

DT/06/2019
DT/06A/2019

In the matter of the **LEGAL PROFESSION ACT (CAP. 161)**

And

In the matter of

**CAROLYN TAN BENG HUI
ADVOCATE AND SOLICITOR**

And

In the matter of

- 1. CAROLYN TAN BENG HUI
ADVOCATE & SOLICITOR**
- 2. AU THYE CHUEN
ADVOCATE & SOLICITOR**

DISCIPLINARY TRIBUNAL REPORT

1. This report is in respect of two sets of disciplinary proceedings. The first, DT 6 of 2019, involves Ms Carolyn Tan Beng Hui ("**Ms Tan**"), an advocate and solicitor of some 30 years standing. Ms Tan is also a respondent in the second set of proceedings, DT 6A of 2019, along with Au Thye Chuen ("**Mr Au**"), an advocate and solicitor of some 25 years standing.
2. This Disciplinary Tribunal was appointed on 2 July 2019 in DT 6. The same members were appointed on 8 January 2020 in DT 6A. The Law Society, Ms Tan and Mr Au were in agreement that the evidence in both proceedings should be taken together. Due to the restrictions arising from the Covid-19 pandemic, the hearing only took place in the period 24-26 August 2020.

Circumstances leading to the proceedings

3. Ms Tan and Mr Au practice at Tan & Au LLP ("**TALLP**"). On or about 2 May 2017, the balance sale proceeds from the sale of a residential property were deposited with TALLP. The property had been registered in the name of Seo Puay Guan, who was one of 7 siblings. His other siblings alleged he held the property on trust for their late mother and they each claimed an interest in the balance sale proceeds. TALLP filed interpleader proceedings entitled Originating Summons No. 1100 of 2017 ("**OS 1100**") in the High Court of Singapore with the 7 siblings as respondents. Three siblings were represented by Central Chambers Law Corporation ("**CCLC**") and another 3 were represented by Yeo-Leong & Peh LLC (now known as Adsan Law LLC ("**YLP**"). The seventh sibling in the main acted in person.
4. OS 1100 was fixed for hearing for 3 days from 12-14 September 2018 before the Honourable Judicial Commissioner Dedar Singh Gill (as he then was) (the "**JC**"). This was because there would be cross examination of witnesses. As matters worked out, Seo Puay Guan was cross-examined on 12 September 2018 and for most of the morning on 13 September 2018. There was no further cross-examination of witnesses. The cross-examination was conducted in the physical court room although the proceedings were treated as being heard in chambers. The learned JC then asked counsel into the physical chambers to deal with house-keeping matters.
5. The alleged misconduct of the Respondents arose from what took place in the physical chambers and subsequently. The Tribunal will go into the details of the exchanges in chambers when the relevant charges are considered below. Ms Tan was sufficiently vexed by what took place that later that afternoon, she caused TALLP to file an application for the learned JC to recuse himself. TALLP also requested a further hearing before the learned JC to clarify the directions made in chambers and a request

for the notes of evidence. Both requests were rejected a few days later. The former was rejected on the basis that the 1st Respondent might “*apply for the Notes of Evidence for 13 Sep 18*” while for the latter, the 1st Respondent was requested to refile the correct request form.

6. The recusal application was heard on 25 September 2018 before the learned JC and was dismissed. An affidavit opposing the application had been filed by the late David Kong Tai Wai who was at the time the solicitor at YLP in charge of the matter. In his affidavit, he had made a statement concerning whether Ms Tan had made telephone calls to him. Ms Tan took umbrage at the statement and on 27 September 2018 filed a police report accusing Mr Kong of perjury. On 28 September 2018, TALLP wrote to Court asking for further arguments and the learned JC heard the further arguments on 10 October 2018 and confirmed his 25 September 2018 decision. On 12 October 2018, the parties in OS 1100 filed their written closing submissions.
7. CCLC and YLP jointly complained to the Law Society on 26 October 2018¹ that Ms Tan and Mr Au had misconducted themselves with respect of various acts in the period 13 September to 12 October 2018. On 7 March 2019, the learned JC handed down his written judgment in OS 1100.
8. The Tribunal now turns to deal with the charges.

DT 6 - 1st Charge

9. As outlined above, on 13 September 2018 after completion of the cross-examination of Seo Puay Guan, counsel attended before the learned JC in chambers. Notes of what

¹ Agreed Bundle ("AB"), Tab 47.

took place in chambers as recorded by the learned JC were released by His Honour on 2 October 2018². Those notes³ are attached as Annex 1 to this report.

10. There are three areas of focus. The first is in relation to the stake-holding fees claimed by TALLP. A monthly fee of \$4,000 plus disbursements of \$200 were claimed. The notes of evidence show the learned JC indicating he wanted to see the closing written submissions in OS 1100 addressed: (a) whether the Court was the appropriate forum to consider allegations about the conduct of TALLP in relation to their stake-holding fees; (b) whether the monthly disbursements claimed had actually been incurred. In addition, the learned JC recorded "... I have to point out that the Settlement Agreement and Variation Deed could have stated monthly amount of stake holding fees but did not ...". The 2 documents had been entered into by the siblings.
11. The second area of focus relates to Ms Tan drawing His Honour's attention to pages 96-98 of the bundle of documents filed by TALLP for the OS 1100 hearing. These pages⁴ are annexed hereto as Annex 2. They are an email of 6 September 2017 from TALLP to two of the siblings, Seo Puay Yong and Seo Puay Beng, on certain billing related matters touching on TALLP's role as stakeholders and the response of 7 September 2017 from the 2 siblings. The solicitors from CCLC and YLP objected to page 98 being in evidence and the learned JC ruled he would not allow the page "to be admitted".
12. The third area of focus is the direction given by the learned JC for written closing submissions in OS 1100 to be filed by 5 October 2018.

² Respondent's Supplementary Bundle of Documents, Tab 7.

³ AB Tab 9.

⁴ ABOD Tab 5.

13. The attendance in chambers concluded shortly after noon. At 1.22 pm, TALLP filed SUM 4260 of 2018 in OS 1100 ("**the Recusal Application**") for the learned JC to recuse himself from further hearing those proceedings⁵. Two hours later, at 3.03 pm, TALLP requested the notes of evidence for the hearings on 12 and 13 September 2018⁶. A further two hours later, at 5.11 pm, TALLP applied to attend before the learned JC to seek clarification of his directions⁷.
14. Ms Tan's affidavit in support ("**the Recusal Affidavit**") was filed the next day. Attached as Annex 3 are [8] to [17], and [27], of that affidavit.
15. The first charge in DT 6 against Ms Tan arises from what she said in [11] of the Recusal Affidavit. The charge is in the following terms:

"That you, Carolyn Tan Beng Hui, are guilty of a breach of Rule 29 of the Legal Profession (Professional Conduct) Rules 2015, being a rule of conduct within the meaning of Section 83(2)(b) of the Legal Profession Act (Cap. 161, 2009 Rev Ed) in that, you, on or about 14 September 2018, permitted an affidavit to be filed on behalf of your client Tan & Au LLP in OS No. 1100/2017 containing the following allegations against other legal practitioners, in particular Twang Kern Zern, that:-

- (1) "[t]he Honourable JC also appeared to have arranged with the other counsels to vacate the hearings fixed for the afternoon of 13 September 2018 and the whole day on 14 September 2018 without informing us who were the Applicant"; and
- (2) "the Honourable JC laughed along with the rest of the counsels and in a mocking manner"

without allowing Twang Kern Zern the opportunity to respond to the said allegations, and by so doing you are liable to be punished under section 83 of the Legal Profession Act (Cap 161, 2009 Rev Ed)".

⁵ ABOD Tab 10.

⁶ RSBOD Tab 3.

⁷ RSBOD Tab 4.

16. On 20 September 2018, by way of SUM 4373 of 2018 (“**SUM 4373**”), CCLC applied to expunge various paragraphs of the Recusal Affidavit⁸. This was supported by an affidavit of Twang Kern Zern, a director of CCLC, the particular solicitor named in the charge as being affected by the statements in issue.

