

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

B E T W E E N:-

CHAN CHOW WANG

Appellant

- and -

THE LAW SOCIETY OF SINGAPORE

Respondents

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CASE FOR THE RESPONDENTS

Record

1. This is an appeal from a judgement and order of the High Court of the Republic of Singapore (Wee Chong Jin, C.J., F.A. Chua, J., and Choor Singh, J.) dated the 22nd November 1974, made on the hearing of an application by the Respondent Society under Section 98 of the Legal Profession Act, Cap. 217, that the Appellant, an Advocate and Solicitor of the Supreme Court, do show cause why he should not be dealt with under the provisions of Section 84 of the Act in such manner as the Court shall deem fit. The High Court accepted the findings of a Disciplinary Committee dated the 17th July 1974 and ordered that the Appellant be struck off the Roll.

pp.50-88

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pp.35-43

2. The facts which gave rise to the hearing before the Disciplinary Committee, as found by that Committee after a hearing which lasted 15 days and at which oral evidence was given on behalf of the Society and the Appellant, are as follows :-

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(i) In September 1971 a 20-yearold labourer,

Record

Ng Sa Chia, injured his hand while at work.

(ii) In early March 1972 his mother, Madam Seah Huay, consulted the Appellant on behalf of her son with a view to claiming compensation from the employers, Bridgestone Singapore Limited.

(iii) Madam Seah Huay (hereinafter referred to as "the complainant") agreed with the Appellant that the latter should prosecute a suit on behalf of her son on the basis that the Appellant's fees should be payable only in the event of recovery from the employers and should amount to 10% of any sum so recovered. 10

(iv) The employers having denied liability, the complainant (who was illiterate) "thumb-printed" a Consent to Act as her son's next friend, and a writ was issued on the 5th September 1972. 20

(v) On 3rd December 1972 the Solicitors acting on behalf of the employers' insurers enquired by letter to the Appellant whether his client would settle at a global figure of \$5,000. Without replying and without disclosing this figure to the complainant the Appellant took out an application by way of Summons in Chambers for an order "that the Plaintiff may be at liberty to sign judgment by consent" in the action; and to the insurers' Solicitors the Appellant wrote stating that his client was prepared to accept the global offer of \$5,000. on condition that their clients were prepared to consent to judgment in the form of general damages of \$4,000 and costs of \$1,000. 30

(vi) On the application before the Deputy Registrar of the High Court it was ordered, by consent, that "the Plaintiff be at liberty to sign judgment against the above-named Defendants for the sum of \$4,000 and \$1,000 party and party costs in the action," and on the 23rd October the insurers' Solicitors sent the Appellant a cheque for \$5,000 and a Discharge Voucher to be signed by the complainant. 40

(vii) On the 31st October 1972, in response to a

letter asking her to call upon him, the claimant and her son attended at the Appellant's office. She was asked to thumb-print a document, the contents of which were not explained to her, and she did so. The Appellant then showed her \$3,000 in \$50 notes told her (when she enquired why the amount was not more in view of his earlier advice he hoped to obtain between \$4,000 and \$4,500) that that was the maximum payable; and, among other things, that if she did not accept it she might recover nothing. After counting the money the complainant accepted it and left.

(viii) Being dissatisfied, the claimant and her son made immediate enquiries of the employers direct and then discovered the true facts, i.e., that the insurers had settled for \$4,000 damages and \$1,000 costs, and that the document thumb-printed by the complainant (see sub-paragraph (vii) above) was in fact a Discharge Form acknowledging receipt of \$4,000 in full and final settlement of all claims in respect of her son's accident. With the help of the Assistant Personnel Manager of Bridgestone Singapore Limited the complainant, on 3rd November 1972, wrote a letter of complaint to the Secretary of the Respondent Society, as follows :-

"Dear Sir,

I engaged M/s. Chan Chow Wang & Co., Advocates and Solicitors to act on my behalf to sue Bridgestone Singapore Co. Pte. Ltd. where my son Ng Sa Chia is employed, in connection with injuries sustained by my son in an accident in that factory on 3/9/71. At that time, M/s. Chan Chow Wang verbally informed me that they would deduct as their fees \$10 from every \$100 damages awarded to my son.

Subsequently I was told by M/s. Chan Chow Wang that my son would be awarded \$3,000 as damages. I objected to the amount and I told M/s. Chan Chow Wang that the amount is too low. M/s. Chan Chow Wang then said that he would try and negotiate for another \$1,500 to raise the damages to \$4,500 for my son.

On 31/10/72 in response to a letter from M/s. Chan Chow Wang, I went to their office

Record

and was told that the damages awarded to my son was \$3,300. I was also told that M/s. Chan Chow Wang would deduct \$300 as fees and I would receive \$3,000 for my son. I was shown a document in English, which I did not understand, and was made to place my thumb-print on that document. I was then given \$3,00 in cash. I counted the \$3,000 (in currency notes not \$50 denominations) and my son, who was with me, also counted the money.

