced with a company in liquidation. It is grossly unfair on my client.

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> PS: A two-minute response to the very last point. I don't think any more costs will be incurred or any prejudice to my learned friend's client. *We have argued this application within the factual matrix of the current case before Your Honour.* And so there will be no costs incurred and no further arguments to be heard except where it relates to our client's proposed amendments and for my learned friend to comment on the scope of the amendments. …
>
> [emphasis added]

19 We note that when the Judge said that "I don't need to make any reference to the facts of this case", he clearly meant that, given the advanced stage of the proceedings in Suit 965 (see [9] and [16] above), the questions posed in SUM 79 did not require the Judge to make any factual findings that would determine the outcome of Suit 965; the directions sought in SUM 79 related to the Liquidators' exposure to costs should the Liquidators decide to take over Suit 965. It was an undisputed fact that Suit 965 was about to reach an end with only oral closing submissions left to be heard.

CA/CA 146/2019

20 We return to the chronology of the proceedings. CA 146 was filed on 26 July 2019 where the Liquidators were the appellants and Metax was the respondent. The Settlement Agreement was reached on 28 November 2019. In anticipation of the settlement, it was proposed, at the outset, that Metax's participation in the appeal would be as a nominal respondent. Mr Mohan for Metax was not keen with that suggestion. He wanted to keep open Metax's right to participate in the appeal as it was named as the respondent. We will elaborate on the developments that unfolded in the negotiations later. For now, the key aspects of what the parties had agreed to on 28 November 2019 in the Settlement

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Agreement, and indeed acted upon thereafter to advance the appeal, were as follows:[4]

> [I]n full and final settlement of all claims, disputes, liabilities, rights, demands and expenses between [SEC and Metax] arising out of or in connection with Suit 965 and the Public Utilities Board project for the construction of 60 MGD waterworks and ancillary facilities at Lower Seletar, on a without admission of liability basis:
>
> (a) Parties agree that Suit 965 shall be held in abeyance pending the outcome of CA 146. Save for procedural matters in respect of Suit 965 (for example, the re-fixing of pre-trial conferences), parties undertake not to take any further steps to prosecute or defend Suit 965 with immediate effect.
>
> (b) [SEC] will make payment of the sum of S$13,000 to [Metax] by way of a cheque issued in favour of [Metax] within three (3) working days of [Metax's] written acceptance of the terms contained herein. For the avoidance of doubt, in the event that the costs order made in respect of SUM 79 on 6 May 2019 is set aside in CA 146, this will have no impact on the aforementioned payment.
>
> (c) In respect of CA 146:
>
> (i) [Metax] will write to the Court of Appeal to inform the Court that it will not be filing a Respondent's Case and will be relying on its submissions filed in SUM 79 and request for leave to do so. The grounds for this request will be that [Metax] is taking the same position as in SUM 79. [SEC] agrees to consent to [Metax's] request.
>
> (ii) Should the Court of Appeal reject [Metax's] request or require [Metax] to either file a Respondent's Case or a formal application for leave to dispense with the requirement to file a Respondent's Case and to rely on its submissions filed in SUM 79, [Metax] will file a formal application for leave to dispense with the requirement to file a Respondent's Case and to rely on its submissions filed in SUM 79. The grounds for [Metax's] application will also be that [Metax] is taking the same position as in SUM

[4] Mr Seah's Letter dated 27 January 2021 at para 32.

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> 79. [SEC] agrees to consent to [Metax's] application with no order as to costs.
>
> (iii) Should the Court of Appeal raise a query as to why [Metax] is not filing a separate Respondent's Case or on the progress of Suit 965, parties shall be at liberty to inform the Court that among other things, an agreement has been reached (1) in respect of [Metax's] involvement in CA 146, and (2) to hold Suit 965 in abeyance pending the outcome of CA 146. Only if necessary, parties may explain that such agreement is pursuant to a settlement of the matters arising out of and in connection with Suit 965 on a without admission of liability basis. Without prejudice to the aforementioned matters, the terms of the settlement agreement between the parties are confidential. For the avoidance of doubt, nothing in this letter requires a party and/or solicitor to act in breach of any law and/or its duties to the Court.
>
> (d) There shall be no order as to costs for CA 146 and in the event that any costs order is made against either party in CA 146, parties undertake not to enforce such costs order(s) made.
>
> (e) The outcome of CA 146 will not bind Suit 965.
>
> (f) Within three (3) working days after the Court of Appeal hands down its decision for CA 146:
>
> (i) [SEC] is to discontinue its claim against [Metax] in Suit 965 with no order as to costs; and
>
> (ii) [Metax] is to: (1) discontinue its counterclaim against [SEC] in Suit 965 with no order as to costs, and (2) withdraw its Proof of Debt for the sum of S$2,728,692.46 lodged with [SEC's] Liquidators on 5 September 2017.

21 Pursuant to the Settlement Agreement, on 20 October 2020, R&T wrote a letter to the Supreme Court Registry stating as follows:[5]

> We write to respectfully inform the Honourable Court that the Respondent has instructed us not to file a Respondent's Case, Skeletal Arguments, Appeals Information Sheet or any other

[5] Letter from Rajah and Tann LLP dated 20 October 2020 at para 3.

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> document in CA 146. Nonetheless, we stand ready to assist the Honourable Court at the hearing insofar as may be necessary and permitted by the Honourable Court.

22 The appeal was fixed for hearing on 20 January 2021 before a five-judge *coram*. At the start of the hearing, the Court of Appeal inquired of Mr Mohan as to why Metax had not filed its Respondent's Case. Mr Mohan did not inform the Court of Appeal that Suit 965 had been settled. He adopted the position that the parties before the Court of Appeal were ready to assist the Court of Appeal in relation to CA 146. Mr Seah was asked the same question sometime after Mr Mohan's response. Mr Seah also did not inform the Court of Appeal that Suit 965 had been settled. He merely echoed Mr Mohan's assurance that the parties were before the Court of Appeal ready to assist the court in the spirit of what was agreed:[6]

> 1002 hrs: The Court seeks the respondent's clarification as to why the respondent did not file any documents in the appeal.
>
> 1002 hrs: Counsel for the respondent, Mr Mohan, addresses the Court. Mr Mohan explains that the respondent had entered into an agreement with the appellants in respect of the respondent's involvement in the appeal. One of the terms of the agreement was that the respondent's counsel was not to file a respondent's case. Nevertheless, the respondent's counsel had prepared for the appeal and was ready to assist the Court with any queries the Court might have.
>
> 1004 hrs: The Court seeks the appellants' clarification as follows:
>
> "Your clients are officers of the Court, as liquidators. How is it that as officers of the Court they can enter into an agreement to ask a fellow party not to file papers to the Court?"
>
> 1005 hrs: Counsel for the appellants, Mr Seah, addresses the Court. Mr Seah explains that the agreement

6 Minute Sheet for CA 146 dated 20 January 2021.

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> reached was that, if the Court should so direct, the respondent would be at liberty to assist the Court. The spirit of the agreement was ultimately that parties would be available to assist the Court.

23 After Mr Seah made oral submissions for over an hour, the Court of Appeal revisited the earlier answer that Mr Mohan had given for not filing Metax's Respondent's Case. The minute sheet of the hearing reflects the exchange between the Court of Appeal and Mr Mohan as follows:[7]

> 1113 hrs: The Court seeks the respondent's clarification as to whether the agreement entered into between the appellants and the respondent was in the nature of a settlement.
>
> 1113 hrs: Counsel for the respondent, Mr Mohan, addresses the Court. Mr Mohan confirms that that agreement was in the form of a settlement.
>
> 1113 hrs: The Court stands down.
>
> 1129 hrs: The Court delivers its order as follows:
>
> "The appeal is dismissed. Our reasons would have been evident from the questions that we put to Mr Seah in the course of his submissions. We will nonetheless issue our grounds of decision in due course setting out our views more fully. We are gravely concerned by the discovery that we made as to what had led to the unsatisfactory manner in which the case was argued before us. It appears from what was said that there has been a settlement between the parties, as a result of which, or as part of which, the liquidators also prevailed upon the respondent that its counsel should not make submissions before us. This seems to us to make a mockery of the fact that a five-judge coram was convened to deal with what was presented as an important and unresolved question of law. The liquidators seemed anxious to secure a ruling in their favour. This raises a number of questions and before we decide what, if any, sanction is to be taken in relation to all concerned – the

[7] Minute Sheet for CA 146 dated 20 January 2021.

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> liquidators, the counsel and the solicitors, officers of the court – in allowing the matter to proceed in this way, we invite the parties and counsel to make disclosure of all facts and to offer any explanations within seven days. We reserve the question of costs in the meantime."

24 After discovering that the parties to CA 146 had, in fact, entered into a settlement agreement, the Court of Appeal not only dismissed the appeal but also gave the parties seven days to disclose all facts and offer any explanations as to why the matter was allowed to proceed despite the settlement.

25 On 27 January 2021, both Mr Seah and Mr Mohan wrote to the Supreme Court Registry to offer their respective explanations. Mr Seah explained that following the Judge's decision in SUM 79, the Liquidators instructed TKQP to commence negotiations with Metax with a view to settling Suit 965. At or around the same time (*ie*, late May 2019/ early June 2019), the Liquidators approached TKQP and communicated their view that it would be important to have the matters in SUM 79 canvassed before the Court of Appeal. Eventually, a settlement agreement was concluded on 28 November 2019. Mr Seah explained that their negotiations took place for almost six months from 29 May 2019 to 28 November 2019 and that Metax was not coerced to agree to the terms of the settlement. It had the benefit of legal advice, and it was able to put forward counter proposals. Mr Seah also explained that there was no intention to mislead the Court of Appeal or cause the perversion of justice. He apologised to the Court of Appeal for any concern and inconvenience that had been caused by counsel's conduct of CA 146.

26 Mr Mohan explained that the parties had engaged in protracted negotiations over the issue of Metax's participation in CA 146. TKQP's initial offer was for, amongst other things, Metax to pay SEC $100,000 within three working days of a concluded settlement agreement. Importantly, Mr Mohan

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stated that on 8 July 2019, TKQP suggested that Metax continue participating in CA 146 as a nominal respondent. To this, R&T responded on 16 July 2019:[8]

> 2. As there would be a settlement between our respective clients in respect of Suit 965, there would no longer be any live issue in dispute between our respective clients. This would render OS 16 and the contemplated appeal against the decision of the Honourable Justice Vinodh Coomaraswarmy [*sic*] in SUM 79 given on 6 May 2019 ("**Decision**") purely academic. Our client thus requests that your client reconsider its decision to proceed with OS 16 and the contemplated appeal.
>
> 3. In any event, it is unlikely that the Court of Appeal would accept our client's participation in OS 16 and the contemplated appeal as a "*nominal respondent*". Should your client choose to proceed with OS 16 and name our client as the respondent in the contemplated appeal (if any) and on the premise that there is a settlement between our respective clients on the terms proposed at paragraph 2 of our Letter, our client reserves its right to participate in OS 16 and the contemplated appeal by filing the necessary court documents and appearing at hearings, on the basis that:
>
> (a) Parties file their respective Notices of Discontinuance in respect of Suit 965 per the terms proposed at paragraph 2 of our Letter;
>
> (b) The outcome of the contemplated appeal will not bind Suit 965; and
>
> (c) There shall be no order as to costs for OS 16 and the contemplated appeal and in the event that any costs order is made against either party in OS 16 and/or the contemplated appeal, our respective clients undertake not to enforce such costs order(s) made.
>
> [emphasis in original]

27 Furthermore, Mr Mohan stated that Metax's instructions were to accept the Liquidators' proposal to settle Suit 965. As a consequence of the settlement, Metax was bound to comply with the terms of the Settlement Agreement. Metax and Mr Mohan thus had to balance the terms of the Settlement Agreement

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8 Mr Mohan's Letter dated 27 January 2021 at para 37.

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against the need to assist the Court of Appeal. We will address Mr Mohan's contention later. It suffices to note here that the terms of settlement, in particular para (c) (at [20] above), detailed the calibrated answers that were prepared in response to a series of anticipated questions from the Court of Appeal. This went well beyond what was required to safeguard the interest of Metax in the appeal, which was already provided for in other specific terms in the Settlement Agreement. In addition, we noted the inclusion of a provision that allowed Mr Mohan to depart from the terms of the Settlement Agreement should any of the terms clash with his duty to the court.

The Court of Appeal's written decision

28 After considering the letters from TKQP and R&T, as well as the terms of the Settlement Agreement, the Court of Appeal released its written grounds of decision ("GD") on 3 March 2021. The Court of Appeal explained: (a) why it did not deal in substance with the question of law that was presented to the court in the appeal; (b) how the Court of Appeal was misled by the way the appeal was brought; and (c) the waste of the court's time that ensued. Notably, the purpose of the GD was to also place on record the Court of Appeal's strong disapproval of how the matter came before the court and to deplore the conduct of all involved (GD at [1]).

29 We begin with the Court of Appeal's ruling that "all parties and their counsel *deliberately* entered into an agreement to suppress the disclosure of relevant information to the court unless the court should specifically ask for the same" [emphasis in original] (GD at [56]). In short, the true position that the parties had settled Suit 965 would only be revealed if the Court of Appeal persisted in its queries. The parties were content to leave the Court of Appeal

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with the impression that Suit 965 was being held in abeyance pending the outcome of CA 146 (GD at [86]).

30 The Court of Appeal reiterated the general principle that the court will decline to hear cases or arguments that do not involve a live dispute between the parties (GD at [62], referring to *Sun Life Assurance Company of Canada v Jervis* [1944] AC 111). The Court of Appeal found that the counsel in CA 146 were both experienced litigators and should have known that that is the law and indeed did know that the result of any settlement of Suit 965 would be that the appeal would be rendered academic. The counsel and the Liquidators allowed the appeal to continue and in taking that course, rather than to apprise the court of the true status, the parties chose to mislead the Court of Appeal. The counsel and the Liquidators were patently in serious breach of their duties to the court (GD at [85]).

31 Consequently, those responsible wasted the court's time not only for the hearing itself but also in relation to all the preparatory and procedural work that had been done from 20 October 2020 onwards (GD at [29]). Lastly, the Court of Appeal expressed the court's strong disapproval of how the matter came before the court and deplored the conduct of those involved (GD at [91]). The Court of Appeal described the apologies proffered to the court as simply "*pro forma* without any real acknowledgment of the default" (GD [87]). On 19 March 2021, the Registrar of the Supreme Court wrote a complaint (the "Complaint") to the Law Society to refer the conduct of Mr Seah and Mr Mohan pursuant to s 85(3)(*b*) of the LPA for the matter to be referred to a disciplinary tribunal ("DT"). The Complaint referred to the GD – wherein the Court of Appeal deplored the Respondents' conduct and found that the Respondents had deliberately misled the court.

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The Charges

32 The Law Society preferred two sets of charges against Mr Seah and Mr Mohan each. We set out the charges faced by each respondent in turn.

