

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE HIGH COURT IN SINGAPORE

B E T W E E N :

H.L. WEE Appellant

- and -

THE LAW SOCIETY OF SINGAPORE Respondent

CASE FOR THE RESPONDENT

10

Record

1. This is an appeal, with leave of the High Court in Singapore, by the Appellant, Mr. H.L. Wee, from an order of that Court (Chief Justice Wee Chong Jin, Mr. Justice Kulasekaram and Mr. Justice F.A. Chua) dated the 27th August 1981, by which the Appellant was suspended from practice as an Advocate and Solicitor for a period of two years.

Pt. I p. 519

Pt. I pp. 518/
519

THE FACTS

20

2. Until so suspended the Appellant had been an Advocate and Solicitor of the Supreme Court of Singapore of approximately thirty years standing, and at the time in 1977 when the events complained of by the Respondent occurred, was the President of the Respondent Society, and had been since 1975. He had also held office at various times as a member of the Council of the Respondent Society.

Pt. II p. 5
para 1 (admitted)

30

3. At the material time, the Appellant practised under the name and style of "Braddell Brothers" ("the Firm"), of which practice he was the sole proprietor. In or about 1971, the Appellant employed one Santhiran ("S") as an assistant Advocate and Solicitor.

Pt. II p. 5
paras 1 & 2
(admitted)

4. In February 1976 the Firm had in its service Four assistant Advocates and Solicitors, of whom S was the senior. At the end of February 1976, the Appellant had reason to believe that S had misappropriated a sum

Pt. I p. 174
11.1 - 10

Record

Pt. I p. 174
11. 16-21
Pt. I p.174
1.30 - p.175
1.33

of approximately \$318 from the Firm's Clients' account. On or about the 2nd or 3rd March 1976, the Appellant confronted S, who admitted taking about \$80,000 and promised to refund this money if he was unable to give satisfactory explanations.

Pt. I pp.516
paras. 4 and 5
(admitted)

5. The Appellant then caused an investigation to be carried out by one Lisa Choo, an employee of the Firm, and by or about mid-March 1976 it had been established, as a consequence of this investigation that S had committed criminal breach of trust of a sum of \$298,270.75 ("the offence"). Between the 9th March and 10th June 1976, S made restitution to the Appellant of \$297,956.12.

10

Pt. I p. 262
1.14 - p. 270
1.32

6. The Appellant did not report the offence to the Respondent Society, or inform the Firm's auditors of it. He instructed Lisa Choo to continue her investigation with a view to establishing whether any further monies had been misappropriated by S.

Pt. I p. 181
11.10 - 24

7. The money repaid by S to the Firm (the sum of \$297,956.12 referred to in 5 above) was paid into a Suspense Account ("the Suspense Account") and transferred out of the Suspense Account to various Clients' accounts as and when Lisa Choo was able to identify the Clients' accounts from which monies had been misappropriated.

20

Pt. I p. 201
11.21 - 25

8. In or about August or September 1976 Lisa Choo informed the Appellant that she was unable to make further progress in her investigation of the Firm's accounts. The Appellant, believing that further sums had been misappropriated by S, sought and obtained the consent of S to the appointment of a firm of auditors, Medora and Tong, who were not the Firm's auditors, to carry on the investigation. The Firm's auditors were deliberately not told of this appointment, which was made on the 9th November 1976. The terms of reference of Medora and Tong were, in effect, to make, with the assistance of S, "a final report on the actual amount of the defalcation."

30

Pt. I p. 205
1.22 - p. 206
1.11

9. Following discovery of the offence in February 1976, S remained in the employment of the Firm, without salary or other remuneration, until the 21st December 1976. For that period of nine months S continued to see and attend to clients, and generally to carry out his duties as an Assistant Advocate and Solicitor. At no time during this period did the Appellant report the offence to the Respondent Society.

40

Pt. I p. 235
1.34 - p. 240
1.33

Pt. I p. 230
11.7 - 9

10. On the 21st December 1976 S, without prior notice to the Appellant left the employment of the Firm.

Record

11. On the 28th December, 1976 Medora and Tong delivered a preliminary report which concluded that a sum of \$488,503.37 had been withdrawn by S from Client's account without proper documentary support.