17. Both the Recusal Application and SUM 4373 were heard together on 25 September 2018 and the former was dismissed and the latter allowed by the learned JC. Two sets of costs of \$15,000, exclusive of disbursements, were ordered to be paid by TALLP to CCLC's clients and YLP's clients.

The submissions

18. The Law Society submits that:
 - 18.1 Rule 29 of the Legal Profession (Professional Conduct) Rules 2015 (“**the PCR**”) are engaged because Ms Tan was acting as a legal practitioner with TALLP, a body corporate by reason of s 4(1) of the Limited Liability Partnership Act (Cap. 164A) and which had to be represented by a solicitor under O 5 r 6(2) of the Rules of Court (Cap. 322, R 5), as her client.

 - 18.2 The cited statements meant that the other solicitors in chambers on 13 September conspired with the learned JC against TALLP and the phrase “mocking manner” is derogatory of the other solicitors.

19. The Respondents contend:

⁸ AB Tab 18.

- 19.1 Ms Tan was speaking as a partner of TALLP, the litigant, when making the statements in the Recusal Affidavit and not as a legal practitioner acting for a client, and Rule 29 does not apply.
- 19.2 Had an application been taken out by TALLP for leave to have Ms Tan and Mr Au represent it in OS 1100, it is likely that the application would have been granted given that the reason for O 5 r 6(2) is to ensure that trained and disciplined persons have conduct of litigation on behalf of body corporates: *Bulk Trading SA v Pevensey Pte Ltd* [2015] 1 SLR 538.
- 19.3 The complaint about the statement about the solicitors laughing in a mocking manner has been dismissed at the Review Committee stage and cannot be the subject of a charge before this DT.
- 19.4 The other statement pertained to the conduct of the proceedings by the learned JC rather than the solicitors or Mr Twang, and do not constitute allegations against them.
- 19.5 Mr Twang in any case had the opportunity to respond to the allegations in his affidavits filed in support of SUM 4373.

Consideration

20. Rule 29 of the PCR is well-known and provides:

"A legal practitioner (A) must not permit an allegation to be made against another legal practitioner (B) in any document filed on behalf of A's client in any court proceedings, unless -

- (a) B is given the opportunity to respond to the allegation; and
- (b) where practicable, B's response (if any) is disclosed to the court".

21. Similarly, the legal profession has a large number of limited liability partnerships constituted under the Limited Liability Partnership Act (Cap. 163A) and s 4(1) of that legislation provides such a partnership "... is a body corporate ... which has a legal personality separate from that of its partners ...". There is no exception in the legislation for legal practitioners whether generally or where they choose to represent the limited liability partnership that they are part of in court proceedings to which the partnership is a party. In the latter situation, it is open to the legal practitioners to apply under O 1 r 9(2) for leave to act on behalf of the partnership. No such application was made in OS 1100.
22. While it may be said that had such an application been made, it is likely that leave would have been granted since Ms Tan and Mr Au were the only two partners of TALLP, it is not for this DT to presume this and act on that basis.
23. It is understandable that Ms Tan and Mr Au did not consider taking out such an application, given they are the only two partners and Ms Tan's practice as a litigator, but the fact is that in the various filings in OS 1100, they as individuals were identified as the solicitors for the applicant, TALLP.
24. The Respondents make the further point that when deposing to the statements in the Recusal Affidavit, Ms Tan was speaking as a partner of TALLP, the litigant. The distinction is then drawn that she was thus not acting as a legal practitioner. However, Rule 29 provides that a legal practitioner (i.e. Ms Tan) is not to permit any allegation to be made in a document filed on behalf of her client (i.e. TALLP) in any court proceedings. That Ms Tan may have conceptually been wearing two hats at the time in

relation to the affidavit is not justification for excusing her from the application of Rule 29. The DT notes that we are not dealing with the situation where a legal practitioner is acting in person and deposes to allegations against another practitioner in his affidavit which is then filed in Court. The DT respectfully disagrees with the views of the Inquiry Committee in its report dated 8 February 2019 which considered this aspect of the complaint against Ms Tan and was of the view that it did not come within Rule 29⁹.

25. For these reasons, the DT considers Rule 29 is engaged.
26. In relation to the statement that the other solicitors at the hearing laughed in a mocking manner, the Review Committee (report dated 30 November 2018) considering the complaint was of the view that the statement did not amount to an allegation and the complaint with respect to this lacked substance and should be dismissed¹⁰. Consequently, under s 85(8)(a) and s 85(9) of the Legal Profession Act (Cap. 161) (“**the Act**”), the complaint with respect to the statement cannot be proceeded with further.
27. Those provisions read:

“85(8)(a) direct the Council to dismiss the matter if it is unanimously of the opinion that the complaint or information is frivolous, vexatious, misconceived or lacking in substance and give the reasons for the dismissal; or”

“85(9) The Council shall, within 7 days of receiving any direction under subsection (8)(a) –

(a) give effect to the direction to dismiss the matter; and

⁹ ABOD p. 589 and p. 591.

¹⁰ ABOD p. 479.

(b) inform the complainant and the regulated legal practitioner concerned of the dismissal of the matter and furnish the complainant with the reasons of the Review Committee in writing.”

28. The DT views the provisions as being jurisdictional in nature. The Council of the Law Society is bound to give effect to the direction of the Review Committee to dismiss the matter. The direction of the Review Committee is subject to judicial review (see e.g. *Deepak Sharma v Law Society* [2016] 4 SLR 192). Absent any quashing of the direction, the matter comes to an end, consistent with the role of the Review Committee as a first-level filter of complaints against legal practitioners.
29. The Law Society initially acted consistently with the above. Its letter dated 4 December 2018 to Ms Tan enclosing the Review Committee report stated that the allegation concerning the statement about the laughter was not being referred to an Inquiry Committee¹¹ and the Inquiry Committee's report does not consider that allegation¹². The DT notes the Law Society's point, in its reply submissions dated 23 October 2020 at [15] to [17], that s 87(3)(a) provides that the Council of the Law Society may charge a legal practitioner with any misconduct disclosed by the Inquiry Committee's report even if such conduct had not been referred to the Inquiry Committee. However, that is not the situation here. The Inquiry Committee said nothing about the statement about the laughter and the allegation concerning it was known to the Council prior to the referral to the Inquiry Committee.
30. In any event, the DT does not consider the statement about laughter to be an allegation against the other solicitors. It is descriptive of what happened in chambers. Laughter is not, even in Court, in and of itself a negative and the remainder of the sentence about

¹¹ AB p. 482.

¹² AB p. 586.

words being said in a mocking manner does not attribute the manner to the other solicitors.

31. The DT is thus concerned only with the statement that alleged that the other solicitors involved in OS 1100 had an arrangement with the learned JC to vacate the hearings fixed for the afternoon of 13 September 2018 and the whole day of 14 September 2018 without informing the TALLP.
32. The statement has as its subject the conduct of the learned JC. It says nothing about the conduct of counsel other than that they went along with what the learned JC allegedly did with respect to the remaining hearing time. Mr Twang gave evidence before the DT and on cross examination agreed with the Respondents' counsel that the statement was directed at the learned JC and not the solicitors (transcript 24 August 2020 pp 16-17).
33. Furthermore, as the Respondents point out in their closing submissions, Ms Tan was expressing her opinion in that sentence in [11] of the Recusal Affidavit - "... appeared to have ..." - and an expression of opinion is not an allegation.
34. For these reasons, the DT finds that this charge against Ms Au is not made out. The DT consequently does not have to come to a view on the Respondents' submission that Rule 29 was not breached because Mr Twang had the opportunity to respond and did so by his affidavit filed on 20 September 2020. The DT will say that it has difficulties with the submission given the wording of Rule 29 which not only contemplates the opportunity to respond being given prior to the filing of the document and the express requirement that the response be disclosed to the Court where it is practicable to do so.