Mr Seah

33 Each set of charges faced by Mr Seah was similarly worded. We reproduce the relevant language of the charges:[9]

> **1st Charge**
>
> You … are charged that you, on behalf of your clients, the Liquidators of [SEC], had allowed the appeal of your clients to the Court of Appeal in CA/CA 146/2019 to proceed and/or facilitated the continued prosecution of the said appeal, even after you had negotiated and concluded a settlement of the underlying dispute with [Metax] which resulted in the appeal being academic, thereby causing a wastage of the time and resources of a five-coram Court of Appeal, and such conduct amounts to a breach of your duty to assist in the efficient administration of justice vis-à-vis the appeal process before the Court of Appeal, and in the circumstances, you are thereby guilty of grossly improper conduct in the discharge of your professional duty as an advocate and solicitor of the Supreme Court of Singapore within the meaning of Section 83(2)(b) of the Legal Profession Act 1966.
>
> **First Alternative to the 1st Charge**
>
> You … are charged that you, on behalf of your clients, [the Liquidators of [SEC], had allowed the appeal of your clients to the Court of Appeal in CA/CA 146/2019 to proceed and/or facilitated the continued prosecution of the said appeal, … you are guilty of a breach of Rule 9(1)(a) and/or Rule 9(1)(e) of the Legal Profession (Professional Conduct) Rules 2015 which amounts to improper conduct or practice as an advocate and solicitor of the Supreme Court of Singapore under Section 83(2)(b) of the Legal Profession Act 1966.
>
> **Second Alternative to 1st Charge**
>
> You … are charged that you, on behalf of your clients, the Liquidators of [SEC], had allowed the appeal of your clients to

[9] Statement of Case against Mr Seah dated 31 October 2022 at para 45.

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> the Court of Appeal in CA/CA 146/2019 to proceed and/or facilitated the continued prosecution of the said appeal, … you are guilty of such misconduct unbefitting an advocate and solicitor of the Supreme Court of Singapore or as a member of an honourable profession under Section 83(2)(h) of the Legal Profession Act (Cap 161).
>
> **2nd Charge**
>
> You … are charged that you, on behalf of your clients, the Liquidators of [SEC] had entered into a settlement agreement with [Metax] on 28 November 2019, wherein it was agreed that your clients would proceed with the appeal in CA/CA 146/2019 notwithstanding the settlement of the dispute and that the fact of the settlement would not be disclosed to the Court of Appeal unless strictly necessary and only upon specific queries from the Court of Appeal, which said conduct amounted to a breach of your duty of candour as you misled the Court of Appeal by way of a deliberate suppression of the disclosure of relevant information to the Court of Appeal, and in the circumstances, you are thereby guilty of grossly improper conduct in the discharge of your professional duty as an advocate and solicitor of the Supreme Court of Singapore under Section 83(2)(b) of the Legal Profession Act (Cap 161).
>
> **First Alternative to 2nd Charge**
>
> You … are charged that you, on behalf of your clients, the Liquidators of [SEC] had entered into a settlement agreement with [Metax] on 28 November 2019, … you are guilty of a breach of Rule 9(2)(a)(i) of the Legal Profession (Professional Conduct) Rules 2015 which amounts to improper conduct or practice as an advocate and solicitor of the Supreme Court of Singapore under Section 83(2)(b) of the Legal Profession Act 1966.
>
> **Second Alternative to 2nd Charge**
>
> You … are charged that you, on behalf of your clients, the Liquidators of [SEC] had entered into a settlement agreement with [Metax] on 28 November 2019, … you are guilty of such misconduct unbefitting an advocate and solicitor of the Supreme Court of Singapore or as a member of an honourable profession under Section 83(2)(h) of the Legal Profession Act 1966.

34 As the Law Society stated in its written submissions in OA 11, the first set of charges against Mr Seah relate to a breach of duty to assist in the efficient administration of justice. The second set of charges relate to misleading the Court of Appeal.

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35 With regard to Mr Seah's charges, rr 9(1)(*a*), 9(1)(*e*) and 9(2)(*a*)(i) of the Legal Professional (Professional Conduct) Rules 2015 (the "PCR") provide as follows:

> **Conduct of proceedings**
>
> **9.** —(1) The following principles guide the interpretation of this rule.
>
> *Principles*
>
> (*a*) A legal practitioner has a duty to assist in the administration of justice, and must act honourably in the interests of the administration of justice.
>
> …
>
> (*e*) A legal practitioner must, in any proceedings before a court or tribunal, conduct the legal practitioner's case in a manner which maintains the fairness, integrity and efficiency of those proceedings and which is consistent with due process.
>
> …
>
> (2) When conducting any proceedings before a court or tribunal on behalf of a client, a legal practitioner must not do any of the following:
>
> (*a*) knowingly mislead or attempt to mislead in any way, whether by doing anything referred to in sub-paragraph (*b*) or (*c*) or otherwise —
>
> (i) the court or tribunal …

Mr Mohan

36 We reproduce the charges for Mr Mohan:[10]

> **1st Charge**
>
> You … are charged for breaching Rule 9(2)(a) of the Legal Profession (Professional Conduct) Rules 2015 in that:
>
> (1) Between 28 November 2019 and 20 January 2021, when conducting proceedings before the Court of Appeal in Civil Appeal No. 146 of 2019 ("CA 146") on behalf of a client, [Metax], you did knowingly mislead the court, by omitting to inform the Court of Appeal that Metax

10 Statement of Case against Mr Mohan dated 31 October 2022 at para 31.

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had entered into a settlement agreement for HC Suit No. 965 of 2012 ("Suit 965") with Nicky Tan Ng Kuang, Lim Siew Soo and Brendon Yeo Sau Jin ("Liquidators") on 28 November 2019, until expressly questioned by the Court of Appeal,

and in the circumstances, you are thereby guilty of improper conduct or practice as an advocate and solicitor of the Supreme Court of Singapore under Section 83(2)(b) of the Legal Profession Act 1966.

Alternative to 1st Charge

You … are charged for breaching Rule 9(2)(a) of the Legal Profession (Professional Conduct) Rules 2015 in that:

…

and in the circumstances, you are thereby guilty of such misconduct unbefitting an advocate and solicitor as an officer of the Supreme Court of Singapore or as a member of an honourable profession within the meaning of Section 83(2)(h) of the Legal Profession Act 1966.

2nd Charge

You … are charged for breaching Rule 9(1)(a) of the Legal Profession (Professional Conduct) Rules 2015 in that:

(1) You had allowed the appeal in Civil Appeal No. 146 of 2019 ("CA 146") to proceed and/or facilitated the continuance of CA 146, even after your client, [Metax] had entered into a settlement agreement for [Suit 965] with [the Liquidators] on 28 November 2019, resulting in the appeal being academic, thereby causing a waste of the time and resources of a five-coram Court of Appeal from 20 October 2020 to 20 January 2021, which conduct amounts to a breach of your duty to assist in the administration of justice in the conduct of CA 146,

and in the circumstances, you are thereby guilty of improper conduct or practice as an advocate and solicitor of the Supreme Court of Singapore under Section 83(2)(b) of the Legal Profession Act 1966.

Alternative to 2nd Charge

You … are charged for breaching Rule 9(1)(a) of the Legal Profession (Professional Conduct) Rules 2015 in that:

…

and in the circumstances, you are thereby guilty of such misconduct unbefitting an advocate and solicitor as an officer

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> of the Supreme Court of Singapore or as a member of an honourable profession within the meaning of Section 83(2)(h) of the Legal Profession Act 1966.

Proceedings before the DT and the DT's decision

37 Mr Seah and Mr Mohan strenuously defended the charges. Both denied that CA 146 was academic following the settlement of Suit 965. They had behaved properly as officers of the court and had always acted in good faith in bringing CA 146 before the Court of Appeal. A common thread to both Respondents' defences was their honest belief that CA 146 could proceed. We briefly outline the Respondents' submissions before the DT.

38 Mr Seah submitted that the Court of Appeal's findings in the GD were neither relevant nor admissible. His inability to disclose privileged communications should not be held against him. Furthermore, on the first set of charges preferred against Mr Seah, he submitted that the Law Society failed to prove that Suit 965 was the underlying dispute in CA 146. The appeal in CA 146 was brought in respect of the Judge's findings in SUM 79. SUM 79 was not a summons arising under Suit 965. Instead, it was a summons brought under CWU 90. The directions sought in SUM 79 were also general directions; they were not tied to Suit 965. As such, the appeal in CA 146 was not rendered academic simply because Suit 965 was settled. In any event, a wastage of the court's time and resources by itself is not misconduct; the Law Society failed to prove that the Respondents had *knowingly* wasted the court's time and resources. As for the alleged breach of r 9(1)(*a*) of the PCR, Mr Seah submitted that the Law Society's case was misconceived because r 9(1) only states principles and does not impose substantive obligations.

39 On the second set of charges, Mr Seah submitted that he did not knowingly mislead or attempt to mislead the Court of Appeal – the evidence

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demonstrated that Mr Seah had the honest belief that he was not suppressing any relevant information from the Court of Appeal.

40 Even if found guilty of misconduct, Mr Seah submitted that his subjective intentions and beliefs should be taken into consideration in deciding the appropriate sanction. Furthermore, Mr Seah's readiness to apologise and the many character references that attested to his reputation should be factored into the assessment of the appropriate sanction too.

41 Mr Mohan first submitted that the Court of Appeal's decision, observations, views, comments, and/or findings in its judgment, GD and the minute sheet for CA 146 (the "Minute Sheet") were inadmissible because a DT is supposed to hear a matter *de novo*. Mr Mohan further submitted that the burden of making out the two sets of charges rested on the Law Society. The Law Society had to establish that Mr Mohan knew at and from the time of the Settlement Agreement that the appeal in CA 146 was academic and there were no live issues. The first set of charges required the Law Society to show that Mr Mohan knowingly misled the Court of Appeal on the basis that he was fully aware that there were no live issues for determination in CA 146. The second set of charges, in effect, required the Law Society to show that Mr Mohan was fully aware that there were no live issues for determination in CA 146. Mr Mohan submitted that the evidence showed that he had honestly formed the view that CA 146 could proceed even if Suit 965 was settled.

42 From the time Mr Mohan came to the view that the appeal could proceed, his concerns and focus were purely on getting the settlement done as soon as possible, on being able to truthfully inform the Court of Appeal why Metax had not filed a respondent's case, on assisting the Court of Appeal with

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submissions to ensure that the finality of the settlement would not be affected, and on ensuring that he would not be asked to do anything improper.

43 In respect of the second set of charges, Mr Mohan submitted that r 9(1) of the PCR does not impose substantive legal obligations, and that the Law Society did not prove otherwise.

44 We turn first to two preliminary points that were addressed by the DT. First, the DT found that the Minute Sheet of the Court of Appeal in CA 146 dated 20 January 2021 and the GD were admissible. Having said that, the DT noted the *de novo* nature of disciplinary proceedings and found that findings and observations of a court in relation to a lawyer's professional conduct were not binding on a disciplinary tribunal that had been appointed to investigate and determine the charges against the lawyers.

45 As a second preliminary point, the DT found that no adverse inference was to be drawn against Mr Seah for not producing documents that were protected by client privilege.

46 In relation to the second set of charges against Mr Seah and the first set of charges against Mr Mohan, the DT's findings were as follows: (a) CA 146 was academic following the settlement of Suit 965 which was plainly the subject matter of CA 146; (b) the Respondents' failure to bring the true state of affairs to the Court of Appeal's attention when there was a duty to do so as officers of the court meant that the court had been misled; and (c) the overall circumstances bore out the Respondents' requisite state of mind to mislead the Court of Appeal – (i) the Respondents must have known that courts in Singapore do not hear cases in the abstract to opine on academic points of law however novel and important, (ii) the fact that the Settlement Agreement included a term providing

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that the parties were at liberty to inform the Court of Appeal that Suit 965 was being held in abeyance pending the outcome of CA 146 supported the DT's view that the Respondents had the requisite knowledge or were at least reckless; and (iii) the term in the Settlement Agreement that the Court of Appeal was to be informed of the Settlement Agreement "[o]nly if necessary" and the fact that the Respondents acted in accordance with that term also led to the inference that they had the requisite knowledge. As officers of the court who owed a duty of candour to assist the court in matters before the court, there ought to have been no hesitation about bringing the fact of the settlement to the attention of the Court of Appeal at the earliest opportunity, but the Respondents had failed to do so.

47 In the final analysis, the DT rejected the Respondents' defences that they honestly believed that the appeal in CA 146 could proceed notwithstanding the settlement of the claims between the Liquidators and Metax in Suit 965. The DT accepted the Law Society's case that the failure to inform the Court of Appeal of the settlement unless and until asked amounted to a breach of both Respondents' duty to the court and had the effect of misleading the court.

48 Therefore, the second charge, and its two alternative charges, against Mr Seah was made out. The DT found that Mr Seah's conduct constituted improper conduct under s 83(2)(*b*) of the LPA.

49 As to the first charge and the alternative charge against Mr Mohan, the DT found that the Law Society's case against Mr Mohan for knowingly misleading the Court of Appeal in CA 146 was made out beyond a reasonable doubt. That is to say that Mr Mohan had knowingly misled the Court of Appeal by omitting to inform the court of the settlement. The DT also rejected

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Mr Mohan's claim that he honestly believed that the appeal in CA 146 could proceed.

50 However, the DT found Mr Mohan less culpable than Mr Seah and found Mr Mohan guilty of misconduct unbefitting an advocate and solicitor under s 83(2)(*h*) of the LPA.

51 Finally, the DT found that the first charge and its two alternative charges against Mr Seah and the second charge and its alternative charge against Mr Mohan pertained to the Respondents' duty to assist in the efficient administration of justice *vis-à-vis* the appeal process before the Court of Appeal. In relation to those charges, the DT found that r 9(1) of the PCR did impose substantive legal obligations. Specifically, r 9(1)(*a*) prohibits a lawyer from acting contrary to the administration of justice.

52 The DT found that the charges relating to the Respondents' duty to assist in the efficient administration of justice were made out. In other words, rr 9(1)(*a*) and 9(1)(*e*) were breached. The DT noted that the Respondents allowed and/or facilitated the appeal in CA 146 to proceed notwithstanding the appeal being academic which resulted in the wastage of time and resources of a five-judge coram in the Court of Appeal. The DT found both Mr Seah and Mr Mohan guilty of misconduct unbefitting an advocate and solicitor under s 83(2)(*h)* of the LPA.

53 On a related note, the DT found that certain aspects of the evidence given by Mr K Gopalan ("Mr Gopalan") and Ms Doreen Chia Ming Yee ("Ms Chia") were irrelevant. Mr Gopalan's evidence was, amongst other things, that Mr Mohan probably held the belief that he was doing the right thing and that he was not claiming that Mr Mohan was dishonest in any way. Ms Chia's evidence

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was that after SEC and Metax had entered into the Settlement Agreement, in or around early to mid-August 2019, Mr Mohan had formed the view that the Liquidators could still proceed with CA 146. The DT found that Mr Gopalan's and Ms Chia's evidence was irrelevant because the fact remained that the appeal in CA 146 had been rendered academic regardless of Mr Mohan's state of mind. Moreover, Mr Gopalan's evidence of Mr Mohan's state of mind was a matter of his opinion and irrelevant.

54 Thus, pursuant to s 93(1)(*c*) of the LPA, the DT found that cause of sufficient gravity in respect of both solicitors existed under s 83 of the LPA and that the matter should be referred to the Court of Three Judges. As we turn to consider the matter, we highlight that we will elaborate on the DT's findings and reasoning in our discussions below whenever necessary.