Pt. II p. 172
penultimate
para.

12. In January 1977, the Appellant learned that S had commenced practice as an Advocate and Solicitor on his own account. Notwithstanding this knowledge, the Appellant, who regarded S as a criminal at large, made no report to the Respondent Society.

Pt. I p. 228
1.28 - p.235 1.33

10 13. In or about July 1976, the Firm's auditors, Turquand Youngs & Co., discovered the Suspense Account. They asked S about it, "and were told a pack of lies". In or about December 1976 or January 1977 the Auditors asked the Appellant about the Suspense account. He said "I will see you later about it", but did not.

Pt. II p.4

20 14. In early March 1977, the auditors commenced their audit of the Firm's accounts for the year ended 31st December 1976, during which they again asked the Appellant to explain the Suspense Account. They were then informed by the Appellant, for the first time, of S's criminal breaches of trust, of which he had known approximately a year earlier. The auditors were told that the sum of \$149,745 by which this account was then in credit, represented monies recovered from S. On the 10th March 1977 the Appellant informed Turquand Youngs & Co., again for the first time, that Medora and Tong had been appointed some months previously to determine the extent of S's defalcations, and that their investigation was still in progress.

30 Pt. II pp.208 -
209 Pt. I
pp. 246-249
1.35 pp. 282
1.10 - 286 1.21

15. Throughout the period between the discovery of the offence and eventual reporting to the Respondent Society, the Appellant attended formal meetings of the Respondent Society. He said nothing about the offence to his colleagues on the Council of the Respondent Society.

Pt. I p. 249
1.36 -p.251 1.42

40 16. In late March 1977, approximately a year after the offence was discovered, the Appellant informed the Attorney-General and the Vice-President of the Respondent Society verbally of S's misconduct and stated that a formal complaint was forthcoming. There is no evidence as to precisely what the Appellant told either of these persons, and more particularly whether he told them how much money had been taken, or when the offence had been discovered.

Pt. II p. 60
penultimate
para.

17. On the 30th April 1977, some thirteen months after the discovery of the offence, the Appellant wrote to the Respondent Society stating that "certain

Record

Pt. II p. 12 defalcations and misappropriation of moneys from various Clients' accounts and costs in my Firm appears to have been carried out by S. Santhiran, a former employee of this Firm". The letter went on to state that the Appellant would be presenting a complaint against S when Medora and Tong had completed their supplementary report.

18. On the 6th May 1977 the Appellant informed the Attorney-General and the Vice-President of the Respondent Society that there would be a delay in the submission of the Formal complaint since a Supplementary Report by Medora and Tong had yet to be received.

10

Pt. II p. 13-22 19. A Supplementary Report was issued on the 26th May 1977. On the same day the Appellant made a formal complaint concerning S to the Respondent Society, and reported him to the police.

20. The Appellant's explanations for his delay of approximately thirteen months in reporting the offence were that he required the co-operation of S in order to ascertain in the interests of his Clients firstly, how much money S had taken and secondly, how much of it belonged to each individual client. That co-operation would not have been forthcoming if he had reported S upon discovering the commission of the offence, or within a reasonable time thereafter. The delay was aggravated by the time taken by Medora and Tong to carry out their investigations.

20

Pt. I p. 148
1.13 - p. 149
1.50

PROCEEDINGS AGAINST THE APPELLANT PURSUANT TO THE LEGAL PROFESSION ACT

Pt. II pp. 52/53 21. By letter dated the 18th March 1978 Appellant was required by the Inquiry Committee of the Respondent Society, which Committee had decided of its own motion pursuant to Section 87 (b) of the Legal Profession Act ("the Act") to inquire into the Appellant's conduct, to explain his delay in reporting the defalcations of S. The Appellant submitted his written explanation by letter dated the 19th April, 1978 and appeared before the Inquiry Committee on the 26th May 1978.