DT 6 - 2nd and alternative 2nd Charges

35. There is a second charge against Ms Tan arising from the Recusal Affidavit. This is in relation to statements against the learned JC. The charge reads:

"That you, Carolyn Tan Beng Hui, are guilty of a breach of Rule 13(2) of the Legal Profession (Professional Conduct) Rules 2015 being a rule of conduct within the meaning of Section 83(2)(b) of the Legal Profession Act (Cap. 161, 2009 Rev Ed) in that, you, on or about 14 September 2018, in an affidavit filed in OS No. 1100/2017, did make the following statements in respect of the Judicial Commissioner Dedar Singh Gill ("the Honourable JC"):

- (1) "[The Honourable JC] suddenly opined that there was no documentary evidence to support our monthly stake-holding fees of S\$4,200.00. He rejected immediately my assertions to the contrary without reference to any Affidavits or documents despite my attempt in vain to highlight the same. This evidences a closed mind ...";
- (2) "I was stunned. The Applicant had not been given any opportunity nor time to make any oral submissions on the case. I had been stripped of all my rights. I was also not informed that the afternoon hearing was cancelled although we were the Applicant and had paid all the Court hearing fees for the case ... due process and procedure was suddenly and abruptly aborted without even the courtesy of any explanation by the Honourable JC although there were 1.5 hearing days further scheduled in Court";
- (3) "the Honourable JC expressed outspoken, extreme, and unbalanced views to suggest that our stake holding fees of S\$4,200.00 per month may be subject to Law Society Disciplinary Proceedings for overcharging and therefore outside the Court's jurisdiction. This is an incredible statement ...";
- (4) "In addition, the Honourable JC invited the other counsels to make further written submissions on whether the Applicant's fees should be the subject of Law Society Disciplinary Proceedings and thus outside the Court's jurisdiction, without inviting or allowing the Applicant to do the same. Thereupon the Court said he will then give his oral decision.";
- (5) "The Honourable JC also stated in less than uncertain terms that he had already made up his mind without hearing parties or reviewing submissions on evidence by the Parties that the paltry stake holding fees of S\$4,200.00 per month constituted overcharging without hearing any oral arguments on our part. When taken together with the fact that he only invited the other counsels and not the Applicant to make submissions regarding professional misconduct, it becomes apparent that the Honourable JC was only seeking points in support of his conclusion as opposed to being fair minded as to the correct decision."; and

- (6) "From what I see, there appears to be allegations that have been made not by our former clients in their Affidavits but by their new lawyers in their submissions. The accusations have been made into a dagger to stab us in the back and this evil and dangerous weapon is now encouraged to be brandished freely about instead of being laid to rest so that the actual dispute between the siblings relating to the sale proceeds could be resolved."

and by so doing, you have been disrespectful of the Court and liable to be punished under section 83 of the Legal Profession Act (Cap 161, 2009 Rev Ed)".

36. An alternative charge against Ms Tan is based on the same facts. This alleges that her statements constitute misconduct unbefitting an advocate and solicitor contrary to s 83(2)(h) of the Act.

37. Rule 13(2) of the PCR reads:

"A legal practitioner must always be respectful of a court or tribunal".

Submissions

38. The Law Society has submitted:

38.1 The Recusal Application was taken out about two hours after the physical chambers hearing on 13 September 2018 concluded, and before TALLP requested the notes of evidence and a clarificatory hearing.

38.2 The Recusal Affidavit was filed before the Court responded to the latter two requests.

38.3 The Recusal Affidavit contained serious allegations against the learned JC.

- 38.4 Ms Tan did not formally seek clarification from the other solicitors who had been in the physical chambers hearing.
- 38.5 Ms Tan did not retract the allegations after Mr Twang filed his affidavit on 20 September 2018 in response to the Recusal Application.
- 38.6 The Recusal Application was dismissed in its entirety with costs.
- 38.7 Ms Tan has continued in these disciplinary proceedings, in her affidavit of evidence in chief (at [20] and [21]) and under cross examination (transcripts 26 August 2020 p. 26) to maintain that the statements in the Recusal Affidavit remain true from her perspective.
- 38.8 The statements in issue are strikingly similar to those found to be in contempt of court in *AG v Ong Wui Teck* [2019] SGHC 30 (High Court); [2020] 1 SLR 855 (Court of Appeal).
- 38.9 The facts stated in the statements were incorrect.
39. Ms Tan contends:
- 39.1 The statement set out at [6] in the charge, which appears at [27] of the Recusal Affidavit, is not directed at the learned JC.
- 39.2 The other statements cited in the charge were necessary for the Recusal Application and were made bona fide. In support of the former point, reference is made to the Inquiry Committee's report of 30 July 2019 (at [5.5.2]). No disrespect to the learned JC was intended.

- 39.3 Ms Tan made these other statements as a partner of TALLP and not as a legal practitioner acting for TALLP.
- 39.4 It is not desirable to curtail the ability of litigants and solicitors to explain their bases for filing a recusal application.
- 39.5 TALLP had taken steps to obtain the notes of evidence and to seek a clarificatory hearing but these were refused.
- 39.6 The Recusal Application and the Recusal Affidavit have to be considered in light of the allegations that TALLP had overcharged and were guilty of professional misconduct.
- 39.7 The learned JC did not find that the statements in the Recusal Affidavit were not bona fide or that Ms Tan had acted disrespectfully to the Court, and the learned JC did not make a complaint about her conduct. This was unlike the circumstances in the *Ong Wui Teck* decision.

Consideration

40. The DT agrees with and accepts the submission by the Respondents that the statement at [27] of the Recusal Affidavit (cited as [6] in the charge under consideration) on its plain reading was not with regards to the learned JC and cannot support the charge.
41. Turning to the point that Ms Tan deposed to the other statements in her capacity as a litigant and partner in TALLP, while it is correct that Rule 13 of the PCR does refer to legal practitioners acting as such in its references to how a case is to be presented or

conducted and how the legal practitioner is to deal with the court, it is not possible to draw a hard line between Ms Tan's roles as deponent of the Recusal Affidavit and as legal practitioner settling and filing the Recusal Affidavit. It is artificial to say that Ms Tan ceased to be a legal practitioner for the purposes of the statements. The consequence of accepting that there can be a hard distinction would be to accept that when an advocate and solicitor acts in person, there is a lower standard that would apply to his conduct. The DT does not consider this to be a correct position in law.

42. Further, it cannot be said that Rule 13 is concerned only with the presentation and conduct of a case to the Court, and not with the factual statements made for the purposes of the case. While Rule 13(1) in setting out the principles that guide the interpretation of the Rule refer to the presentation and conduct of a case, Rule 13(6) is wider in referring to publication of material concerning a case, which publication is necessarily to an audience other than the Court. The purpose of Rule 13 is sufficiently clear. Legal practitioners have rights of audience and are held to a higher standard than non-practitioners. The laws as to contempt of court apply to both, but legal practitioner owe a duty of respect as well.

43. The circumstances of the Recusal Affidavit demonstrate it was made in some haste. It was filed in support of an application made in great haste. The DT has difficulty reconciling Ms Tan's experience as a litigation lawyer with the rush to apply. While we understand that Ms Tan would have been very concerned at how TALLP's claim for a recurring monthly stakeholders' fee had been described by the two camps of warring Seo siblings, it is surprising that she would have thought that TALLP would not have the opportunity of addressing the contentions about the stakeholders' fee. This would extend to any question of whether the fee amounted to some form of professional misconduct. We note that Ms Tan testified, after the learned JC told the other counsel what they were to cover in their submissions, she had addressed the learned JC on 13

September 2018 on what she could address the Court on in submissions (transcript 25 August 2020 p. 120 line 3). The DT would stress that we take this not from the notes of evidence which were not available to Ms Tan at the time of the Recusal Affidavit but from what she said before us in these proceedings. The point is that counsel with a reasonable experience of court proceedings would know that the Court will receive written submissions and, in some cases, oral arguments as well. Ms Tan is a solicitor of almost 30 years' standing. Even if Ms Tan were unclear about this, she could have in the first instance written to the other solicitors but she did not. It appears that she did attempt to call Mark Lam of CCLC while he was out at lunch but they did not eventually speak despite him returning the call (Lam's affidavit of evidence in chief at [13]-[14]). Ms Tan testified that she also attempted to call the late Mr Kong but was unable to reach him (transcript 26 September 2020 p. 18 line 7).