Admissibility of the Court of Appeal's Minute Sheet and the GD in CA 146

55 A preliminary point concerned the Court of Appeal's Minute Sheet dated 20 January 2021 for CA 146 and the Court of Appeals' GD. The Law Society submitted that both documents were relevant and admissible. For this preliminary point, the Law Society relied on ss 32 and 37 of the Evidence Act 1893 (2020 Rev Ed) ("Evidence Act") and *Law Society of Singapore v Udeh Kumar s/o Sethuraju and another matter* [2017] 4 SLR 1369 ("*Udeh Kumar*") and *Tan Beng Hui Carolyn v Law Society of Singapore* [2023] 1 SLR 602 ("*Carolyn Tan*"). In addition, the Law Society clarified that it was not seeking to draw an adverse inference from Mr Seah's inability to disclose privileged communications between his firm and the Liquidators. We will therefore address only the admissibility issue.

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56 As mentioned, Mr Seah was no longer contesting liability. Mr Mohan submitted that the DT erred in finding that the Minute Sheet for CA 146 and the GD were admissible. We begin by noting that the parties agree that disciplinary proceedings before a disciplinary tribunal occur on a *de novo* basis and that the Court of Appeal's GD and Minute Sheet were not conclusive findings that were binding on the DT. The DT reached this conclusion too (see [44] above). As such, the question before this court was not whether the DT or the Court of 3 Supreme Court Judges should look to the Minute Sheet and GD as conclusive evidence for certain matters; instead, the question was simply whether they were relevant and admissible.

57 We agreed with the DT that the Minute Sheet was relevant and admissible pursuant to ss 32(1)(*b*) and 37 of the Evidence Act. The two provisions provide as follows:

> **32.** —(1) Subject to subsections (2) and (3), statements of relevant facts made by a person (whether orally, in a document or otherwise), are themselves relevant facts in the following cases:
>
> …
>
> **or is made in course of trade, business, profession or other occupation;**
>
> (*b*) when the statement was made by a person in the ordinary course of a trade, business, profession or other occupation and in particular when it consists of —
>
> (i) any entry or memorandum in books kept in the ordinary course of a trade, business, profession or other occupation or in the discharge of professional duty;
>
> (ii) an acknowledgment (whether written or signed) for the receipt of money, goods, securities or property of any kind;
>
> (iii) any information in market quotations, tabulations, lists, directories or other compilations generally used and relied upon by

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> the public or by persons in particular occupations; or
>
> (iv) a document constituting, or forming part of, the records (whether past or present) of a trade, business, profession or other occupation that are recorded, owned or kept by any person, body or organisation carrying out the trade, business, profession or other occupation,
>
> and includes a statement made in a document that is, or forms part of, a record compiled by a person acting in the ordinary course of a trade, business, profession or other occupation based on information supplied by other persons …
>
> …
>
> **Relevancy of entry in public record made in performance of duty**
>
> **37.** An entry in any public or other official book, register or record, stating a fact in issue or relevant fact and made by a public officer in the discharge of his or her official duty or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register or record is kept, is itself a relevant fact.

58 The Court of Three Judges in *Udeh Kumar* found that the minute sheets relied upon by the Law Society in making its case in an originating summons were admissible. A minute sheet falls within two exceptions to the hearsay rule. First, under s 32(1)(*b*) of the Evidence Act, statements "made by a person in the ordinary course of a trade, business, profession or other occupation" are relevant and admissible. In particular, minute sheets fall under either s 32(1)(*b*)(i) – entries in books kept in the ordinary course of a profession or in the discharge of a professional duty – or s 32(1)(*b*)(iv) – documents constituting or forming part of the records of a profession that are recorded, owned or kept by a person, body or organisation carrying out that profession: *Udeh Kumar* at [13] and *Carolyn Tan* at [47]. We noted that pursuant to s 32(4)(*b*) of the Evidence Act read with O 15 rr 16(7) of the Rules of Court 2021 ("ROC"), the Law Society would have had to serve a formal notice on the Respondents stating the grounds

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under s 32(1) of the Evidence Act that allowed the Minute Sheet to be admitted. However, like the courts in *Udeh Kumar* and *Carolyn Tan*, we were prepared to exercise our discretion under O 3 r 2(4)(*a*) to waive such non-compliance since Mr Mohan was aware that the Law Society was seeking to refer to the Minute Sheet: see *Udeh Kumar* at [14] and *Carolyn Tan* at [47].

59 Second, s 37 of the Evidence Act provides that entries into a public record by public officers in the discharge of their official duties are relevant evidence. Section 2(1) of the Interpretation Act 1965 (2020 Rev Ed) defines a "public officer" as the holder of any office of emolument in the service of the Government. Section 76(*a*) of the Evidence Act defines "public documents" to include the documents recording the acts of public officers (including judicial officers) in Singapore. Thus, the minute sheet for CA 146 was relevant and admissible evidence: *Udeh Kumar* at [15] and *Carolyn Tan* at [46].

60 We also agreed with the DT that the GD was proof of relevant facts and was admissible. Section 7, read with s 45 of the Evidence Act, provides that facts which are the occasion, cause or effect of relevant facts or facts in issue are relevant. The GD contained the bases of the court's holding and conclusion that the court was engaged in a consideration of wholly hypothetical issues and arguments because the Respondents had allowed an appeal that was academic to proceed as if the issue was still alive, and in doing so, had deliberately misled the Court of Appeal and consequently wasted the court's time since 20 October 2020 (see GD at [29] and [85]). The purpose of the GD, as stated by the Court of Appeal, was not only to set out why it was inappropriate to deal with the substance of the question of law in the appeal but to also record the court's strong disapproval of how CA 146 came before the Court of Appeal (see GD at [1]). In terms of admissibility, we were able to take judicial notice of the GD pursuant to s 59 of the Evidence Act, read with *Zheng Yu Shan v Lian Beng*

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Construction (1988) Pte Ltd [2009] 2 SLR(R) 587 at [27]. It was indisputably clear that the GD authoritatively set out the reasons for the Court of Appeal's decision.

61 Therefore, both the Minute Sheet for CA 146 and the GD were relevant and admissible. With this, we consider the submissions on the substance of the applications that were before us.

Overview of the duty owed to the court as an officer of the court

62 We begin with the seminal remarks of Lord Reid in *Rondel v Worsley* [1969] 1 AC 191 at 227:

> [A]s an officer of the court concerned in the administration of justice [a legal practitioner] has an overriding duty to the court, to the standards of his profession, and to the public, which may and often does lead to a conflict with his client's wishes or with what the client thinks are his personal interests.

63 Rule 4 of the PCR sets out the principles to guide the interpretation of the PCR. For present purposes, the relevant principles are found in Rule 4(*a*) to (*c*), which read as follows:

> (*a*) A legal practitioner has a paramount duty to the court, which takes precedence over the legal practitioner's duty to the legal practitioner's client.
>
> (*b*) A legal practitioner's duty to the legal practitioner's client is subject only to the legal practitioner's duty to the court, and must at all times be fulfilled in a manner that upholds the standing and integrity of the Singapore legal system and the legal profession in Singapore.
>
> (*c*) A legal practitioner has a duty to discharge honourably and with integrity all of the legal practitioner's responsibilities to any tribunal before which the legal practitioner appears, the legal practitioner's clients, the public and other members of the legal profession.

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64 It is plain that a solicitor's duty to the court is an incident of his position as an officer of the court and as an integral participant in the administration of justice that goes to ensuring the integrity of the rule of law in the legal system. A well-established aspect of the solicitor's duty to the court is in assisting the court to reach a proper resolution of the dispute in a prompt and efficient manner. It is incumbent upon solicitors to assist the court in the efficient utilisation of its limited resources.

65 We begin with V K Rajah JA's instructive observations in *Bachoo Mohan Singh v Public Prosecutor and another matter* [2010] 4 SLR 137:

> 113 It is trite that a solicitor, being an officer of the court, owes a paramount duty to the court, which overrides his duties to the client … This paramountcy is justified by reason of "the court" being the embodiment of the public interest in the administration of justice. No instructions from a client, tactical considerations or sympathy for a client's interests can ever take precedence over this duty.
>
> 114 A crucial aspect of this multi-faceted responsibility is the duty not to mislead the court, also known as the duty of candour … Indeed, this duty is a touchstone of our adversarial system which is based upon the faithful discharge by an advocate and solicitor of this duty to the court. The duty applies when performing *any* act in the course of practice. Litigants and/or their solicitors must neither deceive nor knowingly or recklessly mislead the court. Untrue facts cannot be knowingly stated, true facts cannot be misleadingly presented, material facts cannot be concealed and a client or witness must not be allowed to mislead the court. …
>
> 115 The duty of candour has both a prescriptive and a proscriptive dimension in civil proceedings. On the one hand, the solicitor must, for example, ensure that all discoverable documents are produced and he must disclose to the court even adverse legal authorities; on the other hand, he must refrain from misleading the court as to the law or the facts. …

66 The court in *Law Society of Singapore v Ravindra Samuel* [1999] 1 SLR(R) 266 ("*Ravindra Samuel*") explained the significance of a solicitor's

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duty of candour in his position as an officer of the court in the legal system in the following terms:

> 12 … The administration of justice can only proceed on the basis that solicitors can place reliance upon the honesty of the solicitors with whom they deal. The public too must be able to repose confidence in a profession which plays so indispensable a part in the administration of justice. Similarly, ***the courts of this country must be able to depend on the honesty and integrity of all practitioners appearing before them and to expect that they will maintain the highest standards of personal honesty and integrity in their dealings with the courts***.
>
> 13 There is therefore a serious responsibility on the court, a duty to itself, to the rest of the profession and to the whole of the community, to be careful ***not to accredit any person as worthy of public confidence and therefore fit to practise as an advocate and solicitor who cannot satisfactorily establish his right to those credentials***. In the end therefore, the question to be determined is whether the solicitor in question is a fit and proper person to be an advocate and solicitor of the court, and the orders to be made are to be directed to ensuring that, to the extent that he is not, his practice is restricted.
>
> [emphasis added in bold italics]

67 Indeed, the obligation not to mislead the court has been described as the bare minimum required of a solicitor (Jeffrey Pinsler, "Ethics in Litigation: Issues Raised by the Legal Profession (Professional Conduct) Rules 1998" (1998) SAcLJ 284 at 286):

> [An advocate and solicitor's] most basic obligation is not to deceive or mislead the court, any other advocate and solicitor, witness, court officer, or other person or body involved in or associated with court proceedings. This responsibility extends to every function including the presentation and interpretation of facts, drafting of pleadings and documents, legal argument and other submissions to, or communications with, the court. The duty not to intentionally mislead or deceive is only the bare minimum required of the advocate and solicitor.

68 Furthermore, the High Court in *Public Trustee and another v By Products Traders Pte Ltd and others* [2005] 3 SLR(R) 449 at [30] found:

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> Misleading or deceptive conduct can be passive or active or a combination of both. It is passive when material facts are concealed and/or there has been economy with the truth. It is active when untruths are deliberately articulated and/or facts misrepresented. Given the broad spectrum of activity it encompasses, it would be pointless to attempt to precisely or exhaustively define it … What can be asserted with confidence, however, is that the solicitor's duty of candour to the court in any given matter is indivisible, uncompromising and enduring. The failure to be candid with the court can lead to misleading and/or deceptive conduct on the part of a solicitor.

69 To make out a breach of the duty not to mislead the court (*ie*, the mental state that is required to establish a breach of r 9 of the PCR 2015), it must be shown that a false statement was made to the court by a solicitor: (a) knowing it is false; (b) without belief in its truth; or (c) recklessly, without caring whether it is true or false: *Udeh Kumar* at [34]–[36], citing *Derry v Peek* (1889) 14 App Cas 337 ("*Derry v Peek*").

70 With these observations in mind, we turn to examine the misconduct complained of and determine the overall gravity of the misconduct.

The Law Society's case in OA 11 and OA 12

71 We set out in brief the Law Society's case in respect of OA 11 and OA 12 in turn.

OA 11 – Mr Seah

72 First, the Law Society submitted that the substratum for both sets of charges was the nature of the relief sought in SUM 79 and subsequently in CA 146, whether the Settlement Agreement rendered CA 146 academic, and Mr Seah's knowledge of the same. In relation to this, the Law Society submitted that Mr Seah had only referred to Suit 965 and no other existing disputes. His assertion that the Liquidators required the directions sought in SUM 79 for the

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"other existing disputes" was an afterthought. Mr Pillai for the Law Society maintained that the DT rightly rejected the contention that even though Suit 965 was settled, the Liquidators could still proceed with CA 146 to seek guidance and clarification on the estate costs rule (see [13] above) in relation to other pre-existing disputes within CWU 90.

73 On the first set of charges, Mr Pillai submitted that r 9(1) of the PCR imposed substantive obligations. A settlement of Suit 965 rendered CA 146 academic and by proceeding with it wasted judicial resources. Mr Pillai submitted that the DT rightly rejected Mr Seah's claim that he neither wasted the Court of Appeal's time nor impeded the administration of justice. The DT held that the charge in relation to the wastage of judicial resources had been made out and that such conduct amounted to "misconduct unbefitting an advocate and solicitor" as per s 83(2)(*h*) of the LPA. Mr Pillai reminded the court that s 83(2)(*h*) is a broader "catch-all" provision and the standard applied in the inquiry is less strict than that in s 83(2)(*b*) (see explanation at [99]–[100] below); what needs to be shown is merely that a solicitor is guilty of such conduct as would render him unfit to remain as a member of an honourable profession. Liability under s 83(2)(*h*) of the LPA usually follows on a finding of liability under s 83(2)(*b*).

74 On the second set of charges, Mr Pillai submitted that Mr Seah did knowingly mislead the Court of Appeal, as suggested in the GD and reflected in the drafting of the Settlement Agreement which obliged parties to effectively suppress disclosure of Suit 965. During the hearing of CA 146 on 20 January 2021 itself, it transpired that Mr Seah persisted in the suppression of disclosure of the settlement. He informed the Court of Appeal that "the spirit of the agreement" was that the parties would assist the Court of Appeal and this statement was made after Suit 965 was already settled. The settlement could

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have been disclosed to the Court of Appeal, but Mr Seah instead chose to perpetuate the suppression of disclosure. The Law Society argued that Mr Seah had clearly created a false impression by concealing the truth. The "spirit of the agreement" was not that the parties would assist the court; the "spirit of the agreement" was that the parties had settled Suit 965 which was not to be disclosed at the earliest opportunity. All that amounted to improper conduct under s 83(2)(*b*) of the LPA.

75 On the appropriate sanction, the Law Society sought a suspension for a term of two years. It submitted that the facts of the case were sufficiently serious to warrant the imposition of sanctions under s 83(1) of the LPA. Mr Seah was dishonest and acted fraudulently. The presumptive sanction in cases of dishonesty is striking off if the relevant conduct is indicative of a character defect rendering the solicitor unfit for the profession, or if it undermines the administration of justice. However, the Law Society argued that considering the circumstances, this was an exceptional case and an order for striking off was disproportionate. While the culpability was high, amongst other things, there was no financial gain.