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Later I made inquiries with M/s. Bridgestone Singapore Co. Pte. Ltd. as to what was the actual amount of the settlement made to my son by the Insurance Company. I was given to understand the amount was \$5,000 inclusive of costs. I further understand that this amount is broken up into \$4,000 damages for my son and \$1,000 party to party costs. The document on which I was made to place my thumb-print by M/s. Chan Chow Wang was in fact a Discharge Form from M/s. United Malayan Insurance Co. regarding receipt by me of the sum of \$4,000 in full and final settlement of all claims in respect of my son's accident.

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I cannot understand why I was given only \$3,000 in cash by M/s. Chan Chow Wang when I was made to place my thumbprint on the document purportedly to be a receipt by me of \$4,000.

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I have seen the Legal Aid Bureau on the matter but I was requested to write to you for assistance.

Could you please take up the matter with my solicitors on my behalf and advise me as to what further action I should take to recover the balance of the damages for my son.

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I look forward eagerly to your reply.

Yours faithfully,"

(ix) On the 23rd November 1972 the Appellant wrote to the complainant:

"Dear Madam,

Re: Suit No. 1937 of 1972

Ng Sa Chia (an infant) suing by
his mother and next friend Seah
Huay (f) v. Bridgestone Singapore
Company (Pte.) Limited

10 We refer to above matter which has been
settled at \$4,000 plus party and party
costs at \$1,000 and upon going through our
file we note that we have inadvertently
omitted to issue you a receipt for the
payment of Solicitors and Client's costs
of \$1,000.

The receipt for the payment of Solicitors
and Client's costs of \$1,000 is now ready
for your collection at our office. You
may call at our office to collect the same
or if you like we shall post the same to
you.

Yours faithfully,"

20 (x) The complainant did not reply but instead,
and with assistance as before, wrote a
further letter to the Respondent Society
dated the 27th November 1972 as follows :-

p.59

"Dear Sir,

Further to my registered letter dated
3/11/72, I wish to advise that I have
received a letter dated 23/11/72 from M/s.
Chan Chow Wang & Co. a copy of which is
enclosed herewith for your perusal.

30 From M/s. Chan Chow Wang's letter dated
23/11/72, you will note that M/s. Chan
Chow Wang has deducted \$1,000 from the
settlement of \$4,000 awarded to my son,
the deduction being for payment of
Solicitors and Client's costs. This is
an addition to the party and party
costs of \$1,000 which has been paid
directly to my Solicitors.

40 I wish to reiterate that when I first
sought the services of M/s. Chan Chow
Wang & Co. I was categorically informed
by my Solicitors that they would deduct
only \$10 as their fees from every \$100
damages awarded to my son. Now I find that
my solicitors are charging my son \$1,000
being Solicitors and Client's costs, in

Record

addition to the party and party costs settled at \$1,000 making a total of \$2,000.

Since the total settlement is for \$5,000, my Solicitors should stick to their original agreement to deduct as fees \$10 from every \$100 awarded which means that the total amount they could deduct as fees should not exceed \$500, and my son should be paid \$4,500 instead of only \$3,000 which I have received.

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To charge my son \$1,000 for Solicitors and Client's costs when the party and party costs have been settled at \$1,000 is very excessive and unreasonable since there was not much work done in my son's case.

I feel that I have been unfairly deprived of the \$1,500 rightly belonging to my son who should receive \$4,500 of the settlement money and not \$3,000 as paid to me.

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In view of the above, I strongly urge you to consider my case sympathetically and take whatever action you deem it necessary to recover the balance of the money due to my son. I am prepared to appear before you and testify as to the evidence of the case, if necessary.

I look forward to your favourable reply in due course.

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Yours faithfully,"

(xi) On the same day the Secretary of the Inquiry Committee of the Society wrote to the Appellant enclosing a copy of the complainant's first letter dated 3rd November 1972 and inviting him to give the Committee, within 14 days, any written explanation he might wish to offer and to advise the Committee whether he wished to be heard by them.

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(xii) On the 4th December the Secretary of the Inquiry Committee sent the Appellant a copy of the complainant's second letter, dated 27th November.

(xiii) On the 11th December 1972 the Appellant replied to the Inquiry Committee denying the complainant's allegations and giving his

own explanation of the material events.

(xiv) On 1st February 1973 the Secretary of the Inquiry Committee wrote to the complainant informing her that the Committee was investigating her complaint and asking her to make a Statutory Declaration, which she did on the 21st February. Her Statutory Declaration repeated in almost identical words the complainant's first letter to the Society dated 3rd November 1972. But no copy of it was forwarded to the Appellant, who first saw it when the complainant was giving evidence at the subsequent hearing before the Disciplinary Committee.

p.91

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(xv) As required by Section 87 of the Act, the Inquiry Committee reported to the Council of the Society which considered the report and determined that there should be a formal investigation by a Disciplinary Committee. This was duly appointed by the Chief Justice under Section 91 of the Act.