44. It is also undisputed that TALLP had applied for the notes of evidence and for a clarificatory hearing. By then the Recusal Application had been filed. The only explanation given for pressing ahead with the Recusal Affidavit and subsequently the application was, in Ms Tan colourful phrase, the fear of the "spear of professional misconduct". But this understandable fear and concern would point towards waiting for the notes and clarificatory hearing, if any, or at a minimum a discussion with the other solicitors.
45. The DT would express its concern that the relations between solicitors in OS 1100 appeared to have reached a point where the courtesies between fellow legal practitioners and conduct between litigants had vanished, and this is not a comment only upon the contents of the Recusal Affidavit. In particular, when the Recusal Affidavit was served, it would have been apparent to the other solicitors that Ms Tan had been quite mistaken about the directions made by the learned JC yet instead of following up on Ms Tan's call of 13 September to Mr Lam of CCLC, or attempting to

explain the directions to her, what followed was an affidavit by Mr Twang on 20 September 2018 to oppose the recusal application and in support of an application to expunge parts of the Recusal Affidavit. In fact, the other solicitors were more concerned to say that allegations had been made against them without notice (CCLC letter dated 17 September 2018¹³; YLP letter dated 20 September 2018¹⁴).

46. The haste with which the Recusal Affidavit was filed probably explains the language used:

46.1 "... the closed mind ..." attributed to the learned JC;

46.2 Ms Tan's view that she had been "... stripped of all my rights ...";

46.3 "... the Honourable JC expressed outspoken, extreme, and unbalanced views ...";

46.4 that the learned JC invited submissions on TALLP's misconduct and that he "... had already made up his mind without hearing parties or reviewing submissions on evidence ... [and] was only seeking points in support of his conclusion as opposed to being fair minded as to the correct decision ...".

47. There can be no doubt that the language used was not respectful of the Court. The language used by a legal practitioner need not rise to the level of contempt of court to be contrary to Rule 13(2) of the PCR and the DT does not find it necessary to consider any analogy to the language found in the *Ong Wui Teck* decision to be contemptuous. Similarly, that Ms Tan may have acted bona fides or that she believed, at the time of

¹³ AB tab 14.

¹⁴ AB tab 20.

making the Recusal Affidavit or even subsequently in these proceedings, does not excuse her. The requirement is respect and the wholly subjective state of mind is quite apart from her obligations to render respect to the Court.

48. For these reasons, the DT finds the second charge of misconduct contrary to s 83(2)(b) of the LPA to be made out, save for the statement cited at [6] in the charge. It is unnecessary for the DT to consider the alternative charge.

DT 6A - 3rd and alternative 3rd Charges

49. The Law Society has also laid similar charges based on the Recusal Affidavit against Mr Au alleging grossly improper conduct contrary to s 83(2)(b), alternatively misconduct unbefitting contrary to s 83(2)(h), of the Act.

50. The Law Society submits that:

50.1 Mr Au was present at the hearing in physical chambers on 13 September 2018 and would have been aware of the directions made by the learned JC;

50.2 He knew about the Recusal Application on 13 September 2018 itself prior to the filing of the Recusal Affidavit the next day;

50.3 He was one of the solicitors having conduct of OS 1100 for TALLP and had been actively involved in those proceedings; and

50.4 He took no steps to expunge the Recusal Affidavit after having been put on notice by Mr Twang's responsive affidavit filed 20 September 2018.

51. On behalf of Mr Au, it is submitted:

51.1 Mr Au was not present at the hearing in chambers;

51.2 There is no evidence of Mr Au being involved in preparing the Recusal Affidavit.

52. Before the DT, Mr Au has explained (transcript 26 August 2020 p. 36 line 4) that his practice is in corporate and corporate secretarial work, and en-bloc sales of properties. At TALLP, he is in charge of finance and administration. This is consistent with what he deposed to in affidavits in OS 1100 on behalf of TALLP. Mr Au deposed the affidavit initiating the inter-pleader proceedings (26 September 2017¹⁵) and as to the arrangements with respect to the stakeholders' fees charged by TALLP (30 January 2018¹⁶, 5 February 2018¹⁷, 4 July 2018¹⁸, 26 October 2018¹⁹).

53. There is no evidence that Mr Au was involved in the drafting of the Recusal Affidavit. The other solicitors involved in OS 1100 testified only that they recalled him being present at the hearing in the physical chambers on 13 September 2018.

53.1 Mr Chooi Yue Wai Kenny of YLP simply said he was present²⁰.

53.2 Mr Twang of CCLC did not say anything about Mr Au being at the hearing in chambers²¹.

¹⁵ LSSBOD tab 1

¹⁶ LSSBOD tab 2.

¹⁷ LSSBOD tab 3.

¹⁸ LSSBOD tab 4.

¹⁹ LSSBOD tab 5.

²⁰ AEIC at [12].

²¹ AEIC at [11].

- 53.3 Mr Lam of CCLC said²² he noticed that his colleague Mr Tan Siew Bin Ronnie gave up his seat at the second row in chambers to Mr Au and when he turned around when Ms Tan, who was also seated in the second row, addressed the learned JC, he noticed Mr Au next to her.
- 53.4 Mr Tan said²³ he sat next to Mr Au and he noticed certain aspect of Mr Au's attire and behaviour during the hearing.
54. Mr Au in contrast said he did not go into the learned JC's chambers as Ms Tan told her not to as it was only for directions²⁴ and her face was green when she came out²⁵. He did not have a coherent reason for why the other solicitors would say he had been in chambers.
55. Mr Seo Puay Hin who represented himself at the hearings on 12 and 13 September 2018 gave evidence on behalf of the Respondents. He said he had been in chambers and Mr Au had not. The other solicitors all confirmed that Mr Seo had been in chambers. The Law Society set out in their closing submissions a number of reasons as to why Mr Seo's recollection is inaccurate²⁶, principally issues with his recollection of the directions given by the learned JC. The DT does not find it surprising that Mr Seo, a layman, would struggle with the directions, particularly when he did not file any submissions in OS 1100 following the evidential hearing.
56. The DT also notes that the learned JC's notes of evidence record that Mr Au was present but, contrary to the evidence of all counsel, that Mr Seo was not present.

²² AEIC at [12].

²³ AEIC at [11]-[13].

²⁴ Transcript 26 August 2020 p. 40.

²⁵ Transcript 26 August 2020 p. 42.

²⁶ Paragraphs 45 to 48.

57. In the circumstances, the DT is of the view that there is reasonable doubt as to whether Mr Au was present. Given this and the absence of any direct evidence he was involved in the drafting of the Recusal Affidavit, the DT considers that the charge (and the alternative charge) against Mr Au with regards to the Recusal Affidavit is not made out. There is no or no sufficient basis for the DT to infer with sufficient certainty that Mr Au had a role in the Recusal Affidavit such that he had been disrespectful to the learned JC with regards to the statements by Ms Tan in the Recusal Affidavit.

DT 6A - 1st and alternative 1st Charges

58. It will be recalled that the learned JC ruled on 13 September 2018 in physical chambers that he would not allow page 98 of the bundle of documents filed by TALLP for the OS 1100 "to be admitted". The bundle had been filed with skeletal arguments on 7 September 2018 in that hardcopies were provided to the Registrar to be placed before the learned JC for the hearing that began on 12 September 2018²⁷.

59. A few days after 13 September, TALLP on 17 September 2018 e-filed the same skeletal arguments and bundle of documents in the e-Lit system. On 20 September 2018, YLP wrote a strongly worded letter to TALLP stating that they had breached the learned JC's order on 13 September 2018 by e-filing the bundle of documents with page 98 inside and required TALLP to apply to "expunge" the page²⁸.