OA 12 – Mr Mohan

76 Mr Chan for the Law Society submitted that the first charge and its alternative against Mr Mohan were made out. There were two elements to the charges that were both satisfied: (a) Mr Mohan did in fact mislead the court, and (b) he did so knowingly. Mr Mohan's submission that he changed his mind and came to the view that CA 146 was not academic was an afterthought. Furthermore, in so far as Metax was concerned, Mr Mohan must have known that there were no issues of "general application" in CA 146. Once Suit 965 was settled, there were no live issues in dispute between the Liquidators and Metax.

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Mr Mohan knew that CA 146 was academic, and the Settlement Agreement reflected as much. Relatedly, the Law Society submitted that the DT correctly found that Mr Gopalan's and Ms Chia's evidence on Mr Mohan's state of mind was irrelevant (see [53] above). Furthermore, parts of Ms Chia's evidence contradicted Mr Mohan's position.

77 Additionally, Mr Chan submitted that the Law Society did put its case to Mr Mohan and satisfied the rule in *Browne v Dunn* (1893) 6 R 67 ("*Browne v Dunn*"); there is no formal rule of procedure that requires a cross-examiner to use the express words "you are not telling the truth" or "I put it to you that the charge is made out". Mr Mohan was cross-examined and given the opportunity to state his case in response to the charges.

78 On Mr Mohan's state of mind, Mr Chan submitted that Mr Mohan knew that by not disclosing the settlement of Suit 965, the Court of Appeal's impression of CA 146 was that it was an appeal to resolve a dispute between the parties on an important question of law. Mr Chan submitted that the Settlement Agreement itself supported the DT's finding that Mr Mohan had the requisite mental state. It showed, amongst other things, that the parties had agreed not to voluntarily inform the Court of Appeal of the settlement. Mr Chan reminded the court that the essence of the Law Society's case against Mr Mohan was that Mr Mohan's very failure to inform the Court of Appeal of the settlement until he was asked amounted to a breach of Mr Mohan's duty to the court and had the effect of misleading the Court of Appeal.

79 On the second set of charges, Mr Chan submitted that the DT correctly found that r 9(1)(*a*) of the PCR imposes substantive obligations (see [51] above). The Court of Appeal's time was wasted, and Mr Mohan allowed CA 146 to proceed causing that wastage.

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80 On the appropriate sanction, the Law Society sought a suspension for a term of two years. Mr Chan's submissions on sanction were similar to the Law Society's submissions in OA 11 (see [75] above).

OA 11 - Due cause was established under s 83(1) of the LPA against Mr Seah

81 As mentioned at [3] above, on 4 April 2024, one day before the hearing for OA 11 and OA 12, TKQP wrote to the Supreme Court Registry to inform that Mr Seah wished to revise his position in that he did not seek to contest the two sets of charges that the DT found were made out against him. As to the appropriate sanction, Mr Seah sought a suspension for a period of six months to one year given the circumstances of his case and sought to defer the commencement of the term of suspension to 17 August 2024.

82 At the beginning of the hearing on 5 April 2024, Mr Vergis confirmed that Mr Seah no longer contested the two charges. Specifically, as regards the first set of charges, Mr Seah accepted the DT's findings at paras 61–71 and at para 79 of the Report dated 19 July 2023 issued by the Disciplinary Tribunal in respect of the Respondents (the "DT's Report"). Similarly, as regards the second set of charges, Mr Seah accepted the DT's findings at paras 89–93 and at paras 96 and 97 of the DT's Report. We have set out these paragraphs in full in an annex to this decision below (see [A.1] below). It was also not disputed, and we agreed with the DT, that as regards the first set of charges, Mr Seah's conduct constituted misconduct unbefitting an advocate and solicitor or as a member of an honourable profession under s 83(2)(*h*) of the LPA. Further, it was not disputed, and we agreed with the DT, that Mr Seah's conduct in relation to the second set of charges constituted improper conduct within s 83(2)(*b*)(i) of the LPA for breaching r 9 of the PCR.

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Conclusion on the two sets of charges against Mr Seah

83 Besides determining that an errant solicitor's conduct falls within the ambit of s 83(2) of the LPA, the court "must also be satisfied that on the totality of the facts and circumstances of the case, the [solicitor's] misconduct was sufficiently serious to warrant the imposition of sanctions under s 83(1) of the LPA" [emphasis omitted]: *Udeh Kumar* at [30] and *Law Society of Singapore v Seah Choon Huat Johnny and another matter* [2024] 3 SLR 1786 at [27].

84 All in all, we accepted that on the totality of the facts and circumstances of the case, Mr Seah's conduct as disclosed by each set of charges was sufficiently serious to warrant the imposition of sanctions under s 83(1) of the LPA. We applied what we have said at [117] below about Mr Seah's improper conduct.

85 We will elaborate on the appropriate sanction for Mr Seah after we discuss the issue of whether due cause was shown under s 83(1) of the LPA in relation to Mr Mohan.

OA 12 – Whether due cause was shown under s 83(1) of the LPA in relation to Mr Mohan

86 Mr Mohan highlighted that the Law Society's case in relation to both charges was premised on Mr Mohan being "fully aware" that CA 146 was academic, and that Mr Mohan had "knowingly misled" the Court of Appeal. But, according to Mr Mohan, the Law Society did not make out these arguments for three reasons.

87 First, the Judge's views in SUM 79 led Mr Mohan to understand that it remained open to argument in Suit 965 or in any other case that the ruling in

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SUM 79 did not apply because the directions in SUM 79 were general in nature. Moreover, Mr Mohan was determined to discharge his duties to the court and wanted to honestly express Metax's position to the Court of Appeal. By mid-August 2019, Mr Mohan came to the view that even if Suit 965 was settled, CA 146 may not be rendered academic. Notably, Mr Mohan discussed his view that CA 146 was not rendered academic with Ms Chia, whom he assumed would have reviewed her contemporaneous notes of the SUM 79 hearings before their discussion. The Law Society did not put or suggest to Mr Mohan that he did not honestly believe that the issue in CA 146 may still be live and may not be academic. Mr Mohan held this view consistently, even after the hearing for CA 146. The Law Society did not put or suggest to Mr Mohan that he was lying and that he intended to conceal the settlement and only inform the court of the settlement as a last resort.

88 Second, the Law Society's case had shifted from arguing that Mr Mohan *knew* that CA 146 was academic to arguing about whether Mr Mohan knew that Metax had no interest in the appeal and whether Mr Mohan should have disclosed the settlement. There was a significant difference between arguing that the appeal was academic and arguing that the appeal was academic *to Metax*. Moreover, alleging that Mr Mohan "must have known" was different from having to show that Mr Mohan in fact "knew" that the appeal was academic in that the former pertains to constructive knowledge whilst the latter pertains to actual knowledge.

89 Third, Mr Mohan submitted that the DT erred in finding that r 9(1)(*a*) of the PCR imposed a substantive obligation.

90 Beyond the charges, Mr Mohan submitted that the correct interpretation of the Judge's views in SUM 79 were irrelevant; the question was whether the

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Law Society could show that Mr Mohan did not honestly form the view that CA 146 could proceed after refreshing his mind on the proceedings in SUM 79. Furthermore, the DT erred in accepting the Law Society's changed case.

91 On the applicable sanction, Mr Mohan's case was that his conduct was not dishonest. Even if his conduct was dishonest, it neither revealed a character defect, nor undermined the administration of justice. Regardless, there were exceptional circumstances militating against a sanction of striking off. He submitted that the appropriate penalty was a censure or a fine. In any event, the Law Society's submission of a suspension for two years was without basis because the DT itself was of the view that Mr Mohan's conduct was less severe than Mr Seah's conduct. If a term of suspension was to be imposed, Mr Mohan's position was that he should receive six months' suspension commencing from 1 June 2024.

92 In light of the Law Society's case against Mr Mohan and his case as set out above, three main issues arose for our consideration:

(a) Whether the Law Society put its case to Mr Mohan.

(b) Whether the first charge against Mr Mohan was made out.

(c) Whether the second charge against Mr Mohan was made out.

Whether the Law Society put its case to Mr Mohan

93 Mr Mohan's case was that the Law Society failed to put its case to Mr Mohan during his cross-examination before the DT (see [87] above) and that omission contradicted the rule in *Browne v Dunn* ([77] *supra*). We disagreed. The purpose of this rule is to secure procedural fairness in litigation: *Ong Pang Siew v Public Prosecutor* [2011] 1 SLR 606 at [81]. Notably, this rule is flexible:

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Liza bte Ismail v Public Prosecutor [1997] 1 SLR(R) 555 at [68]. It does not impose a formal requirement on parties to use formulaic recitations of a party's case to a witness, with an invitation merely to agree or disagree. Indeed, a court should consider the totality of the evidence in a case when evaluating an objection that a witness had no opportunity to provide evidence on the other side's position and contradictory evidence on the relevant issue: *Hong Leong Singapore Finance Ltd v United Overseas Bank Ltd* [2007] 1 SLR(R) 292 at [42].

94 We make two points. First, the Notes of Evidence ("NEs") suggested that the Law Society did put its case to Mr Mohan. First, Mr Mohan was cross-examined on his subjective knowledge of whether CA 146 was academic after the Settlement Agreement was entered into:[11]

> Q Mr Mohan, you agree that---to borrow a phrase, that 965 form the factual substratum on which Summons 79 was argued, correct?
>
> A It was part of it, Your Honour, I wouldn't say it was the---it was a convenient factual situation to argue from but the principles that the liquidators wanted was not confined to 965 alone. They made it clear that this was of importance to the other matters that they had and was imp---of importance to the liquidation community at large so that was part of what they were arguing.
>
> Q But it was clear to you, at least, that the liquidators wanted to apply the determination in Summons 79 to Suit 965, correct?
>
> A That was clear to me on the 29th of April. Yes.
>
> …
>
> Q Right, thank you. Now, so, bringing it to our current scenario, after Summons 79, once Suit 965 was settled, Matex [*sic*] would also have no interest in CA 146, correct?

[11] Record of Proceedings Vol 3 at Tab 2; NE, Day 2, 3 April 2023, 8:8–17, 11:3–12.

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> A Strictly speaking, yes, Your Honour, that will be correct. And in fact, that was why I wanted to tell him at the outset that, "Please file the NOD, straightaway 965".
>
> Q So, essentially, insofar as that Matex [*sic*] was concerned, once you settled Suit 965, Matex [*sic*] didn't have any live interest in CA 146, correct?
>
> A That would be strictly speaking, correct, Your Honour. Because 965 and Summons 79 were two different matters the way I saw it by that time.
>
> …

95 Second, Mr Mohan was also cross-examined on whether he had deliberately suppressed information pertaining to the settlement before the Court of Appeal. As such, Mr Mohan was cross-examined on the Law Society's case and he had understood the questions as going towards: (a) his honest belief on whether CA 146 was rendered academic, and (b) the allegation that he had deliberately suppressed information before the Court of Appeal. He was given sufficient notice of the Law Society's case during his cross-examination, and he had the opportunity to challenge the Law Society's case. Thus, we found that Mr Mohan was given notice of the Law Society's case and he had the opportunity to respond to it. That said, we accept that the manner of cross-examination could have been more direct and focused.

Whether the first charge against Mr Mohan was made out

Preliminary comments

96 We preface our discussion of the charges by stating an observation that we raised during the hearing on 5 April 2024. The charges framed in respect of Mr Seah and Mr Mohan were substantially similar in that the first set of charges preferred against Mr Seah corresponded to the second set of charges preferred against Mr Mohan, and *vice versa*. However, we found it unsatisfactory in the light of the many common facts that the charges were not presented in the same

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sequence for each Respondent. Secondly, charges which were substantially the same were worded differently which initially caused us to consider whether they were in fact substantially the same or not in the first place. Thirdly, different provisions were relied upon, *ie*, for Mr Seah, the First Alternative to the 1st Charge mentioned a breach of r 9(1)(*a*) and/or r 9(1)(*e*) of the relevant professional rules but for Mr Mohan, the equivalent charge, *ie*, the Alternative 2nd Charge, referred to a breach of r 9(1)(*a*) only. This gave rise to the possibility that even if both solicitors were in breach of r 9(1)(*e*) only, Mr Seah would be found liable but not Mr Mohan.

97 We appreciate that the counsel representing the Law Society in OA 11 and OA 12 were appointed separately and might have different views on the charges to be prosecuted. Nevertheless, unless there were good reasons for the differentiation, the terms of the charges for each of the Respondents should not be different for the reasons mentioned, especially where the charges arose from the same transaction. The Law Society and their counsel should have ensured better coordination between counsel.

98 Mr Mohan was charged for "improper conduct" under s 83(2)(*b*) and "misconduct unbefitting an advocate and solicitor" under s 83(2)(*h*) in his first charge and the alternative to the first charge respectively. The applicable law for ss 83(2)(*b*) and 83(2)(*h*) of the LPA was not in dispute between the parties and we will briefly outline it.

99 The question of "improper conduct" under s 83(2)(*b*) of the LPA focuses on whether the conduct of a lawyer is "dishonourable to [him] as a man and dishonourable to his profession". A lawyer's conduct may be grossly improper notwithstanding that there is no dishonesty, fraud or deceit: *Iskandar bin Rahmat v Law Society of Singapore* [2022] 1 SLR 590 ("*Iskandar*") at [40].

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100 Section 83(2)(*h*) is a broader "catch-all" provision operating when a solicitor's conduct does not fall within any of the other subsections of s 83(2) but is nonetheless considered unacceptable. On the standard of "unbefitting conduct", a solicitor only needs to be shown to have been guilty of such conduct as would render him unfit to remain as a member of an honourable profession. Practically, the court may consider whether reasonable people, on hearing what the solicitor had done, would have said without hesitation that as a solicitor he should not have done it. To make out a breach of s 83(2)(*h*), it is sufficient if the respondent's conduct brings him discredit as a lawyer or brings discredit to the legal profession as a whole: *Law Society of Singapore v Wong Sin Yee* [2018] 5 SLR 1261 at [24]. Ordinarily, liability under s 83(2)(*b*) is also followed by a finding of liability under s 83(2)(*h*) on the basis that the greater encompasses the lesser: *Iskandar* at [45].

101 The first set of charges also alleged that Mr Mohan breached r 9(2)(*a*) of the PCR, which imposes an obligation on lawyers not to knowingly mislead or attempt to mislead, a court.

102 We have already explained the duty of candour at [65]–[69] above. It is useful to emphasise that to make out a breach of the duty not to mislead the court (*ie*, the mental state that is required to establish a breach of r 9 of the PCR), it must be shown that a false statement was made to the court by a solicitor (a) knowing it is false; (b) without belief in its truth; or (c) recklessly, without caring whether it is true or false: *Udeh Kumar* at [34]–[36], citing *Derry v Peek*. In relation to the charges against Mr Seah and Mr Mohan for misleading the court in CA 146 by their deliberate suppression or omission of material information, only the first limb of *Derry v Peek* – "knowing it is false" – was in dispute here.