30

Pt. II pp. 58-
77

22. The Inquiry Committee in due course reported to the Council of the Respondent Society, in consequence of which the Council determined, under section 88(1)(c) of the Act, that there should be formal investigation by a Disciplinary Committee into the Appellants "failure to report the criminal breach of trust committed by Mr. S. Santhiran when he was a Legal Assistant in the firm of Braddell Brothers to the Law Society earlier."

40

Pt. II p. 81

23. A Disciplinary Committee, comprising three Advocates and Solicitors (two of whom had previously held office as President of the Respondent Society) having

Record

been duly constituted, proceeded to investigate the charge against the Appellant that, by reason of his delay in reporting the actions of S, he was guilty of grossly improper conduct in the discharge of his professional duty within the meaning of Section 84(2)(b) of the Act.

10 24. At the outset of the investigation by the Disciplinary Committee, Counsel for the Appellant indicated to Counsel for the Respondent Society that it would be contended on behalf of the Appellant that the only question open for consideration was the Appellant's admitted delay in reporting and that it was not open to the Committee to consider, in determining whether the admitted delay of 13 months amounted to grossly improper conduct, to consider (a) the Appellant's motive for the delay and (b) the consequences of the delay.

Pt. I p.10
1.38 - p. 12
1.17

20 25. Accordingly, before evidence was led or any substantive argument advanced, the following preliminary points were left with the Disciplinary Committee for determination:

- 30 (a) whether the Committee was entitled to consider the natural and probable consequences of the Appellant's admitted delay in reporting to the Law Society; and
- (b) whether Counsel for the Law Society was entitled to address the Committee in opening, and to cross-examine the Appellant, if he chose to give evidence, on the merits and truthfulness of the Appellant's explanation for his admitted delay, and his motive for it.

Pt. I p. 12
11 18-40

26. The Disciplinary Committee, having heard argument, determined both preliminary questions in the affirmative, whereupon it proceeded with its investigation which took five working days, throughout which the Appellant was represented by leading and junior Counsel.

Pt. I pp. 13 -
16
Pt. I pp. 67 -
71

40 27. The Disciplinary Committee issued its report on the 19th November 1980. It concluded, pursuant to Section 93(1) (c) of the Act, that cause of sufficient gravity existed for disciplinary action against the Appellant. In so concluding it rejected the Appellant's contention that, in failing to report S's criminal breaches of trust he had merely been guilty of an error of judgment. It rejected the Appellant's explanations for the delay (see 20 above) and found that the Appellant had delayed reporting S as part of a scheme to enable S to make restitution. The Committee also took into consideration that Santhiran, whom the Appellant described in evidence as a thief, was able as a consequence of the delay in

Pt. I pp. 461 -
501

Pt. I p. 500
11 12-31

Pt. I p. 494
1.25 - p. 497
1.23
Pt. I p.247 1.42-
p.248 1.14 p.232
1.13 - 29

50

Record

Pt. I p. 497
1.24 - p. 500
1.10 p. 500
1.39 - p. 501
1.6

reporting to continue in practice as an Advocate and Solicitor, initially in the employment of the Appellant and subsequently on his own account.

Pt. I p. 502

28. On the 13th February 1981 the Appellant was, upon the Respondent's application, ordered to show cause why he should not be dealt with by the High Court under Section 98(1) of the Legal Profession Act, which provides for an Advocate and Solicitor to be censured, suspended or struck off the Roll.

10

Pt. I pp. 502 -
518

29. The proceedings to show cause occupied three days and the Appellant was again represented by leading and junior Counsel. Judgment was reserved, and delivered on the 27th August, 1981. In the result, the High Court held that the Appellant had been guilty of grossly improper conduct. In ordering that the Appellant be suspended from practice for a period of two years the High Court took into account the findings of part of the Disciplinary Committee, namely that:

20

Pt. I p. 517
1.32 - p. 518
1.5

- (i) the Appellant was at all material times the incumbent President of the Law Society;
- (ii) the delay in reporting was premeditated, and part of a scheme designed to recover restitution from S;
- (iii) the Appellant took great pains to ensure that the scheme would not be prejudiced by premature disclosure;
- (iv) S was enabled, as a consequence of the delay, to actively practice as an Advocate and Solicitor.