60. The letter was transmitted by email sent at 4.43 pm on 20 September 2018²⁹. TALLP replied at 5.13 pm stating that they would file an amended bundle but went on to say³⁰:

²⁷ AB Tab 3.

²⁸ AB Tab 16.

²⁹ AB p. 91.

³⁰ AB p. 90.

"We had left several messages for your David [Kong] at both his mobile cellphone and office.

We regret he had failed to return our call.

This shows a lack of courtesy.

We wanted to inform him that we cannot doctor a document that had been tendered to court as you now suggest.

The proper course is to file an Amended Bundle.

It is not a forgery but the truth ...".

61. The next day, YLP filed SUM 4397 of 2018 in OS 1100 seeking an order that page 98 be expunged. The late Mr Kong deposed an affidavit in support³¹ and at [19] stated: "... I did not, contrary to [TALLP's] allegation, receive any alleged messages from [TALLP] at my mobile phone or my direct office number ...".
62. SUM 4397 was heard on 25 September 2018 and the learned JC ordered³² that page 98 be expunged and the reference to the page in TALLP's skeletal arguments also be expunged. The learned JC ordered TALLP to pay costs of \$2,500 excluding disbursements to each of CCLC and YLP.
63. Dissatisfied with this, TALLP wrote in on 28 September 2018 for further arguments. The learned JC heard further arguments on 10 October 2020 and confirmed his earlier decision. On 12 October 2020, TALLP filed their written closing submissions and at [20] again referred to page 98.

³¹ AB p. 162.

³² AB p. 217-218.

64. This was noticed by opposing counsel and both CCLC³³ and YLP³⁴ wrote on 19 October 2018 to object to this. On 24 October 2018, TALLP filed amended closing submissions omitting the relevant paragraph.
65. Arising out of these circumstances, the Law Society has framed the first charge in DT 6A against Ms Tan in the following terms:

That you, Carolyn Tan Beng Hui, are charged that you are guilty of a breach of Rule 13(2) of the Legal Profession (Professional Conduct) Rules 2015, in that, you did file or cause to be filed documents against the court's directions and orders, in particular:-

- (1) On or about 17 September 2018, Skeletal Argument from Tan & Au LLP which paragraph 16 makes reference to page 98 of the Bundle of Documents from Tan & Au LLP, which page had been disallowed to be filed by the Judicial Commissioner Dedar Singh Gill during the hearing for HC/OS 1100/2017 on 13 September 2018; and/or
- (2) On or about 12 October 2018, Closing Submissions from Tan & Au LLP containing paragraph 20 which is a reproduction of paragraph 16 of the Skeletal Argument which had been ordered to be expunged in HC/ORC 6851/2018.

which are discourteous of a court, and by so doing, you have been guilty of improper conduct or practice as an advocate and solicitor within the meaning of s83(2)(b) of the Legal Profession Act (Cap 161, 2009 Rev Ed).

66. In the alternative, the Law Society charges that the conduct is contrary to s 83(2)(h) of the Act.
67. The Law Society has stressed that its concerns are with the submissions that were filed and not with the inclusion of the document in the bundle of documents and the focus is on the closing submissions filed on 12 October 2018. This must be correct because

³³ AB p. 332.

³⁴ AB p. 334.

the evidence before the DT is that the submissions filed on 17 September 2018 were simply the e-filing of the submissions placed in hardcopy before the learned JC on 7 September 2018. This is the evidence of Nooraini binte Mahmat, a litigation paralegal at TALLP, who confirmed that the e-filing was routine and in accordance with normal practice³⁵, and she did not receive any instructions, whether to e-file or not to e-file the submissions³⁶.

68. As to the closing submissions filed on 12 October 2018, the Law Society submits that Ms Tan intentionally included the reference to page 98.

68.1 The relevant paragraph was the same as in the submission filed on 7 September except that the reference to the page in the bundle of documents was removed.

68.2 Ms Tan said in her AEIC at [23] that she continued to believe that TALLP should have been allowed to reply on the email at page 98 and at [37] that she was of the view that the order to not allow page 98 into evidence was mistakenly made.

69. The Respondents submit:

69.1 The inclusion of the relevant paragraph was inadvertent. Ms Tan had simply cut and pasted the equivalent paragraph from the first submissions. Ms Tan said this under cross examination (transcript 25 August 2020 pp. 124 and 125, and p. 128). She also said, under cross examination, that she did not intend any disrespect to the Court.

³⁵ AEIC at [5]-[7].

³⁶ Transcript 26 August 2020 p. 62.

- 69.2 The filing of the amended closing submissions on 24 October 2018 showed that Ms Tan did not include the relevant paragraph intentionally.
70. The DT would give Ms Tan the benefit of the doubt on the closing submissions filed on 12 October 2020. We note that she has said in her AEIC that she continued to believe that page 98 should have been allowed into evidence but having observed her testimony, we do not think that such a belief caused her to consciously and deliberately include the reference to the contents of page 98 in the closing submissions at [20]. The paragraph is in identical terms to the equivalent paragraph in the earlier submissions.
71. Further, TALLP did file the amended closing submissions. We observe that this may have been following the somewhat overly lengthy and intemperate letter dated 19 October 2020 from YLP accusing TALLP of having "blatantly and flagrantly breached" orders of court, "intentionally disobeyed" the Court and committing "a contempt of court". The letter did observe that TALLP had "repeated, reproduced and/or regurgitated" the relevant paragraph from its earlier submissions. The DT takes the view that the shock of receiving the letter from a fellow legal practitioner may have made Ms Tan realise her oversight as regards the closing submissions.
72. Accordingly, the DT dismisses the charge, and the alternative charge, against Ms Tan.

DT 6A - 1st and alternative 1st Charges against Mr Au

73. The same facts in relation to the skeletal arguments dated 7 September 2018 and the closing submissions dated 12 October 2018 give rise to a charge under s 83(2)(b) of the Act against Mr Au, and an alternative charge under s 83(2)(h) of the Act against him.

74. As indicated above, the focus has to be on the closing submissions dated 12 October 2018. However, there is no evidence before the DT that Mr Au was in any way involved in the preparation of those written arguments. As counsel for the Respondents has pointed out, it was not put to Mr Au that he had been involved.
75. Consequently, the DT dismisses this charge and alternative charge against Mr Au.

DT 6A - 2nd and alternative 2nd Charges against Ms Tan

76. The final charge before the DT against Ms Tan arises from what was said in TALLP's letter dated 28 September 2018³⁷ asking for further arguments on SUM 4397 and in the closing submissions dated 12 October 2018³⁸ about the opposing solicitors.
77. The charge reads:

That you, Carolyn Tan Beng Hui, are charged that you are guilty of a breach of Rule 29 of the Legal Profession (Professional Conduct) Rules 2015, in that, you, permitted documents to be filed on behalf of your client Tan & Au LLP in HC/OS 1100/2017 containing the following allegations against other legal practitioners, in particular:

- (1) On or about 28 September 2018, you permitted a letter from the Applicant to the Registrar of the Supreme Court of Singapore to be filed which contains the following allegation against David Kong Tai Wai:-

Mr David Kong had lied on oath that our Ms Carolyn Tan did not call him. He has committed perjury and/or false statements under oath ...

- (2) On or about 12 October 2018, you permitted Closing Submissions to be filed which contains allegations against Chooi Yue Wai Kenny, David Kong Tai Wai, Fong Kai Tong Kelvin and Twang Kern Zem, that:-

... When Counsel for the Applicant asked whether there were other messages, Counsel for the 2nd, 3rd, and 6th Respondents kept silent and the silence is telling. In an inexplicable move, the Judge accepted an evidence from the Bar

³⁷ AB p. 233.

³⁸ AB p. 314.

of Mr Twang Kern Zern, counsel of 1st, 4th and 5th Respondents relating to his testimony that he received a message from the Interpleader although the Interpleader Counsel had disputed the content as the Interpleader only communicated with the Counsel's clerical staff.

without allowing the said other legal practitioners the opportunity to respond to the said allegations, and by so doing, you have been guilty of improper conduct or practice as an advocate and solicitor within the meaning of s83(2)(b) of the Legal Profession Act (Cap 161, 2009 Rev Ed).