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p.23

3. At the hearing, four principal charges were laid against the Appellant in the Amended Statement of the Case, as follows :-

(1) In entering into the champertous agreement to deduct as his fees the sum of \$10.00 for every \$100.00 damages awarded to the complainant's son if he succeeds in the action, in contravention of Section 107(1)(b) and (3) of the Legal Profession Act, Cap. 217, the respondent [i.e., the present Appellant] has been guilty of grossly improper conduct under Section 84(2)(b) of the Legal Profession Act, Cap. 217.

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(2) If falsely representing to the complainant that her son's employers' insurers had offered to pay \$3,300.00 damages, the respondent has been guilty of fraudulent conduct in the discharge of his professional duty, contrary to Section 84(2)(b) of the Legal Profession Act, Cap. 217.

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(3) In withholding payment to the complainant the full sum of \$4,000.00 awarded as damages to her son by the employers' insurers and paying her \$3,000.00 instead, the respondent has been guilty of fraudulent

Record

conduct in the discharge of his professional duty, contrary to Section 84(2)(b) of the Legal Profession Act, Cap. 217.

- (4) In deducting the sum of \$1,000.00 alleged to be Solicitor and Client's costs without the knowledge and consent of the complainant and without disclosing the fact that the Party and Party costs of \$1,000.00 had been paid, the respondent has been guilty of fraudulent conduct in the discharge of his professional duty, contrary to Section 84(2)(b) of the Legal Profession Act, Cap. 217." 10

pp.24-44

4. After hearing evidence and argument over a period of 15 days, the Disciplinary Committee found that the first, second and fourth charges were established, but not the third, and they made a report in accordance with Section 93(3) and Section 93(1)(c) of the Act. Those charges which were established turned on the relative credibility of the witnesses, and in particular the complainant and the Appellant. The Disciplinary Committee accepted the claimant as a witness of truth and rejected the Appellant's explanations. 20

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5. As required by Section 94(1) of the Act the Society thereupon applied to a Judge of the High Court for an order that the Appellant do show cause why he should not be dealt with under the provisions of Section 84. 30

6. At the hearing before the three Judges of the High Court, the principal submissions made on behalf of the Appellant were as follows :-

- (i) That in failing to send the Appellant a copy of the complainant's Statutory Declaration, the Inquiry Committee had acted in breach of Section 87(5) of the Act, thus rendering void its proceedings and the subsequent proceedings before the Disciplinary Committee; 40
- (ii) That in failing to send the copy Statutory Declaration to the Appellant before reporting to the Council of the Society, the Inquiry 50

Committee were in breach of the rules of natural justice, in that they thus deprived the Appellant of a proper opportunity to defend himself before that Committee;

(iii) That inadmissible evidence and prejudicial matter was introduced into the hearing before the Disciplinary Committee;

10 (iv) That the Disciplinary Committee ought not to have preferred the complainant's evidence to that of the Appellant;

(v) That in relation to the first charge, i.e., of champerty, the Disciplinary Committee failed to consider part of the Appellant's evidence because they did not refer specifically to it in their report;

20 (vi) That it was unsafe to accept the findings of the Disciplinary Committee on the first, second and fourth charges; and

(vii) That the Disciplinary Committee had wrongly relied upon the evidence of the employers' Assistant Personnel Manager as corroborating that of the complainant.

30 7. The High Court accepted the last of the above contentions, but rejected all the others. In summary, that held with regard to each :-

(i) That the Inquiry Committee had already embarked on its inquiry or investigation by the time when the Statutory Declaration came to be made, and accordingly there was no breach of Section 87(5)(a)(i) of the Act; p.73

40 (ii) That the Inquiry Committee's function was neither to condemn nor to criticise, but to inquire and investigate complaints and to report to the Council of the Society thereon (Sections 86(1) and 87(1)(c)); that the rules of natural justice did not require that the Appellant should receive a copy of the Statutory Declaration at that stage; that all the requirements of Part VII of the Act relating to p.81

Record

disciplinary proceedings were complied with; that the Appellant had been given due notice of the allegations against him and there had been no unfairness in the proceedings;

- p.82 (iii) That the Disciplinary Committee were well able to exclude from consideration all irrelevant and prejudicial matters (and had specifically stated that they had done so); 10
- p.83 (iv), (v) & (vi) That credibility was essentially a matter for the tribunal which had seen and heard the witnesses. Furthermore, the High Court, having considered the record, agreed with the tribunal's assessment and would itself have rejected the Appellant's explanations.
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The Respondent Society submits that the decision of the High Court was right and that this appeal ought to be dismissed for the following, amongst other, 20

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- (i) BECAUSE there was no breach of any of the provisions of the Act;
- (ii) BECAUSE the Appellant had ample notice of the allegations made against him and the Disciplinary Committee acted fairly and properly in all respects; 30
- (iii) BECAUSE the Disciplinary Committee was fully entitled to accept the complainant's evidence and to reject that of the Applicant;
- (iv) BECAUSE the affirmation by the High Court of the Disciplinary Committee's findings of fact constitutes "concurrent findings of fact" which preclude any further review; and
- (v) BECAUSE the judgment of the High Court was correct. 40

ROBERT GATEHOUSE

NICHOLAS LYELL

No. 17 of 1976

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PARKER GARRETT & CO.,
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Respondents Solicitors