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Analysis

103 We approached the analysis of this issue in two parts: (a) was the Court of Appeal allowed to be misled by the Respondents' omission; and (b) what was the Respondents' state of mind at the hearing of CA 146. In answer to (a) and (b), first, we agreed with the DT that the Settlement Agreement had indeed rendered CA 146 academic for the reasons stated below. Second, we also agreed with the DT that Mr Seah and Mr Mohan knew that CA 146 was academic following the settlement and knowingly misled the court. We were in no doubt that the Court of Appeal was misled by the Respondents. The Settlement Agreement, the structure of the scheme in the Settlement Agreement and the Minute Sheet of CA 146 that recorded what transpired at the hearing of CA 146 provided compelling evidence of how the Respondents went about the management and conduct of CA 146 that left the Court of Appeal with the misimpression that there was a dispute to be resolved in CA 146. That was a false impression of the true state of affairs until the Court of Appeal queried and was apprised of the settlement of Suit 965 that had the effect of rendering the appeal in CA 146 academic.

104 We move on to examine Mr Mohan's arguments. We were not persuaded and doubted the veracity of Mr Mohan's belief that a settlement of Suit 965 would not in and of itself prevent CA 146 from proceeding before the Court of Appeal because the Judge in SUM 79 decided the question to be of general application and not restricted to Suit 965.

105 We disagreed with Mr Mohan's submission that CA 146 pertained to matters beyond Suit 965 in that the Judge's directions in SUM 79 were generally phrased such that they applied to the entirety of CWU 90 and were not confined to Suit 965. There was nothing to the point that because SUM 79 was filed in

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CWU 90, it was divorced from Suit 965. Suit 965 formed the substratum of SUM 79. This much was made clear in the exchanges between the Judge, Mr Seah and Mr Mohan (see [18] above). The minute sheet showed Mr Seah assuring the Judge in SUM 79 that the general questions in SUM 79 were meant to answer the factual situation in Suit 965 (*ie,* that oral closing submissions had yet to be heard). Mr Seah even offered, subject to his clients' instructions, to amend the questions in SUM 79 to confine them to Suit 965. Furthermore, sub-paragraph (a) of the Settlement Agreement (see [20] above) documented the parties' agreement to hold Suit 965 in abeyance, which was a strong indicator of the parties' subjective knowledge of the connection between Suit 965 and CA 146. This connection was also reflected in sub-paragraph (e) pursuant to which the parties agreed that the outcome of CA 146 would not bind Suit 965.

106 Next, on Mr Mohan's subjective knowledge, he submitted that he honestly believed that CA 146 could proceed because it pertained to matters beyond Suit 965. Mr Mohan's case was that after reviewing Ms Chia's notes of the proceedings before the Judge in SUM 79, he came to the view that CA 146 could proceed. From then on, he was focused on reaching the settlement as soon as possible to be able to tell the Court of Appeal why Metax did not file a Respondent's Case.

107 We had no difficulty rejecting his contention. CA 146 was the Liquidators' appeal against the Judge's directions in SUM 79. Even accepting Mr Mohan's evidence that he referred to Ms Chia's notes of the proceedings in SUM 79, as opposed to the court's Notes of Argument dated 6 May 2019, the contents of her notes similarly reflected the parties' understanding that SUM 79 was based on the factual substratum of Suit 965.

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108 The questions in SUM 79 were phrased generally. But when the Judge questioned Mr Seah, the latter accepted that SUM 79 was to be argued against the factual substratum of Suit 965. Mr Seah further offered to amend the questions in SUM 79 to reflect this. However, Mr Mohan opposed this suggestion due to concerns of time and costs. Nevertheless, Mr Mohan also accepted that SUM 79 pertained to the specific facts of Suit 965. Although the Judge's directions were phrased generally, it was with the common understanding that SUM 79 was tied to the dispute in Suit 965. We also found it telling that Mr Mohan's claim that he had changed his mind by mid-August 2019 only came up during the hearing before the DT. Undeniably, Mr Mohan did not inform the Court of Appeal that, in his view, the Settlement Agreement did not render CA 146 hypothetical either before or during the hearing for CA 146, or in his letter to the Court of Appeal dated 27 January 2021. Significantly, there was no mention of a review of his earlier position at all in the letter of 27 January 2021. Moreover, if the Settlement Agreement did not render CA 146 hypothetical, there would have been no need to agree to structure the terms of the settlement as presented. Even if Mr Mohan was to be believed that, by mid-August 2019, he had formed the view that the appeal could proceed, there was nothing stopping him from informing the Court of Appeal about the settlement when he was on his feet or even after the Court of Appeal's written grounds were released. He ought to have had no hesitation informing the Court of Appeal about the existence of the settlement on CA 146.

109 The general tenor of the Settlement Agreement was noteworthy. The parties had effectively scripted their narratives in anticipation of queries from the Court of Appeal. There was no intention to disclose the settlement unless queried. If there were no queries, the Respondents agreed not to volunteer the information thereby misleading the Court of Appeal into thinking that there were live questions to be resolved between the parties in CA 146. In the

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Settlement Agreement, the parties had agreed that Metax would not file a Respondent's Case; and that Metax would rely on its submissions below. This stance gave a misleading impression that Metax was opposing the appeal.

110 Furthermore, the Respondents had agreed, if they were queried on the status of Suit 965, to inform the Court of Appeal that Suit 965 was held in abeyance pending the determination of CA 146. That was plainly a lie since Suit 965 had already been settled. The reason for the lie was to give the Court of Appeal the misleading impression that Suit 965 was still a live issue. Otherwise, they should have and would have said that it had been settled. Significantly Mr Mohan's position before the DT was that he did not know what the reference to holding the suit in abeyance meant. In our view, this would not be true of any solicitor let alone one with his years of experience.

111 At the hearing before us, Mr Mohan argued that he was never going to say that Suit 965 was held in abeyance pending the outcome of CA 146 and that is why he did not in fact say this to the Court of Appeal. However, while it was true that he did not orally say to the Court of Appeal that Suit 965 was held in abeyance pending the outcome of CA 146, he did not explain to the DT that that was because he knew that it was a lie. Indeed, his position was to the contrary. As mentioned, his position then was that he did not know what holding the Suit in abeyance meant. It seems to us that he did not orally mention the abeyance to the Court of Appeal only because the opportunity did not arise in that the Court of Appeal eventually learned about the settlement on further query at the hearing.

112 Mr Mohan only informed the Court of Appeal of the settlement after the court had heard Mr Seah's oral submissions (see [23] above). Even then, this was only done in the face of a direct question from the Court of Appeal, and

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Mr Mohan again kept to the agreed calibrated response. This sequence of events before the Court of Appeal in CA 146 was not disputed before us. We note that even when he had the opportunity, Mr Mohan did not apprise the Court of Appeal of his belief that the Liquidators could proceed with CA 146 notwithstanding the settlement and this was also not mentioned in his letter of explanation dated 27 January 2021. As stated above, he mentioned it only in the DT hearing. We also do not accept his argument that he was unclear as to what the Court of Appeal was displeased about when he rendered his letter of explanation.

113 Mr Mohan claimed that he had acted honestly and within the bounds of his duties as an officer of the court (see [87] above). The point here is that he may have thought about his duties to the court and at the same time been mindful of the same. But the problem that surfaced was the result of his failed attempt to strike a right balance that properly met the various duties owed by him to the court as an officer of the court as well as to his client, as the Court of Three Judges noted in *Law Society of Singapore v Kasturibai d/o Manickam* [2024] SGHC 55 ("*Kasturibai*") at [27]. In acting in accordance with his client's instructions to secure a settlement and, therefore, on the face of it, in accordance with his client's interests, the steps Mr Mohan took nonetheless interfered with his duties as an officer of the court. In that process, he knowingly misled the Court of Appeal into thinking that there was still a live dispute in CA 146.

114 We also agreed with the DT that Mr Gopalan's evidence as to Mr Mohan's state of mind was irrelevant. Mr Gopalan's evidence as to Mr Mohan's state of mind was based on his own opinion. It was not based on any direct interaction with Mr Mohan.

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115 As for Ms Chia's evidence that Mr Mohan told her that he had formed the view that CA 146 could proceed, it did not bring Mr Mohan's case far. Her testimony was bereft of details and could not oppose the weight of the evidence that pointed to Mr Mohan's subjective knowledge.

116 In the circumstances, the first set of charges against Mr Mohan were made out and we found that due cause was shown which was sufficiently serious to warrant the imposition of a sanction. In our judgment, Mr Mohan and Mr Seah were equally culpable and to that extent, we disagreed with the DT. We held that Mr Mohan's misconduct was so grave as to amount to improper conduct under s 83(2)(*b*) of the LPA, and not s 83(2)(*h*), as determined by the DT (see [50] above).

117 Importantly, in our view, both Mr Seah and Mr Mohan permitted the Court of Appeal to proceed on an incorrect perception of Suit 965. The Respondents had the option of not misleading the court while still safeguarding their clients' interest. As mentioned earlier, Metax's interest was already safeguarded in the Settlement Agreement, and Mr Mohan's conduct was quite inexplicable (see [28] above). We also did not accept that Mr Mohan had to do anything more under the Settlement Agreement as he claimed. It was clear that even a reversal of the Judge's decision in SUM 79, which was in Metax's favour, would have had no adverse consequences on Metax given the terms of the settlement that specifically cover such an eventuality. In our judgment, to the extent that the Respondents knew that the court would be misled or that there was such a risk, their duty to the court and, even basic common sense and decency, would require them to take steps to avoid that result. The Respondents like any other lawyer, were always able to avoid misleading the court or to remove the risk of the court being misled. After all, it was Mr Mohan who inserted the particular clause – "For the avoidance of doubt, nothing in this letter

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requires a party and/or solicitor to act in breach of any law and/or its duties to the Court" – in the Settlement Agreement. Similarly, Mr Vergis spoke of Mr Seah's reminders to his team of their duty to the court. Without doubt, the Respondents had at the forefront of their minds their duty to the court which required them not to knowingly mislead the court or risk the court being misled by deliberate omissions that gave an incomplete picture. In context, their statements to the Court of Appeal as recorded in the Minute Sheet before the court stood down for about 15 minutes were misleading even if not literally false on its face. In this case, they each ended up on the wrong side of their duty to the court. In our judgment, there was dishonesty in the way they went about bringing the appeal to the Court of Appeal and they both knowingly misled the court.

118 We wish to make a further point. As mentioned, the terms of the settlement anticipated the questions that could be raised by the Court of Appeal. We did not accept Mr Singh's reasoning that there could not have been any premeditation to mislead the Court of Appeal since Mr Mohan and Mr Seah had not spoken to each other. The absence of direct contact between the two was not germane. They were copied in on the e-mail exchanges between their respective teams. The planned responses on the management and conduct of CA 146 in the Settlement Agreement were the product of protracted negotiations over a period of six months. The outcome of the long negotiations was after deliberations. It was unlike a situation where a solicitor, in the midst of court proceedings, had to make a decision quickly and under pressure, which might lead to an outcome that was considered imprudent and unwise.

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Whether the second charge against Mr Mohan was made out

119 The second charge referred to Mr Mohan's breach of his duty to assist in the administration of justice in the conduct of CA 146 (see [36] above). He was charged for breaching r 9(1)(*a*) of the PCR such that he was guilty of "improper conduct" under s 83(2)(*b*) and "misconduct unbefitting an advocate and solicitor" under s 83(2)(*h*) in the second charge and the alternative to the second charge respectively. We first consider a preliminary issue of whether r 9(1) of the PCR may impose substantive obligations.

Whether r 9(1) of the PCR imposes substantive obligations

120 Rule 9(1) of the PCR outlines principles that should guide a solicitor's conduct of proceedings. In particular, r 9(1)(*a*) imposes a duty on a solicitor to assist in the administration of justice. Mr Mohan submitted that r 9(1) does not impose a substantive obligation – it merely states principles to guide the interpretation of the substantive provisions in r 9. We disagreed with this.

121 Rule 9(1) does impose substantive obligations. Sundaresh Menon CJ in *Re Parti Liyani* [2020] 5 SLR 1080, at [35], found that "[t]he paramount duty of any advocate and prosecutor is to assist the court in the administration of justice. This duty is enshrined in r 9(1) of the [PCR]".

122 In *The Law Society of Singapore v Koh Tien Hua* [2020] SGDT 6 ("*Koh Tien Hua (DT)*"), at [36], the disciplinary tribunal found that the errant solicitor had violated the principles of r 9(1)(*a*). In *Koh Tien Hua (DT)*, the charges alleged breaches of r 9(1) of the PCR, which were found to be made out: *Koh Tien Hua (DT)* at [4]. Further, as the DT found in *The Law Society of Singapore v Ravi s/o Madasamy* [2020] SGDT 8, at [98], there is nothing in the authorities that indicates that the interpretative provisions in the PCR cannot impose

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substantive obligations. Thus, we found that r 9(1) is capable of imposing substantive obligations.

Whether Mr Mohan was guilty under the second charge

123 For the reasons we have given above at [108]–[113], we took the view that Mr Mohan had breached r 9(1)(*a*) of the PCR. We also found that there had been a waste of judicial time and resources which was a consequence of his breach of duty to the court in choosing to continue with CA 146 and, as the Court of Appeal noted, "[i]n taking this course, rather than apprise this court of the true state of affairs, the parties chose to deliberately mislead this court. Both counsel and the Liquidators were patently in serious breach of their duties to the court" (GD at [85]). A solicitor's failure to assist the court adequately would result in the waste of judicial time and resources: *Zhou Tong and others v Public Prosecutor* [2010] 4 SLR 534 at [2]. The Court of Appeal in its written grounds (at GD [29]) noted that those responsible wasted the court's time not only for the hearing itself but also in relation to all the preparatory and procedural work that had been done from 20 October 2020 onwards.

124 We should explain that whilst the observations of the Court of Appeal in its written grounds (*ie*, [29] and [85]) do not bind the Court of 3 Supreme Court Judges whose jurisdiction is distinct from the civil jurisdiction of the Court of Appeal, the Court of 3 Supreme Court Judges could not completely ignore the observations made by the Court of Appeal (see *Loh Der Ming Andrew v Koh Tien Hua* [2022] 3 SLR 1417 ("*Koh Tien Hua*") at [51]). That said, we concluded that the second set of charges against Mr Mohan were also made out and we found that due cause existed in relation to those charges.

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125 We accepted that on the totality of the facts and circumstances of the case, Mr Mohan's conduct as disclosed by each set of charges was sufficiently serious to warrant the imposition of sanctions under s 83(1) of the LPA.

What was the appropriate sanction

126 We now turn to the question of sanction pursuant to s 83(1) of the LPA and the appropriate sanction to be imposed on the Respondents. We noted that the Law Society did not press for the sanction of striking off but instead sought for a suspension for a term of two years for each Respondent. Each Respondent sought a period of 6 months. Both the Law Society and the Respondents pointed to the presence of exceptional facts to warrant an imposition of a term of suspension. We will discuss later the parties' contention that a striking off would be a disproportionate sanction in the present case. Suffice to say for now that given the Respondents' misconduct that involved dishonesty, the starting position would be a striking off unless such a sanction was disproportionate considering the exceptional facts of the case. The court would have to examine the facts more closely to determine the appropriate sanction: *Law Society of Singapore v Chia Choon Yang* [2018] 5 SLR 1068 ("*Chia Choon Yang*") at [24]). The facts would need to be exceptional to disapply or rebut the presumptive sanction of striking off: *Chia Choon Yang* at [39].