Submissions

78. The Law Society has submitted with regards to the request for further arguments:

78.1 The late Mr Kong was not given an opportunity to respond;

78.2 The reference to the late Mr Kong lying on oath is to his statement at [19] of his affidavit filed on 21 September 2018³⁹ where he said he had not received any messages from TALLP at his mobile phone or his direct office number. Ms Tan had in fact misunderstood the statement. Mr Kong had been referring specifically to not receiving any messages on 20 September 2018 and this was plain on the face of the affidavit and Ms Tan should have known that or should have clarified this with Mr Kong.

79. As to the closing submissions, the passage was in the context of setting out allegedly unusual liabilities imposed on TALLP viz. a sizeable costs order made when page 98 of TALLP's bundle of documents in OS 1100 was ordered on 25 September 2018 to be expunged. The entire paragraph is set out below⁴⁰.

"To further establish breach, the Court admitted without discovery, a telephone recording and rejected Counsel's Interpleader request to examine the phone.

³⁹ AB p. 165

⁴⁰ AB p. 318.

When Counsel for the Applicant asked whether there were other messages, Counsel for the 2nd, 3rd and 6th Respondents kept silent and the silence is telling. In an inexplicable move, the Judge accepted an evidence from the Bar of Mr Twang Kern Zern, counsel of 1st, 4th and 5th Respondents relating to his testimony that he received a message from the Interpleader although the Interpleader Counsel had disputed the content as the Interpleader only communicated with the Counsel's clerical staff".

80. The Law Society has contended that:

80.1 The phrase "... the silence is telling ..." alleged that the Mr Chooi, the late Mr Kong and Mr Fong had something to hide.

80.2 As to Mr Twang, the sentence alleged he acted in a manner than was unexplainable or not to be expected in the usual course of things. And that he had somehow volunteered information from the bar when he did not have to.

81. The Respondents have submitted that:

81.1 TALLP was acting in person and Rule 29 has no application to the letter requesting further arguments or the closing submissions.

81.2 By 28 September 2018, Mr Kong had already filed his affidavit of 21 September 2018 setting out his position on TALLP's allegation in its email of 20 September 2018 that he had failed to return TALLP's call despite several messages being left at his mobile and office numbers.

81.3 As to the closing submissions, the relevant paragraph set out Ms Tan's observations of events that transpired at the hearing and were not allegations against the other solicitors.

- 81.4 In any case, the paragraph in the closing submissions were expunged by the learned JC⁴¹ pursuant to applications taken out by the clients of the solicitors on 25 October 2018⁴².
82. For the reasons discussed above in relation to the first charge in DT 6 against Ms Tan, she was acting as solicitor for TALLP and Rule 29 is applicable.
83. However, with respect to the closing submissions, the DT is unable to accept the Law Society's view that allegations were made against the solicitors. The relevant paragraph of the closing submissions were in relation to the Court's conduct of the proceedings on 25 September 2018. It is true that the phrase "the silence is telling" is a touch over-descriptive and sensational but this choice of phrase, while regrettable, does not convert what is essentially an observation about the proceedings into an allegation against the other solicitors.
84. Similarly, the sentence where Mr Twang is named is in relation to what the learned JC chose to accept, and Mr Twang has explained⁴³ that he was responding to a question from the learned JC.
85. The request for further arguments is quite a different matter. There can be no doubt that it was an allegation to say that the late Mr Kong lied on oath. The interpretation of the sentences is unarguable. It is also material that Ms Tan had the day before at around 6.45 pm made a police report against the late Mr Kong for lying about the same matters⁴⁴. There can be no doubt that it is a serious matter to accuse another legal

⁴¹ AB 474.

⁴² AB p. 357 and p. 396

⁴³ Transcript 24 August 2020 p. 32.

⁴⁴ AB p. 225.

practitioner and "... it would generally be inappropriate for a solicitor to allege misconduct on the part of another solicitor for a purpose other than to lodge formal complaint with the Law Society ...": *Law Society of Singapore v Ravi Madasamy* [2015] 3 SLR 1187.

86. It is no answer to the charge that Mr Kong had the opportunity in his affidavit of 21 September 2018 to respond to the allegation. In the affidavit, the late Mr Kong was responding to what TALLP had alleged in its email of 20 September 2018. The request for further arguments alleged that his response was false. And it ought to be obvious that an allegation that a fellow legal practitioner has lied on oath is not one to be made lightly, and Rule 29 must in part be intended to allow some clarification and retraction.
87. Consequently, the DT finds that the charge of misconduct has been made out against Ms Tan with respect to the allegations in TALLP's letter of 28 September 2018.

DT 6A - 2nd and alternative 2nd Charges against Mr Au

88. A charge, and an alternative charge, have also been laid against Mr Au with respect to the statements in the 28 September 2018 request for further arguments and the closing submissions dated 12 October 2018.
89. As noted above, Mr Au has denied being involved in those preparation of any filings other than the affidavits he deposed to and there is no evidence before the DT of his involvement in the request for further arguments and the closing submissions. Accordingly, the charge, and the alternative charge, are dismissed.

Disposition with respect to Ms Tan

90. The DT's findings with respect to Ms Tan are summarised in the table below.

DT 6 of 2019	Finding
1st Charge	Charge is not made out.
2nd Charge	Charge is made out save with respect to the statement at (6) of the Charge.
DT 6A of 2019	
1st Charge	Charge is not made out.
Alternative 1st Charge	Charge is not made out.
2nd Charge	Charge is made out with respect to the statement in the letter dated 28 September 2018 only.

91. As noted above, with respect to the 2nd Charge in DT 6 of 2019 concerning a breach of Rule 13(2) of the PCR, the conduct need not rise to that of being in the level of contempt of court. There is no doubt Ms Tan made the relevant statements in the Recusal Affidavit in a rush, within hours of the hearing in physical chambers in an agitated state of mind. This was ill-considered. In her testimony, she tried to explain her state of mind - "we felt hit by the spear of professional misconduct and we want to take the spear out of the body"⁴⁵. The DT notes that Ms Tan did not accuse the learned JC of actual bias.

92. The Law Society accepts, in its closing submissions at [63], that Ms Tan's misconduct is of a lesser degree than those in *Re Hilborne* [1983-1984] SLR(R) 322 where the legal practitioner was famously insolent or threatening to a Judge and in *Law Society v Ravi Madasamy* [2006] SGDSC 8 where the solicitor in open court conducted himself in a

⁴⁵ Transcript 26 August 2020 p. 26

manner that disrupted the proceedings and was considered to have threatened the judicial officer having conduct of the proceedings.

93. The DT is of the view that in all the circumstances of the Recusal Affidavit, this is a case where a penalty that is sufficient and appropriate to the misconduct committed will suffice, and so determines under s 93(1)(b)(i) of the Act.
94. Turning to the 2nd Charge in DT 6A, the Law Society has submitted that a sanction to be imposed by the Council of the Law Society would suffice, and the DT accepts this and determines accordingly under s 93(1)(b)(i) of the Act. The DT would note that the Council of the Law Society has separately dealt with the police report lodged by Ms Tan in late 2019 or early 2020⁴⁶.

Disposition with respect to Mr Au

95. The DT's findings with respect to the charges against Mr Au are summarised in the table below.

DT 6A of 2019	
1st Charge	Charge is not made out.
Alternative 1st Charge	Charge is not made out.
2nd Charge	Charge is not made out.
Alternative 2nd Charge	Charge is not made out.
3rd Charge	Charge is not made out.
Alternative 3rd Charge	Charge is not made out.