30

Pt. I p. 515
1.10 - p. 517
1.16

In the course of its judgment the High Court held that the Appellant's motive for the admitted delay of thirteen months in reporting S's offences to the Respondent Society and the consequences of that delay, were relevant factors and had been properly considered by the Disciplinary Committee. It upheld the Disciplinary Committee's findings of fact (paragraph 28 of this Case) and rejected the argument advanced on behalf of the Appellant that since neither motive nor consequences were referred to the Disciplinary Committee for investigation, it had erred fundamentally in considering these factors. The High Court distinguished In the Matter of an Advocate and Solicitor (1978) 2MLJ 7, upon which (inter alia) Counsel for the Appellant relied.

Pt. I p. 513
1.31 - p. 515
1.9

40

Pt. I P.516
1.10 - p. 517
1.16

It is against this judgment that the Appellant now appeals.

THE ISSUES

30. The Respondent Society apprehends the issues in this appeal to be :

- (i) whether the Disciplinary Committee and the High Court were right in concluding that the admitted delay of thirteen months in reporting criminal breaches of trust by his assistant Solicitor amounted to grossly improper conduct on the part of the Appellant;
- 10 (ii) whether in determining (i) the Disciplinary Committee and the High Court were entitled to consider the Appellant's motives for the delay and the consequences thereof, and if so whether the conclusions of the Disciplinary Committee and the High Court on these issues are sustainable on the evidence and/or the inferences to be drawn therefrom;
- 20 (iii) whether in all the circumstances the High Court was right to order that the Appellant be suspended from practice for a period of two years.

THE RESPONDENT'S SUBMISSIONS

The Respondent Society submits that the judgment of the High Court in exercise of its jurisdiction under Section 98 of the Legal Profession Act was right and ought to be affirmed, and that this Appeal should be dismissed with costs for the following REASONS (amongst others) :

- 30 (i) the Disciplinary Committee and the High Court were right in holding that the Appellant's delay amounted to grossly improper conduct, and that this conclusion, arrived at on the basis of concurrent findings of fact, ought not to be disturbed;
- (ii) the Disciplinary Committee and the High Court were entitled to consider the Appellant's motive for the delay since, inter alia;
 - 40 (a) he had put motive in issue at the outset in explaining the delay to the Inquiry Committee, and had re-asserted motive in evidence before the Disciplinary Committee; and
 - (b) motive went to the degree of impropriety, a matter directly in issue since it fell to be decided whether the Appellant's conduct

Record

if improper, was grossly so.

- (iii) the Disciplinary Committee and the High Court were entitled to consider the natural and probable consequences of the delay, since:
- (a) the Appellant must be deemed to have been aware, and was aware of those consequences; and
 - (b) since his awareness went to the degree of impropriety, a matter directly in issue since it fell to be decided whether the Appellant's conduct, if improper, was grossly so. 10
- (iv) the Disciplinary Committee and the High Court were entitled, on the evidence, and/or the inferences which were properly drawn therefrom, to find, and did find, that the Appellant's delay, in reporting the offence to the Respondent Society was such as to render the Appellant's conduct dishonourable to himself as a man and dishonourable in the context of the profession; or alternatively, that the Appellant's conduct was such as would be reasonably regarded as disgraceful or dishonourable by lawyers of good repute and competence, and accordingly that his conduct was grossly improper; 20
- (v) having regard to the facts (paragraphs 2 to 20 inclusive of this Case) and the matters it took into account, (paragraph 23 of this Case), the sanction imposed by the High Court was appropriate. 30

J. GRIMBERG

No. 44 of 1981

IN THE JUDICIAL COMMITTEE OF THE PRIVY
COUNCIL

O N A P P E A L
FROM THE HIGH COURT IN SINGAPORE

B E T W E E N :

H. L. WEE Appellant

and

THE LAW SOCIETY OF SINGAPORE Respondent

CASE FOR THE RESPONDENT

LINKLATERS & PAINES,
Barrington House,
59-67 Gresham Street,
London EC2V 7JA

Solicitors for the Respondent