Sentencing considerations

127 The courts in determining the appropriate penalty in cases of disciplinary proceedings considers a range of sentencing considerations. The sentencing considerations or sentencing objectives are well established. They are as follows (see *Law Society of Singapore v Hanam, Andrew John* [2023] 4 SLR 1280 ("*Andrew John*") at [131]):

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(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 against similar defaults by the same solicitor and other solicitors in the future; and

(d) the punishment of the solicitor who is guilty of misconduct.

128 The courts have said many times that sanctions serve the primary purpose of safeguarding the public interest. In selecting the appropriate sanction, the court's concern is with the paramount considerations outlined at [127(a)] and [127(b)] which are the protection of the public and the upholding of public confidence in the integrity of the legal profession (see *Andrew John* at [132]; *Law Society of Singapore v Ravi s/o Madasamy* [2016] 5 SLR 1141 ("*Ravi 2016*") at [54]). Generally, deterrence as outlined at [127(c)] above is also a consideration if it is aligned with and advances the two paramount considerations (see *Ravi 2016* at [54(b)]).

129 It is not surprising that the courts have adopted a strict approach to punishing a solicitor's misconduct involving dishonesty and the justification for the strict approach is simply the court's concern with the protection of the public and upholding public confidence in the integrity of the legal profession. Thus, a sanction that responds to the paramount objectives of ensuring that the public and then the profession are adequately protected from the risk of harm is viewed appropriate in the circumstances of misconduct involving dishonesty even if that sanction might be seen as excessive purely from the perspective of the actual culpability of the offender (see *Ravi 2016* at [41] and *Law Society of Singapore v Choy Chee Yean* [2010] 3 SLR 560 at [49]–[50])).

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130 It follows that in disciplinary cases, a solicitor's misconduct involving any form of dishonesty is treated with utmost severity. This includes conduct which might be described as "technical dishonesty", which include false attestations, and are an aspect of dishonesty: *Law Society of Singapore v Mohammed Lutfi bin Hussin* [2023] 3 SLR 509 at [23] and [42]. Therefore, the courts have rejected the notion that there is a "spectrum of dishonesty" inviting a "spectrum of punishment", and held that dishonesty will almost invariably lead to an order for the striking off of the advocate and solicitor: *Udeh Kumar* at [101]–[104] and affirmed in *Chia Choon Yang* at [18]–[20].

131 The court in *Chia Choon Yang* at [39] identified three broad categories of misconduct which are seen as being indicative of a character defect rendering the solicitor unfit to remain a member of the profession, or if the misconduct involves dishonesty which undermines the administration of justice. As this case engaged the third category of cases, we quote from the relevant part of [39]:

> … ***misconduct involving dishonesty will almost invariably warrant an order for striking off where the dishonesty reveals a character defect rendering the errant solicitor unsuitable for the profession, or undermines the administration of justice***. This would typically be the case … (c) where the dishonesty leads to a breach of the solicitor's duty to the court or otherwise impedes the administration of justice. In such cases, ***striking off will be the presumptive penalty unless there are truly exceptional facts to show that a striking off would be disproportionate …***
>
> [emphasis added in bold italics]

132 As such, in the absence of exceptional facts where striking off would be disproportionate, the presumptive sanction of striking off applies (a) where the dishonesty reveals a character defect rendering the errant solicitor unsuitable for the profession, or (b) where the dishonesty undermines the administration of justice. In such cases, personal culpability and mitigating factors have little relevance: *Chia Choon Yang* at [39]. The two broad categories were expressed

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as an "overarching principle" that encapsulates the typical cases where dishonesty would invariably lead to striking off: (a) where the dishonesty is integral to the commission of a criminal offence of which the solicitor has been convicted; (b) where the dishonesty violates the relationship of trust and confidence inherent in a solicitor-client relationship; and (c) where the dishonesty leads to the breach of the solicitor's duty to the court or otherwise impedes the administration of justice: *Chia Choon Yang* at [19]–[20].

133 As explained in *Koh Tien Hua* at [73], the third category of cases (outlined at [131] above) concerns cases where the errant solicitor was fraudulent in his dealings with the court or breaches his duty of candour and violates his obligations as an officer of the court.

134 In *Law Society of Singapore v Nor'ain bte Abu Bakar and others* [2009] 1 SLR(R) 753 ("*Nor'ain*"), two of the three errant solicitors were struck off. That case concerned solicitors withholding salient information from the court and perpetrating fraud on the court. The court there looked at the involvement of the three lawyers in dishonestly concealing material information from the court. In that case, the first and third respondents had perpetrated a fraud on the court by causing it to order payment out of a huge sum of money and their misconduct was egregious and warranted their being struck off. In respect of the second respondent, the Law Society accepted that the second respondent was less culpable than the first and third respondents. The second respondent had appeared in place of or together with the first respondent in some of the relevant proceedings. The disciplinary tribunal had recorded that the second respondent had accepted her conduct as being improper and that she had played a lesser role in the entire affair (at [69]). For those reasons, the Law Society decided not to base the charges against her on fraud or deceit or misleading the court. She was charged instead for gross impropriety unbefitting an advocate and solicitor.

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The second respondent was suspended for a period of three years: *Nor'ain* at [94].

135 In *Law Society of Singapore v G B Vasudeven* [2019] 5 SLR 876 ("*Vasudeven*"), the respondent was guilty of misconduct involving dishonesty that fell within the second and third broad categories of cases identified in *Chia Choon Yang* (see [132] above): *Vasudeven* at [11]. The respondent deceived his client into believing that bankruptcy proceedings which he had been instructed to commence against a third party were in progress. To maintain this deception, the respondent prepared a fictitious court document and fictitious affidavits, and forged the electronic seal of the Supreme Court as well as the signature and stamp of a Commissioner for Oaths. The respondent was struck off the roll as (a) he had violated the relationship of trust and confidence between solicitor and client; and (b) he also violated his obligations as an officer of the court by creating fictitious court documents: *Vasudeven* at [11] and [12].

136 In *Udeh Kumar*, the Court of Three Judges considered a total of 11 charges against the errant solicitor. The charges were broadly categorised into three groups. The first set of charges concerned the solicitor's failure to use best endeavours to avoid unnecessary adjournments, expense, and waste of the court's time. The second set of charges concerned the alleged breach of r 56 of the PCR in deceiving or misleading the court by making false and inaccurate statements. The third set of charges related to events that led to the solicitor advising his client to obtain a medical certificate under false pretences in a seeming attempt to excuse the client's absence from court in circumstances that amounted to a subversion of the course of justice (*Udeh Kumar* at [6], [21], [38]–[40] and [57]–[59]). The court found that all 11 charges were made out and that due cause of sufficient gravity existed in relation to each charge. The court also noted that the 11 charges were similar in that they went to the heart

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of the relationship between the solicitor, as an officer of the court, and the court itself, in connection with its core function of administering justice: *Udeh Kumar* at [84]. As to the appropriate penalty, the court considered that the solicitor's misconduct was egregious and ordered that he be struck off: *Udeh Kumar* at [101] and [112].

137 Given the critical nature of a solicitor's duty of candour to the court which stems from his role as an officer of the court, all these cases are clear examples of cases involving dishonesty such as fraudulent conduct that revealed a character defect that rendered the errant lawyer unsuitable for the profession. Fraudulent conduct invariably undermines the administration of justice. As to the court's firm attitude where fraud or dishonest conduct affects the administration of justice, the observations of the court in *Ravi 2016* at [48] are apposite, and we gratefully adopt them here:

> … In one sense, cases involving dishonesty stand apart because if a solicitor is found to be dishonest, he is presumptively unfit to be accredited as a member of the profession, which has, as its central calling, an important role in the administration of justice. Dishonesty attacks the very core of the trustworthiness and integrity of a solicitor, and in a broader sense, the integrity of the profession and the legitimacy of the administration of justice …

138 Notably, before the presumptive sanction of striking off applies, it is necessary to determine whether the dishonest conduct implies a character defect that renders the errant solicitor unsuitable for the profession, or if the dishonest conduct has undermined the administration of justice: *Chia Choon Yang* at [39].

139 We pause here to make the following observations. The situation in the present case is different from *Law Society of Singapore v Chung Ting Fai* [2006] 4 SLR(R) 587 ("*Chung Ting Fai*") and *Koh Tien Hua*. In addition, the parties had not referred us to any direct or analogous precedent cases.

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140 In *Chung Ting Fai,* the possibility of an appeal against an order was raised between the client and the respondent solicitor, Mr Chung Ting Fai ("Mr Chung") after the stipulated time frame for an appeal had lapsed. In preparing the draft affidavit in support of the intended application for leave to appeal out of time, Mr Chung inserted numerous inaccurate statements in the draft affidavit: *Chung Ting Fai* at [22]–[23]. Notably, it was observed in *Chung Ting Fai* at [50] that an errant solicitor who knowingly drafts a false affidavit for self-serving reasons would be struck off. Mr Chung was suspended for a period of one year because the court found that Mr Chung had not acted out of self-interest but instead had been motivated by "misplaced zealousness" to obtain an extension of time to appeal on behalf of his client: *Chung Ting Fai* at [35]. Importantly, Mr Chung's acts were merely preparatory in that he had not filed the affidavit and, above all, his client would have been in the position to reject the draft as was the case there. In other words, there was no dominant intention to mislead the court. If Mr Chung had filed the affidavit with numerous inaccuracies, the result would have been a deception of the court (at [37]).

141 In *Koh Tien Hua,* the court there found that the dishonest conduct did not reveal a character defect nor did it undermine the administration of justice, and, accordingly, the presumption of striking off did not apply in the first place. The court then considered whether it should nevertheless strike off the errant solicitor applying the factors listed in *Chia Choon Yang* at [40]. To that end, it is correct that the context in which the discussion in *Koh Tien Hua* took place was different from the present case.

142 The court in *Koh Tien Hua* held that the content of the solicitor's misstatements was irrelevant to the query made by the assistant registrar. The solicitor was simply attempting to downplay or excuse his failure to comply with the court's direction; the solicitor's remarks were essentially ignored by

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the assistant registrar: *Koh Tien Hua* at [74] and [84]. Even though the misstatements to the court were ineffective, the court expressed little tolerance for the solicitor's dishonesty and imposed a substantial period of suspension. A firm stance was adopted because any dishonesty that blights the solicitor's conduct at all is serious as it strikes at the core of the trustworthiness and the integrity of the solicitor, and in a broader sense the integrity of the profession and the legitimacy of the administration of justice (*Ravi 2016* at [48] and *Koh Tien Hua* at [85]).

143 The solicitor in *Koh Tien Hua* also attempted to conceal matters from his client. There was no real prejudice that the client suffered. The court found that the real nature of the solicitor's wrong was his woefully inadequate management of his client's affairs – the court emphasised that the client's actual legal position in the case was not compromised by the solicitor's conduct (at [112]). The solicitor's deceptions were ultimately of no consequence for two of the charges. They had no bearing on the proceedings before the assistant registrar. For a third charge, though the nature and extent of the solicitor's deception were more severe, the solicitor's conduct revealed a lack of moral courage, an appalling management of the client relationship and a lack of judgment (at [106] and [113]). Furthermore, the solicitor did not benefit from his dishonesty (at [114]). Neither did the solicitor's dishonest conduct cause his client any harm. Nevertheless, the court did consider the *potential* harm in that the solicitor's misconduct *could* have affected his client's legal position (at [115]). In the round, the court found that striking off was not warranted and imposed a term of suspension of three years (at [122]).

144 We now come to the situation where the imposition of the presumptive penalty of a striking off could be excessive as being a disproportionate sentence. As mentioned, the presumption is only rebutted if there are truly exceptional

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facts to show that a striking off would be disproportionate. Cases of misconduct involving dishonesty with exceptional facts are said to be extremely rare viewed from the perspective of the court's paramount concerns which are the protection of the public and upholding of public confidence in the integrity of the profession, and these concerns do go well beyond the specific personal circumstances of the solicitor in question. In other words, an errant solicitor's personal culpability and mitigating factors generally have little relevance "in cases where the presumptive position of striking off applies" (see *Law Society of Singapore v Ravi s/o Madasamy and another matter* [2024] 4 SLR 1441 at [56]). In practical terms, what this means, as explained in *Ravi 2016*, is that a sanction that satisfies the court's paramount considerations would be considered appropriate even if that sanction might be seen as excessive from the perspective of the actual culpability of the errant solicitor. Plainly, the need to protect the public and uphold confidence in the profession will impact on the way in which the court approaches all and not just cases involving dishonesty (see *Ravi 2016* at [49]).

145 In our view, there is no reason in principle why a similar reasoning and approach ought not to apply where an errant solicitor seeks to rebut the presumptive position of striking off. In exceptional cases where an order for striking off might conceivably be disproportionate, the observations made in *Ravindra Samuel* (see [66] above) are equally relevant since the same question is asked in determining the appropriate sentence: "whether the solicitor in question is a fit and proper person to be an advocate and solicitor of the court, and the orders to be made are to be directed to ensuring that, to the extent that he is not, his practice is restricted." The pertinent inquiry is the same here: whether the solicitor's dishonesty is indicative of a character defect rendering him unfit for the profession, or if it undermines the administration of justice. What happens if the dishonesty did not attest to a character defect, but the

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dishonesty somehow affected the administration of justice? What should the court's approach be in such a situation where the presumptive sanction of striking off could be excessive? Relatedly, what can constitute an exceptional case?

146 To this end, in the context of whether a striking off could be excessive, the court will examine the facts closely to determine the appropriate sanction considering the aggravating and mitigating factors where applicable. As for mitigating circumstances in individual cases, they will be considered so long as they do not undermine and are consistent with the two paramount objectives – protection of the public and safeguarding confidence in the profession. Conversely, where aggravating factors are concerned, a factor that aggravates an errant solicitor's personal culpability would generally tend also to aggravate the adverse impact on the public confidence in the administration of justice (see *Ravi 2016* at [34]). We emphasise that in the court's deliberation on whether a striking out is excessive, the facts and circumstances must be assessed holistically. In our view, the non-exhaustive factors in *Chia Choon Yang* at [40] are generic in nature; they should be open to adaptation if the context of the case permits it in the court's assessment of the existence of "exceptional facts" in a disciplinary case. After all, the question of whether the facts of a case are "exceptional" in the context of a solicitor's duty of candour depends on the context in which misconduct arises, the convention in his professional work as a solicitor, and practical judgment.

147 The court in *Chia Choon Yang* set out the following non-exhaustive list of factors for cases that do not trigger the presumptive sanction of striking off to determine whether it is nevertheless the appropriate sanction (*Chia Choon Yang* at [40]):

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(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 misjudgement on the other.

(d) whether the errant solicitor benefited from the dishonesty.

(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.

148 With these principles and observations in mind, we turn to consider the appropriate sanction in the present case which as we mentioned engaged the third category of cases identified in *Chia Choon Yang*.

The parties' submissions on the existence of "exceptional facts"

149 The Law Society accepted that the presumptive sanction in cases of dishonest conduct is striking off if the relevant conduct is indicative of a character defect or if dishonest conduct undermines the administration of justice. However, the Law Society argued that this case was an exceptional case and an order for striking off would be disproportionate; while the culpability was high, amongst other things, there was no financial gain. On that basis, the Law Society sought a suspension of two years for both Respondents (see [75] and [80] above).