⁴⁶ AB p. 721

Tribunal's concluding observations

96. These disciplinary proceedings have come about from a fairly mundane set of legal proceedings where a legal practice has filed inter-pleader proceedings with respect to a sum of money held by the practice as stakeholders. In response to the legal practice's claim for its fees as stakeholder, objections were taken which sought to turn a question of interpretation of the written stake-holding agreement into an attack on the legal practice. Thereafter, various applications were taken out to expunge parts of an affidavit, a bundle of documents and written submissions. These steps escalated the legal expenses of the inter-pleader proceedings without necessarily moving the resolution of those proceedings forward. The charges before the DT are a sub-set of a much larger set of complaints made by fellow legal practitioners against the Respondents in relation to inter-pleader proceedings. This is despite the various grievances having been addressed before the learned JC and considered in the course of the decisions on the applications which had been taken out. The learned JC did not refer the Respondents to the Law Society.

97. The DT is reminded of statements by Andrew Phang JA in two cases. In *China Insurance Co (Singapore) Pte Ltd v Liberty Insurance Pte Ltd* [2005] 2 SLR(R) 509, it was observed that (at [64]):

"Although we operate within an adversarial system which, by its very nature, mandates counsel on each side advocating, as persuasively and as fearlessly as possible, their arguments on behalf of their respective clients, this can - indeed ought - to be achieved within a framework of what, for want of a better term, I would classify as professional courtesy and common decency. Put in simpler terms, one can disagree and yet not be disagreeable".

98. Later, in *Law Society of Singapore v Tan Buck Chye Dave* [2007] 1 SLR(R) 581, Phang JA said (at [21]):

"The legal profession is, by its very nature, a community of trained and skilled legal professionals. Hence, while individual endeavour and achievement are important, the idea of community ought not to - indeed, cannot - be gainsaid. ... we hope there will not only be more civility within the legal profession itself ... we hope there will be more camaraderie within the profession ...".

Dated this 12th day of November 2020



Tan Chuan Zhye SC, President



Chong Yee Leong

Annex 1

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

1 HC/OS 1100/2017

2

3

4

Between

5

6

TAN & AU LLP

7

... Applicant(s)

8

And

9

10

1. Seo Puay Guan

11

2. Seow Puay Teck

12

3. Seo Puay Yong

13

4. Seo Peck Ngo

14

5. Seo Peck Guat

15

6. Seo Puay Beng

16

7. Seo Puay Hin

17

...Respondent(s)

18

19

Coram : Judicial Commissioner Dedar Singh Gill

20

21

Carolyn Tan Beng Hui and Tony Au (Tan & Au LLP) for the Applicant;

22

Twang Kern Zern, Lam Jianhao Mark, Ronnie Tan and Justin Low (Central Chambers Law Corporation) for the 1st, 4th and 5th Respondents;

23

24

Chooi Yue Wai Kenny, Fong Kai Tong Kelvin and Kong Tai Wai David (Yeo-Leong & Peh LLC) for the 2nd, 3rd and 6th Respondents.

25

26

27

Notes of Evidence

28

29

Thursday 13 September 2018

30

31

Time: 11.15 am in Chamber 2A. No recording.

32

1 Ct: The 1st, 4th and 5th Respondents have alleged overcharging by Applicant. They
2 have made reference to Rule 17 of Legal Profession (Professional Conduct)
3 Rules 2015. The 2nd, 3rd and 6th Respondents say stake holding fees are
4 excessive and / or unreasonable. That being the case I need parties to address
5 me on whether the Court or the Law Society is the appropriate forum to deal
6 with the issue of the stake holding fees.

7
8 Ct: (To Carolyn Tan) In the event that parties submit and I agree that the Court is
9 the appropriate forum I will need an affidavit from the Applicant's itemising
10 with supporting documents how disbursements of \$200 were incurred each
11 month.

12
13 Also, I have to point out that the Settlement Agreement and Variation Deed
14 could have stated monthly amount of stake holding fees but did not.

15
16 Ct: (To Mr Chooi) I also need you to address the following in your written
17 submissions by reference to the evidence:

18
19 (i) Who sold the property in question? Was the oral agreement with the 1st
20 Respondent only or 1st Respondent and his wife?

21
22 (ii) The 1st Respondent and his wife held the property as joint tenants, could 1st
23 Respondent have sold it alone?

24
25 (iii) Could 1st Respondent have held it on trust if wife not involved in the agreement
26 to sell?

27
28 (iv) Paragraphs 72 to 73 of Written Submissions of 1st, 4th and 5th Respondents'
29 say that distribution not triggered because Letters of Administration not applied
30 for yet.

31

1 Ct: (To Mr Twang) I need you to address me on constructive trust and not just
2 express trust.

3

4 Carolyn Tan: Refer to Applicant's Bundle of Documents. Table of Contents. Item
5 number 12. Appears at pages 96 to 98. Parties have paid all along and except for 1st
6 and 7th Respondents others did not dispute. Also signed Variation Deed.

7

8 Twang: Page 98 was not exhibited in Applicant's affidavit. Objecting to its inclusion.

9

10 Chooi: Also objecting. Before Assistant Registrar Applicant had applied for leave to file
11 further affidavit yet the email at page 98 was not exhibited to the affidavit filed.

12

13 Ct: I am not allowing page 98 of Applicant's Bundle of Documents to be admitted.

14

15 Chooi: Applicant's Skeletal Arguments also raise new matters, example see paragraph
16 11: "2nd to 6th Respondents were informed verbally". We will need to take
17 instructions and how do we deal with the matter.

18

19 Ct: There must be finality. Respondent's to point out the new matters and are not
20 required to deal with such matters.

21

22 Ct: Parties to tender Written Submissions by 5 October 2018.

23

24 Carolyn Tan: Will your Honour be dealing with Prayer 3 of Originating Summons?

25

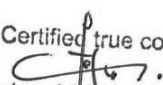
26 Ct: Will deal with it once all submissions are in.

27

28

29

30 (signed)
31 Dedar Singh Gill
32 Judicial Commissioner

Certified true copy

Private Secretary to Judicial Commissioner
Supreme Court Singapore

Annex 2

TAB

12

Tan & Au LLP

From: Seo Puay Yong <seospy3s@gmail.com>
Sent: 07 September 2017 09:19
To: 'Tan & Au LLP'
Cc: Benseo1110@gmail.com
Subject: RE: ESTATE OF TAN POH GEOK

Dear Tony Au,

1. \$8,400.00 had been remitted to your UOB Office A/c No: 374 302 2686 (as appended below) for balance payment of our Bill No 6251 (Amended) and 6236 totalling to \$12,600.00 contra against Bill No 6202 of \$4,200.00

Fund Transfer

Successful. Your fund transfer is complete.

TO
TAN & AU LLP 374-302-268-6
AMOUNT
8,400.00 SGD
FROM
Privilege Account 126-303-432-0
WHEN
07 Sep 2017
RECURRING
No
MY INITIALS
SPY & SPB
REFERENCE NUMBER
1709071527069372

2. Please prepare the official receipt for our collection together with official receipt no. 6457 dated 06 Sep 2017. Puay Beng will be collecting them from your office after checking with Tracy.
3. Charges/expenses which will be rendered at the interpleading proceedings and pushed by you to be paid by Mr Seo Puay Guan and Mr Seo Puay Hin only is greatly appreciated. We will be glad to have a copy of the charges/expenses for our reference.
4. Upon our payment of \$8,400.00, you should be in a clear position to let us know when the stakeholder monies be placed in the court. Please advise of the schedule.
5. If it is legally permissible, we will be glad to have your recommendation of a lawyer/firm whom Puay Beng & myself may need for assistance for the claims of our shares of the stakeholder monies.
6. As iterated in our last meeting with you, as soon as we can, we may be contacting you to represent us in the process of the application of the letter of representation of our mother's estate.