150 Mr Vergis on behalf of Mr Seah submitted that he honestly believed the appeal in CA 146 continued to be a live matter even after the Settlement

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Agreement was entered into. Mr Vergis accepted that the final settlement agreement did imply dishonesty that undermined the administration of justice. But, Mr Seah's honest belief was that the appeal continued to be a live issue, in so far as it remained relevant to the disposition of other outstanding matters that the Liquidators were facing, and that background context should be taken into account. It was an exceptional case in that the appeal did have relevance to other matters, albeit they related to matters that were not referred to in SUM 79. Mr Seah was also deeply remorseful for his actions and had apologised on multiple occasions, which was a strong mitigating factor.

151 Moreover, Mr Seah had no personal or financial incentive in pursuing CA 146. Mr Seah also accepted that he had made an omission by failing to bring the settlement to the Court of Appeal's attention. We noted the additional points raised by Mr Vergis before us during the hearing, in particular, that Mr Seah had cautioned his team on the importance of being transparent and accurate with the court. Mr Vergis pointed us to an exchange of e-mails on 30 and 31 August 2019 where Mr Seah had emphasised on the need to be accurate and transparent with the court. Despite the fact that the e-mails were heavily redacted, Mr Seah's case was that he intended to comply with his obligations to the court.

152 We also noted Mr Vergis's explanation of the circumstances in which this case transpired. The Liquidators, senior and experienced practitioners, were hoping to correct an error in the Judge's decision in CA 146 and they could be expected to be putting a lot of pressure on Mr Seah to make sure the appeal was heard. In the round, Mr Seah just took a step too far and failed to strike a balance in the duties he owed to his clients and the duties owed to the court.

153 Mr Singh, on behalf of Mr Mohan, submitted, amongst other things, on Mr Mohan's insistence on having a clause in the Settlement Agreement that

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would have allowed him to disclose the fact of the settlement to the Court of Appeal. Moreover, Mr Singh stated that this was a situation where Mr Mohan had been prevailed upon by the circumstances where he thought he could still discharge his duties to the court. On the application of the principles from *Chia Choon Yang*, Mr Singh relied on three facets of this case to submit that this was an exceptional case: (a) the DT itself came to the view that Mr Mohan's conduct was less severe than Mr Seah's; (b) the DT found that while Mr Mohan's duty of responsibility towards his client was laudable, it caused an error of judgment on his part that fell short of his duty to assist in the administration of justice, and (c) the DT found that due cause was shown under s 83(2)(*h*) and not s 83(2)(*b*) of the LPA.

Our decision

154 Since the charges faced by each Respondent arose from the same circumstances, we deemed it appropriate for a composite sanction, *ie*, one sanction in respect of all the charges that each faced. The analysis of the sanction would naturally be focused on the element of dishonesty in the context of the Respondents' approach to navigating their duty to their clients whilst ensuring that they observed their duty to the court.

155 Having considered the circumstances leading to the filing of CA 146, and in particular the terms of the Settlement Agreement, and the performance thereof in relation to CA 146, it was clear that the Respondents had acted dishonestly in that they knowingly misled the Court of Appeal by giving the Court of Appeal the mistaken impression that there were live issues between the parties to CA 146 that the Court of Appeal was to resolve. Their dishonest conduct undermined the administration of justice. The Respondents' seniority at the bar was an aggravating factor. Mr Seah had been in practice for 14 years.

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Mr Mohan was a senior member of the bar for just under three decades. The Court of Appeal in its GD stated that the Respondents as senior and experienced litigators should know the law which is that the court would decline to hear cases or arguments that do not involve a live dispute between the parties (GD at [62], and noted that the Respondents knew that the result of any settlement of Suit 965 would be that the appeal would be rendered academic. In our view, the evidence showed that the Respondents fully appreciated and were mindful of their two duties – to their clients and to the court – but they nevertheless fell short of observing their overriding duty to the court. As noted, the Respondents engaged in conduct that was prejudicial to or undermined the administration of justice.

156 That said, we nevertheless accepted that their misconduct involving dishonesty did not attest to a character defect. We also accepted that several points stood out as mitigating circumstances in the present case. They collectively made up the exceptional facts needed to rebut the presumptive sanction of striking off. We emphasise that the mitigating circumstances in the present case were taken into consideration because they did not militate against the two paramount objectives of sanction – protection of the public and safeguarding confidence in the profession. In this case, a conflict of duty arose during the Respondents' professional work by virtue of the instructions of their clients. To be clear, we recognised that, in practice, circumstances might present themselves whereby lawyers ostensibly have difficulty navigating and managing clients' instructions with the duty owed to the court: see *Kasturibai* at [27]. To be clear, it is not wrong and unreasonable for the solicitor to take steps to seek and maintain a right balance between the opposing duties. The difficulty that the solicitor faces is to attain a proper equilibrium without which the solicitor risks being subject to disciplinary action.

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157 If in following clients' instructions, and because of the solicitor's duty to the court, the solicitor encounters an ethical dilemma, the fault is that of the solicitor if his paramount duty to the court is sidelined. He ought to assess the situation before he puts himself in that ethical dilemma. In such cases, a solicitor is not excused from fulfilling his duty to the court which prevails over his duty to his client. In fact, such cases call for a degree of judgment in following the clients' instructions. Such cases also call for a solicitor to dispense his professional duties with moral courage and independence in the face of pressures from the clients. It is open to the solicitor to inform his client of the conflicting duty on account of the instructions, and if necessary, to discharge himself from acting for the client. It is also open to a solicitor to seek the assistance of either a more senior lawyer within the firm or seek an independent counsel's advice before deciding what to do (see the Lord Chief Justice Lord Thomas of Cwmgiedd's observations in *Alastair Brett v The Solicitors Regulation Authority* [2014] EWHC 2974 (Admin) at [110]).

158 In the present case, Mr Seah followed the clients' instructions to appeal the decision in SUM 79 to correct a point of law which was seen as inconvenient to the Liquidators' commercial interests. In the case of Mr Mohan, he followed the clients' instructions to settle Suit 965 and at the same time he cooperated with the Liquidators to the extent of not impeding the appeal process. The chosen pathway and strategy that they agreed to placed them in a position of having two irreconcilable duties which arose entirely from their fault. We foreshadow an unusual feature of this case which is that in essence, the Respondents were opposing counsel, and each tried to meet the distinct interests of their two distinct clients. This formed their underlying motive which then led to their dishonest conduct. The Respondents, in particular Mr Seah, did not even think (as it did not cross his mind) of asking the Court of Appeal to grant leave

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to proceed with CA 146 notwithstanding the settlement of Suit 965, although he might have failed in that endeavour.

159 After a close and holistic examination of the facts and circumstances, we concluded that a striking off even in the present case involving dishonesty which had the effect of undermining the administration of justice would be a disproportionate sanction. Several points stood out as we examined the nature of the dishonest acts involved and they formed the bases of our reasons for imposing a term of suspension rather than a striking off.

160 First, the Respondents' act of dishonesty did not go beyond a failure to disclose at the earliest opportunity the truth of a settlement of Suit 965 that would render CA 146 academic. Having entered into the Settlement Agreement, the Respondents did not take further steps to aggravate their breach. They did not fabricate facts or evidence before the Court of Appeal: see *Koh Tien Hua* at [67]. The core of the Respondents' wrongdoing was their non-disclosure of the settlement to the Court of Appeal. The settlement was disclosed after Mr Mohan was questioned further on the parties' agreement not to file a Respondent's Case in CA 146. It was then that the Respondents became frank in their responses and disclosed the status of Suit 965.

161 Second, this was not a case where the Respondents acted with total indifference to their obligations owed to the court. The duty to the court was on the Respondents' minds but was overcome by their desire to achieve the aims of their respective clients. Both their clients wanted a settlement. At the same time, the Liquidators themselves wanted to pursue the appeal in the hope of obtaining a favourable ruling that Liquidators would not be liable for costs personally from the date of the commencement of litigation. Relatedly, the Liquidators had asked the Committee of Inspection members whether the

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former ought to proceed with an appeal against the decision in SUM 79, and if so, whether the members were prepared to fund the appeal. As of the deadline for the filing of the Notice of Appeal in respect of SUM 79, the majority of the members of the Committee of Inspection that had responded expressed the view that they had no objections to the filing of an appeal. However, none of the members were willing to fund the appeal. It transpired that the Liquidators' arrangement with TKQP was that the Liquidators would be responsible for the disbursements associated with the appeal and that TKQP would not charge legal fees for the appeal. On the other hand, Metax wanted a settlement and was willing to accommodate the wishes of the Liquidators to proceed with the appeal. Significantly, the Respondents were opposing counsel, each representing distinct interests of their two distinct clients. Mr Mohan's conduct was done in what was perceived to be in his client's interest to adhere to the Settlement Agreement. We accepted Mr Singh's submission that it was Mr Mohan who had included a clause in the Settlement Agreement that would have allowed him to disclose the fact of the settlement to the Court of Appeal. As for Mr Seah, Mr Vergis suggested that Mr Seah's conduct was shaped by who his clients were – influential and experienced liquidators who wanted to benefit from the Court of Appeal's view on a point of law that would aid them in the course of their insolvency business. Mr Vergis also made the submission, which we accepted, that Mr Seah reminded his team of their duty to the court while the parties were negotiating a settlement.

162 Third, the dishonest acts were done in the erroneous belief that they would discharge their respective duties to the court and to their clients with the chosen strategy as expressed in the Settlement Agreement. As we see it, the Respondents did not appreciate at the time that it was impossible to discharge their duty to the court and their duty to the clients in the manner stated in the Settlement Agreement. We were prepared to accept that there appeared to be no

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ill intent underlying the instructions to appeal except that with the settlement of Suit 965 that came about after CA 146 was filed, the settlement of Suit 965 rendered the Liquidators' instructions to appeal on a point of law problematic. The Settlement Agreement and the structure of the scheme on the conduct of CA 146, whilst appallingly misguided and ill-conceived, appeared to have been driven by what was thought to be a doable work-around in pursuit of balancing the conflict of duty faced by the Respondents even though they were aware that their duty to the court must prevail. That approach would not justify and excuse the Respondents' default, but it helped explain why it was more acceptable to see those acts as having stemmed from lapses of judgment and discernment rather than as demonstrative of a defect in the character of each Respondent.

163 What ought to be seen with clarity by the Respondents was clouded in the sense that the strategy adopted, contrary to the Respondents' thinking, did not go hand in hand with the two duties. The strategy adopted was perceived unwisely and erroneously as striking a practical balance between ethics and service to clients. The upshot is that the Respondents had not kept a closer eye on the wider duty to the court. We recognised that solicitors do from time to time find themselves in a dilemma being caught in the middle between two opposing obligations – the duty to court and duty to client. The practical approach would be in finding and maintaining a right balance between the opposing duties. In this regard, discernment and common sense are needed. If it is not possible to achieve a proper equilibrium from balancing opposing obligations, the wider duty to the court trumps the duty to the client. In the present case, the Respondents failed to achieve that right balance and it resulted in disciplinary sanction against the Respondents. The failure to be candid with the court led to misleading conduct and undermined the administration of justice.

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164 Fourth, it was relevant that neither Mr Seah nor Mr Mohan had anything to gain, personally or financially, from pursuing the appeal in CA 146. Mr Seah represented the Liquidator on a *pro bono* basis. Similarly, even before the settlement negotiations began, Mr Mohan had agreed to stop charging Metax any more fees. It is not apparent and the Law Society had not suggested that the Respondents' motivations were due to business interests.

165 Fifth, the misconduct ultimately did not cause any loss to the parties or other third parties. There was no loss to the Liquidators who had no legal right to proceed with an appeal that was rendered academic because of the settlement of Suit 965. CA 146 was an attempt to seek a legal opinion on a point of law from the Court of Appeal, something the Liquidators as appellants were not entitled to in the first place. For Metax, its interest was already safeguarded by the terms of the settlement, and it was already paid under the settlement. There was nothing in CA 146 that would have affected the both of them. The dishonesty in the present case was serious, but in the end, it had serious consequences only for the Respondents who assisted in the matter on a *pro bono* basis. From this perspective, a less drastic sanction than a striking off would be appropriate.

166 Sixth, the Respondents had an unblemished record, and their misconduct was an isolated incident that was out of character. It was unlikely that the Respondents would mislead the court again. We were further persuaded that a term of suspension was a proportionate and sufficient sanction for the Respondents; they would have to gradually salvage their now blemished reputations in the years ahead and practise in the shadow of these proceedings for some time.

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167 Seventh, as stated in *Koh Tien Hua* at [75], although the courts strictly pursue the efficient administration of justice, the courts do not do so doggedly, and understanding can be accorded if there were legitimate and reasonable grounds. We have explained, in some detail, that the Respondents did consider their duty to the court; but in the end their misconduct was the product of their inability to properly balance their duties owed to the court and to their clients.

168 For the reasons stated, we sentenced both Mr Seah and Mr Mohan to a suspension for a period of three years each. Mr Seah's three-year suspension was to commence from 17 August 2024, and Mr Mohan's suspension was to commence on 1 June 2024.

169 We emphasise that the outcome of this case must be restricted to its specific, and exceptional, facts. Amongst other things, the dynamics between the different parties involved, the absence of any personal benefit for the Respondents, and the interests the Respondents' clients had in entering into the Settlement Agreement all contributed to our finding on the appropriate penalty. Just as in *Chung Ting Fai* at [50], if the facts were different, the sanction might have very well been a striking off.

170 On the other hand, a suspension of two years, as proposed by the Law Society, was too low bearing in mind: (a) the fact of dishonesty; (b) that the solicitors had plenty of time to re-consider their plans before the Settlement Agreement was reached; and (c) the elaborate details not to disclose the settlement to the Court of Appeal at the earliest opportunity.

Conclusion

171 For these reasons, we found that due cause of sufficient gravity existed for disciplinary sanction against Mr Mohan in OA 12, and we sentenced him to

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three-years' suspension commencing on 1 June 2024. In OA 11, we sentenced Mr Seah to three-years' suspension commencing on 17 August 2024.

172 We ordered Mr Seah to pay the Law Society costs of $10,000, inclusive of disbursements, in OA 11, which sum reflected his concession on liability at the start of the hearing. Mr Mohan was ordered to pay the Law Society costs of $16,000, inclusive of disbursements, in OA 12.

Belinda Ang Saw Ean
Justice of the Court of Appeal

Woo Bih Li
Judge of the Appellate Division

See Kee Oon
Judge of the Appellate Division

Pillai Pradeep G and Rashpal Singh Sidhu (PRP Law LLC) for the applicant in C3J/OA 11/2023;
Abraham Vergis SC and Timothy Hew (Providence Law Asia LLC) for the respondent in C3J/OA 11/2023;
Chan Kah Keen Melvin and Chew Xizhi Stephanie (TSMP Law Corporation) for the applicant in C3J/OA 12/2023; and
Davinder Singh s/o Amar Singh SC, Sngeeta Rai, Jaspreet Singh Sachdev, Irina Golovkovskaya and Seong Hall Ee Waverly (Davinder Singh Chambers LLC) for the respondent in C3J/OA 12/2023.

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Annex:

A.1 In this annex, we reproduce the paragraphs containing the DT's findings which were accepted by Mr Seah:

> 61 In relation to the 1st Respondent, first, as the Court of Appeal in CA 146 has stated, the long-established legal position in Singapore "is that a court in Singapore will not answer hypothetical questions or opine on an academic point merely because a party to the proceedings would like the court to set down the law on the point." This is a principle applicable to both appeals and originating claims. Individuals may desire clarity on legal questions but absent an actual dispute between parties, the courts in Singapore do not entertain hypothetical questions. There are many reasons for this including the courts not wanting to be overwhelmed by hypothetical cases thereby leading to delays in cases that have a real impact on the rights of parties, and the common law tradition of establishing the law incrementally through cases based on their facts and not in a vacuum. Both Respondents were aware of this general principle.
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> 62 This being the case, once CA 146 had been settled, there was no longer any live issue for the Court of Appeal to determine. Although SUM 79 was taken out based on section 273(3) of the Companies Act where it is stated that a Liquidator may apply to the Court for directions, this must be in relation "to any particular matter arising under the winding up". The Tribunal agrees with counsel for the Law Society in relation to the 1st Respondent that directions under section 273(3) cannot be sought in a vacuum. The Tribunal is of the view that section 273(3) of the Companies Act was not intended to displace the established legal position that courts do not answer hypothetical questions and this is borne out by the words "any particular matter". Accordingly, absent any particular question or issue relevant to a winding-up, a court will decline to answer a hypothetical question of law relating to windings-up generally. In cross-examination, the 1st Respondent accepted this to be the position.
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> 63 Second, as SUM 79 had to be in the context of a live issue in the liquidation, when it was argued before the Honourable Justice Coomaraswamy, the only matter that was raised before the learned Judge as requiring guidance from the Court vis-à-vis the Estate Costs Rule was Suit 965. When the court in SUM 79 gave directions on "matters which have arisen under the winding up of SEC", the only matter that had arisen was the issue of the Estate Costs Rule and the application of such rule vis-à-vis Suit 965. The 1st Respondent accepted this

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during cross-examination. In addition, when the application for an extension of time to file the appeal against the decision in SUM 79 was filed, the Liquidator's submissions dated 25 June 2019 stated at paragraph 40(e) that SUM 79 was filed by the Liquidators to seek directions on the Singapore legal position and this was an appropriate case for clarification on the issue of the Estate Costs Rule "given the unique circumstances of Suit 965". Furthermore, one of the reasons given as to why the extension of time ought to be granted for the appeal to the Court of Appeal to be filed was that such extension "would also not prejudice Metax (the would-be Respondent) as it would have suffered little or no change in position following from Coomaraswamy J's decision" [emphasis added].

64 The Tribunal regards these as important indications that the appeal in CA 146 was filed in the context of Suit 965 in relation to a specified respondent and therefore the Settlement Agreement rendered the said appeal academic. Although the 1st Respondent said that there were other outstanding matters which similarly involved pre-existing claims and counterclaims that had been stayed and one involving the Land Transport Authority was referred to specifically, it is not in dispute that there was no mention of other existing disputes in Justice Coomaraswamy's notes of argument while there were extensive references in the said notes of argument to Suit 965. This also appeared to be the case with CA 146 up to the date of the hearing before the Court of Appeal.

65 Third, while the 1st Respondent stated that the answer given by Justice Coomaraswamy was of general application, the Tribunal does not think that this detracts from the foregoing as most determinations of the law by the superior courts in Singapore would be of general application. This does not mean that questions in the abstract can be posed to the courts for determination. There is a difference between an existing dispute between parties that upon a court's determination will lead to general principles of law being developed and a hypothetical case that will also generate such legal principles if a court agreed to hear such a case. In the former, the court has arguably no choice but to hear the matter on its merits unless it falls within a particular instance where the court should not do so, e.g. the matter is res judicata or it is an abuse of the process of court. In the latter, a court in Singapore will possibly always decline to hear the matter on its merits.

66 Fourth, that Suit 965 was considered crucial to the appeal in CA 146 is also corroborated by the terms of the Settlement Agreement insofar as it was agreed that within three days after the Court of Appeal handed down its decision for CA 146, SEC would discontinue its claim against Metax in Suit 965

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and Metax would similarly discontinue its counterclaim against SEC in Suit 965. The parties were also at liberty to inform the Court of Appeal that agreement had been reached to hold Suit 965 in abeyance pending the outcome of CA 146. Given that a settlement had been reached between SEC and Metax to bring all disputes in Suit 965 to an end, there must have been a reason why it was not discontinued forthwith, which would usually be the case, and held in abeyance till the outcome of CA 146. The only likely answer is that keeping Suit 965 alive was seen as important to CA 146. This is evident from the link between discontinuance of Suit 965 and the outcome in CA 146 and the absence of any other logical reason why Suit 965 was not discontinued soon after the Settlement Agreement.

67 Fifth, in relation to the 1st Respondent, the fact that the Court of Appeal may refuse to hear CA 146 if Suit 965 was settled was something the 1st Respondent was alive to. In his AEIC, he said that while he thought the Court may indicate a refusal to hear the appeal if Suit 965 was settled, the Liquidators could nevertheless make the argument that it should be heard as parties were before them to seek clarification on a general question of law. What is important about this is the recognition that the Court of Appeal may refuse to hear CA 146 because of the Settlement Agreement. This is a tacit admission that the 1st Respondent was aware that CA 146 may have become academic because of the Settlement Agreement. The Tribunal also notes the 1st Respondent's explanation that the Liquidators could make the argument to the Court that it should hear the matter despite the settlement. This indicates knowledge that CA 146 was a matter that the Liquidators had to persuade the Court of Appeal to hear. Given the 1st Respondent's awareness of at least the possibility that the Court may not wish to hear CA 146 and that arguments to the Court of Appeal on why it should do so would (or at least may) be necessary, it is the Tribunal's view that, as an officer of the court with the duty to assist the Court in the efficient administration of justice, the fact of the Settlement Agreement should have been brought to the attention of the Court of Appeal at the earliest opportunity. This would have enabled the Court to decide if it wanted to hear CA 146 and would have prevented the Court spending significant time on the matter if it decided not to do so whether with or without the benefit of arguments from the Liquidators and/or Metax.

68 It is convenient for the Tribunal to observe here that to the extent the 2nd Respondent was aware of the general principle that the courts in Singapore do not hear matters that are academic, and that the 2nd Respondent's initial view was that a settlement between SEC and Metax would render any appeal against Coomaraswamy J's decision academic, the 2nd

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Respondent must at a minimum also have known that the Court of Appeal may refuse to hear CA 146 due to the settlement reached between SEC and Metax.

69 On this basis, the Tribunal does not accept as valid the 1st Respondent's submission that all the authorities that the TKQP team's research brought up involved cases with an "A v B" scenario, and not one where an appeal was brought in relation to directions on general questions of law sought under section 273(3) of the Companies Act and the respondent was an intervening party that subsequently fell out of the picture. Even if there was no case directly on point, and even if the 1st Respondent honestly held the view that the Liquidators could rightfully pursue an appeal even if Suit 965 was settled, the fact that the 1st Respondent knew of the possibility that the Court of Appeal would not hear CA 146 and accordingly it would be incumbent on the Liquidators to make the argument that the appeal should nevertheless be heard meant that the Settlement Agreement should have been brought to the attention of the Court of Appeal. To be clear, the Tribunal is not taking a view on whether the 1st Respondent did or did not change his mind about whether an appeal could proceed in light of the Settlement Agreement, it being unnecessary for the Tribunal to do so, but that he was at least aware of the not fanciful possibility that the Court may not want to hear CA 146 in the circumstances.

70 In fact, that there was no case on point in relation to section 273(3) of the Companies Act underscores why the 1st Respondent should have been candid and open with the Court. Given his appreciation that the Court of Appeal may not wish to hear the appeal given the existing position in Singapore and the absence of any case law supporting a broad reading of section 273(3) of the Companies Act, he ought to have disclosed the fact of the Settlement Agreement to the Court of Appeal and sought the Court's leave for the appeal to proceed. However sincerely he felt that the Liquidators could make a forceful case for the appeal to proceed, this was a decision for the Court to make.

71 If the 1st Respondent was convinced that injustice would have ensued because Justice Coomaraswamy's decision would end up finally determining the Liquidators' position without recourse to an appeal, this was an argument he could have raised with the Court of Appeal. He could have explained to the Court that there were other potential parties against whom proceedings had also been held in abeyance as a result of the winding-up proceedings against SEC and that an important matter of public interest was involved.

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79 For all the above reasons, the Tribunal finds that the Society's case against the Respondents that their conduct amounted to a breach of their duty to assist in the efficient administration of justice vis-à-vis the appeal process before the Court of Appeal in CA 146 is made out and that such conduct amounts to misconduct unbefitting an advocate and solicitor of the Supreme Court of Singapore or as a member of an honourable profession under Section 83(2)(h) of the Act.

…

89 The Tribunal also finds these Charges to be made out against the Respondents. The crux of the Charges is that the Respondents knowingly misled the Court of Appeal by omitting to inform the Court of the Settlement Agreement. There is no dispute that the Respondents failed to do so until queried expressly by the Court on the day of the hearing of CA 146. A common thread to both Respondents' defences is that they honestly believed that the appeal in CA 146 could proceed. For essentially similar reasons as have been given for the earlier set of Charges, the Tribunal does not accept this as a sufficient explanation. The appeal in CA 146 was stated to be in the context of the dispute between the Liquidators and Metax in Suit 965 and Suit 965 had been settled. Therefore, the very basis of the appeal had fallen away. The appeal was academic. The Respondents are not saying they had an honest belief that the law in Singapore is such that the Court of Appeal would have heard the appeal and decided the rights of the Liquidators vis-à-vis Metax even if Suit 965 was settled. Their case is that even though the rights of the Liquidators and Metax had been conclusively settled, the Court could nevertheless decide to determine an important legal question. It is of course the case that the highest court in Singapore can set out what the common law of Singapore is. However, even if the Respondents felt they were entitled to proceed with the appeal because the Court could be persuaded to do so notwithstanding the absence of a named respondent with any interest in the matter, it was incumbent upon them to inform the Court of Appeal of the true state of affairs so that the Court could decide in the context of all the relevant information if it still wished to hear the matter. Instead, the Respondents' actions meant they took matters into their own hands and effectively made the decision for the Court. The failure to bring a relevant matter to the Court's attention when there was a duty to do so as an officer of the Court meant that the Court had been misled.

90 The circumstances point to the Respondents having the requisite state of mind when the Court was misled. As discussed above, the Respondents must have known that the courts in Singapore do not hear cases in the abstract to opine on academic points of law, however novel and important. Given

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this, even if they felt the Court of Appeal may make an exception in CA 146 after Suit 965 was settled, either because an important point of law was involved that would benefit from clarification and/or there were other matters similarly held in abeyance, the Court should have been informed of the Settlement Agreement and asked if submissions could be made to persuade the Court to hear the appeal notwithstanding the settlement. No good reason was given as to why this was not done. In fact, the omission is striking given that both Respondents said they expected the Court to ask why Metax was not filing a Respondent's Case. It is not clear why the information was not volunteered if the Respondents felt that the Court would wish to know the reason for this. At a minimum, this expectation by the Respondents suggests that they recognized there was some relevance to the information.

91 The Settlement Agreement between the Liquidators and Metax that included the term that if the Court asked why Metax was not filing a separate Respondent's Case or on the progress of Suit 965, the parties shall be at liberty to inform the Court of Appeal that Suit 965 was being held in abeyance pending the outcome of CA 146 further supports the Tribunal's view that the Respondents had the requisite mental state. Such a term amounted to an agreement to convey to the Court something that was only partially true. While it was technically true that Suit 965 was held in abeyance because it had not been discontinued, it did not convey the full picture that the reason for it being held in abeyance was because the parties had fully settled their dispute even if they did not yet wish to file a Notice of Discontinuance. Given that the Respondents knew or must have known that there was a possibility the Court would not hear the appeal given the Settlement Agreement, it is difficult to resist the inference that allowing such a term to be agreed and acting in accordance with it meant that they had the requisite knowledge to mislead the Court (or at least were reckless in so doing).

92 The Tribunal's view is further supported by the Settlement Agreement where, after agreeing that the parties would be at liberty to inform the Court "that among other things, an agreement has been reached (1) in respect of [Metax's] involvement in CA 146, and (2) to hold Suit 965 in abeyance pending the outcome of CA 146", it was further agreed that:

> "Only if necessary, parties may explain that such agreement is pursuant to a settlement of the matters arising out of and in connection with Suit 965 on a without admission of liability basis."

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> Although the 2nd Respondent explained that he wanted this to be put in so that it gave him liberty to inform the Court that there had been a Settlement Agreement, and this was not challenged by the Society, it nevertheless showed this was not what the parties were to inform the Court in the first instance but only if it became necessary to do so. As officers of the court who owed a duty of candour to assist the Court in matters before the Court, there should have been no negotiation or hesitation about bringing the fact of the settlement to the Court of Appeal's attention at the earliest opportunity. The failure to do so based on the terms of the Settlement Agreement, which would have given the Court of Appeal the impression that the matter between SEC and Metax was live, led to the Court being misled.
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> 93 It is not enough for the Respondents to say they had no intention to mislead the Court of Appeal. The Tribunal is mindful there was evidence to show that the 1st Respondent pushed back against some of the instructions from his clients because he felt that such instructions were contrary to his duty to assist the Court. The Tribunal accepts that he was trying to find the right balance between the demands of his clients while staying faithful to his overriding duty as an officer of the Court. He admitted that his preference would have been for the Settlement Agreement between the parties to simply state they were at liberty to disclose the settlement to the court. However, he had to calibrate the approach given concerns from his clients, the Liquidators. While the 1st Respondent may be constrained by client privilege to explain what those concerns were, the Tribunal finds it difficult to see what legitimate concerns there could have been to prevent the fact of the settlement being disclosed to the Court. In any event, whatever the Liquidators' concerns, the 1st Respondent's duty to the court trumped his duty to his client and the 1st Respondent should have brought the Settlement Agreement to the attention of the Court of Appeal given (at a minimum) his appreciation that the Court may choose not to hear the appeal given the Settlement Agreement.
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> …
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> 96 Accordingly, the Tribunal finds that the Society's case against the Respondents for knowingly misleading the Court of Appeal in CA 146 is made out beyond reasonable doubt. In Udeh Kumar, the respondent made three statements, each of which the Court of Three Judges considered to have been fraudulent in the respondent's dealings with the court. The Court of Three Judges held that such misconduct constituted improper conduct under section 83(2)(b) of the Act and due cause was made out.

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> 97 As regards the 1st Respondent, the Tribunal similarly finds that his conduct constituted improper conduct under section 83(2)(b) of the Act. In coming to this conclusion, the Tribunal has borne in mind that the 1st Respondent did not simply accept all his clients' instructions; that he was mindful of his duties as an officer of the court and felt that some of the things the Liquidators wanted the TKQP team to do would conflict with their duty to the Court of Appeal; and that, as Ms Kuah Boon Theng, S.C. who provided a character reference stated, the 1st Respondent "may have become blindsided by his own enthusiasm to argue those points of law that he failed to properly consider if it was at all fair of his clients to ask so much of the Court's time and resources", a position that the Society appears to accept.
>
> [footnotes omitted]

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