Best regards,

Puay Beng & Puay Yong

From: Tan & Au LLP [mailto:lawtanau@lawtanau.com.sg]
Sent: Wednesday, 6 September 2017 7:18 PM
To: 'Seo Puay Yong' <seospy3s@gmail.com>
Cc: Benseo1110@gmail.com; lawtanau@lawtanau.com.sg
Subject: RE: ESTATE OF TAN POH GEOK

Dear Puay Yong & Puay Beng,

- (a) Our firm's Bank a/c for your remittance of the \$8,400.00 balance payment of our Bill No 6251 (Amended) and 6236 totalling to \$12,600.00 contra against Bill No 6202 of \$4,200.00 (Copy of letter dated 28th August 2017 is attached) is: UOB Office A/c No: 374 302 2686.
- (b) There are no further bills except for our stakeholding and interpleading proceeding charges/expenses which will be rendered at the interpleading proceedings to be paid by all or by Mr Seo Puay Guan and Mr Seo Puay Hin only. We will push for payment by Mr Seo Puay Guan and Mr Seo Puay Hin.
- (c) Our Official Receipt will be available for collection today. Please contact our Ms Tracy Gim for the same.
- (d) We are finalising the interpleader proceeding documents and once ready, we will filed into the High Court and all stakeholding monies will be paid into the Court in consequence shortly.

Best Regards,
Tony Au
TAN & AU LLP

TAN & AU LLP
 10 Anson Road
 #18-12 International Plaza
 Singapore 079903
 Tel: (65) 62238500 Fax: (65) 62237100 *(Fax not for service of Court documents)*
 E-mail: lawtanau@lawtanau.com.sg *(E-Mail not for service of Court documents)*
 Website: www.lawtanau.com.sg
 (UEN No. T07LL0268L)

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 LEONG KUM KWOK LAW PRACTICE LLC, ADVOCATES & SOLICITORS, SINGAPORE,
 LAW CONNECT LLC, ADVOCATES & SOLICITORS, SINGAPORE,
 YBO & ASSOCIATES LLC, ADVOCATES & SOLICITORS, SINGAPORE &
 IN ASSOCIATION WITH MESSRS PHUOC & PARTNERS, INTERNATIONAL ATTORNEYS-AT-LAW, SOCIALIST REPUBLIC OF VIETNAM
 (SINGAPORE - HO CHI MINH - HANOI - DANANG)

From: Seo Puay Yong [<mailto:seospy3s@gmail.com>]
Sent: 06 September 2017 05:14
To: 'Tony Au/Tan & Au LLP' <lawtanau@lawtanau.com.sg>
Cc: Benseo1110@gmail.com
Subject: RE: ESTATE OF TAN POH GEOK

Dear Tony Au,

Annex 3

(B) EVIDENCE OF CLOSED MIND: TOTAL DISREGARD OF
DOCUMENTARY EVIDENCE BEFORE THE COURT –
PREJUDICING CASE

8. This case concerns the balance of the Sale Proceeds of a property amounting to \$2,903,467.69, i.e. to whom the Interpleaded monies representing the sale proceeds are to be paid to. The stake-holding sum of S\$2,903,467.69 has already been paid into Court. We are mere Interpleaders with no interest in the interpleaded monies except for our costs and expenses of the Interpleader proceedings.
9. The Respondents herein have raised competing claims to the Interpleaded monies of S\$2,903,467.69.
10. On 13th September 2018, during a housekeeping session in chambers the Honourable Judicial Commissioner Dedar Singh Gill (hereinafter referred to as the "Honourable JC") suddenly opined that there was no documentary evidence to support our monthly stake-holding fees of S\$4,200.00. He rejected immediately my assertions to the contrary without reference to any Affidavits or documents despite my attempt in vain to highlight the same. This evidences a closed mind since this sum was stated in our retainer letter to the 2nd to 6th Respondents dated 12 April 2017 and in our Bill No. 6202 dated 8 May 2017, Bill No.

6230 dated 4 July 2017, and Bill No. 6237 dated 14 July 2017 which had been accepted by most and received by all the Respondents herein. All evidence was already filed in Court and before the Honourable JC. I was shocked he reached such a conclusion and refused to look at the evidence before him.

(C) DOOR TO JUSTICE SHUT IN MY FACE: STRIPPED OF RIGHTS OF LITIGANTS

11. The Honourable JC also appeared to have [arranged with the other counsels] to vacate the hearings fixed for the afternoon of 13 September 2018 and the whole day on 14 September 2018 without informing us who were the Applicant. This is despite the case not having actually commenced. The first day of the hearing related solely to the cross-examination of the 1st Respondent. The case proper never got off the ground. When I raised a query on the time to return to Court for the afternoon session on 13 September 2018, the Honourable JC laughed along with the rest of the counsels and in a mocking manner and muttered something along the lines of: "Don't you know that the matter has been already been dealt with and is over?"

12. I was stunned. The Applicant had not been given any opportunity nor time to make any oral submissions on the case. I had been

stripped of all my rights. I was also not informed that the afternoon hearing was cancelled although we were the Applicant and had paid all the Court hearing fees for the case. Oral arguments by counsels on the Affidavits are the heart of the Originating Summons action. It is to be noted that the Originating Summons procedure is not a writ action culminating in an open-court trial with examination of witnesses. The Originating Summons procedure is in Chambers conducted by counsels by way of argument based on Affidavits filed. In this case due process and procedure was suddenly and abruptly aborted without even the courtesy of any explanation by the Honourable JC although there were 1.5 hearing days further scheduled in Court.

(D) GREIVIOUS DAMAGE TO THE APPLICANT

13. We are gravely concerned that we will not receive a fair hearing in the matter. We note that Justice must be seen to be done as well. Firstly, this is because the Honourable JC expressed outspoken, extreme, and unbalanced views to suggest that our stake holding fees of S\$4,200.00 per month may be subject to Law Society Disciplinary Proceedings for overcharging and therefore outside the Court's jurisdiction. This is an incredible statement when the fees were not only subject to a contractual Retainer but also subject of formal signed Deeds between the Respondents.

14. The fees were also paid and accepted by the 2nd to 6th Respondents without protest and the 2nd to 6th Respondents had thanked us for the tremendous work done. There is now exhibited emails and correspondence from the 2nd to 6th Respondents praising us and expressing great gratitude and appreciation for the work we have done, in a bundle marked "CT-2". Therefore, it is extremely remote and fanciful that the Respondents will seek to lodge a complaint to the Law Society. We had been helpful in seeking a resolution of the matter which was an old war between siblings running into decades. In the present action, siblings on both sides of the fence had sought my assistance. They have greeted me with warmth and friendship during the days in Court. I am most doubtful that they view me as the "enemy" or my conduct as capable of being the subject of a Law Society complaint

15. In addition, the Honourable JC invited the other counsels to make further written submissions on whether the Applicant's fees should be the subject of Law Society Disciplinary Proceedings and thus outside the Court's jurisdiction, without inviting or allowing the Applicant to do the same. Thereupon the Court said he will then give his oral decision.

16. Our firm is now greatly prejudiced. This is because, if we knew the present Court hearing of HC/OS 1100/2017 was not largely about the distribution of sale proceeds of \$2,903,467.69 but related to an attack on our law firm's professional conduct, we would have to inform our insurers and they may have to engage counsel on the matter to defend us. We are thus deprived of counsel and our right to defend ourselves in a decent fashion.

17. The Honourable JC also stated in less than uncertain terms that he had already made up his mind without hearing parties or reviewing submissions on evidence by the Parties that the paltry stake holding fees of S\$4,200.00 per month constituted overcharging without hearing any oral arguments on our part. When taken together with the fact that he only invited the other counsels and not the Applicant to make submissions regarding professional misconduct, it becomes apparent that the Honourable JC was merely seeking points in support of his conclusion as opposed to being fair minded as to the correct decision. It is surely natural justice that both sides of the case must be heard. This throws doubt on his ability to approach our evidence with an open mind or an objective judicial mind.

23. We are not alleging actual bias. We have a reasonable suspicion of apparent bias in view of the Honourable JC's association and long friendship and deep ties with Drew & Napier to the extent that he may share their deep-seated views and animosity towards me.

24. This is because Singapore is a very small Asian community and society full of petty jealousies. It is likely that the prejudices will infect the members of Drew & Napier sooner or later.