

Abdul Rahim Rajudin

Appellant

v.

The Law Society of Singapore

Respondent

FROM

THE HIGH COURT OF THE
REPUBLIC OF SINGAPORE

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL, DELIVERED THE
21ST JANUARY 1991

Present at the hearing:-

LORD BRIDGE OF HARWICH
LORD BRANDON OF OAKBROOK
LORD ACKNER
LORD GOFF OF CHIEVELEY
LORD LOWRY

[Delivered by Lord Goff of Chieveley]

There is before their Lordships an appeal by Abdul Rahim Rajudin from an order of the High Court of Singapore whereby it was ordered, pursuant to section 80 of the Legal Profession Act, that he should be suspended from practice as an advocate and solicitor for a period of two months, and that he should pay to the respondent, the Law Society of Singapore, the costs of and incidental to the proceedings in the High Court and of proceedings before the Disciplinary Committee of the Law Society.

The facts of the matter are, in brief, as follows. The appellant, who practised as a sole practitioner, acted for Peter Chaw Chuan Choon ("Peter Chaw") in relation to the purchase by him of certain property. By an agreement executed on or about 4th February 1980, Peter Chaw agreed to purchase the property for \$667,653 (\$7 per square foot) without vacant possession. Peter Chaw asked the appellant to find him a purchaser for the property; and the appellant, through Roland Mah, introduced Philip Yap Pui Long ("Philip Yap") to Peter Chaw. On 4th March 1980, following negotiations at the appellant's office, a price was agreed between Peter Chaw and Philip Yap of \$2,241,406.50 (\$23.50 per square foot); on the following day an agreement for the sale of the property by Peter Chaw to Philip Yap, at

- (a) That he took advantage of Peter Chaw in demanding unconscionable commissions for putting through the transactions relating to the property;
- (b) That he committed a breach of rule 14 of the Solicitors' Remuneration Order 1974; and
- (c) That he rendered an excessive bill for \$150,000.

As to the second of these complaints, they held that rule 14 had no application; and as to the third they held that, though the bill was excessive and submission of the bill constituted improper conduct, the conduct in question was not grossly improper. They further rejected the determination by the Committee that there had been a contravention by the appellant of Schedule VI of the Order of 1974, because there had been no complaint or charge against the appellant alleging contravention of Schedule VI. However, they upheld the first of the three complaints, and held that the appellant's conduct so complained of amounted to grossly improper conduct in the discharge of his professional duty. For this, they imposed the penalty of suspension from practice for two months, and made the order of costs against the appellant already referred to. It is against this order that the appellant now appeals.

It follows that, in the present appeal, the only complaint with which their Lordships are concerned is the first of the three complaints listed by the High Court, viz. that the appellant took advantage of Peter Chaw in demanding unconscionable commissions.

Their Lordships turn therefore to the reasoning of the High Court with regard to this aspect of the case, which related to the Commission Agreement. Their reasoning was as follows:

- (a) There was evidence, which the Committee accepted, that the appellant had asked for commission at the rate of \$1.25 per square foot at an earlier date on about 4th March 1980.
- (b) The Committee accepted the evidence of Peter Chaw that he had no choice but to sign the Commission Agreement when requested to do so by the appellant, as he urgently needed the appellant's assistance towards the end of June 1980. In the opinion of the High Court, the Committee was justified in accepting the evidence of Peter Chaw on this point. The evidence showed that Peter Chaw was at the material time in need of help, because American Express (on whose petition Peter Chaw was later adjudicated bankrupt) was pressing for payment. Peter Chaw needed the appellant to continue acting for him, and did not have much of a free choice in signing the Commission Agreement, which he was under some pressure to sign.

- (c) The Committee concluded that the commission payable under the Commission Agreement was grossly excessive and unconscionable. The High Court agreed with that conclusion. They said:-

"In our opinion, the irresistible inference from the facts was that Peter Chaw was never free (in agreeing to and signing the Commission Agreement) from the influence of the [appellant] acting as his solicitor. The [appellant], we find, abused this trust and confidence by obtaining for himself a hefty commission."

They re-examined the question whether the commission was grossly excessive; they concluded that it was, and stated that the relevant comparisons afforded the clearest indication that the appellant had abused the solicitor and client relationship to promote his own interests.

- (d) The High Court expressed their general conclusion on this aspect of the case in these words:-

"We find the Commission Agreement (which includes the amount in the Note) was unfairly made in that the [appellant] took advantage of Peter Chaw and that the terms of the agreement are unreasonable in that they are grossly excessive and indicate in a telling manner the [appellant's] abuse of his fiduciary position. Such conduct on the part of the [appellant] was grossly improper in the discharge of his professional duty."

Before their Lordships, Mr. Burke-Gaffney (who said everything that could be said on behalf of the appellant) criticised the reasoning of the High Court. His principal criticism was that the conclusion of the High Court that Peter Chaw was under some pressure when signing the Commission Agreement was based on verbatim extracts from the record of proceedings before the Disciplinary Committee, upon which the Disciplinary Committee had, he submitted, made no finding save that the commission was a "gross" overcharging or an "overcharge and unconscionable". It followed, he submitted, that the conclusion of the High Court that Peter Chaw was under pressure in signing the Commission Agreement was beyond their powers and was wrong.

Their Lordships are unable to accept this argument. In a passage from the record of Peter Chaw's evidence quoted by the High Court, Peter Chaw is recorded as having stated that the appellant demanded a commission of \$1.25 per square foot as a condition of his writing to Philip Yap, and further that he urgently required the money from Philip Yap because he needed it to pay American Express. Among the Disciplinary Committee's comments on the Commission Agreement there is to be found the following passage:

"The stand taken by the [appellant] on the Commission Agreement was rather ambiguous. On the one hand he said it was 'finder's fee' to which he was entitled for securing a buyer for the property in his personal capacity and not in his professional capacity, and on the other, he said it was initially a gift from Chaw, a voluntary payment that Chaw insisted he accept. Chaw, on the other hand, insofar as he can be believed, indicated that he had no choice but to sign the document when requested by the [appellant] as he urgently needed the [appellant's] assistance towards the end of June 1980. There is evidence that Chaw had problems then and the question of his need to change solicitor was arising at about this time."

It is plain that the High Court read the Disciplinary Committee's comments in this passage, coupled no doubt with its conclusion that the commission charged under the Commission Agreement was unconscionable, as a finding that Peter Chaw had been under pressure when signing the Commission Agreement. Their Lordships would be most reluctant to differ from the conclusion of the High Court upon such a point; but in fact they agree with the High Court's understanding of the report of the Disciplinary Committee. In any event, however, the High Court was entitled to reach this conclusion because it was an irresistible inference from the material before them. It is obvious that the Disciplinary Committee must have rejected the appellant's evidence that the grossly excessive rate of commission payable under the Commission Agreement was, in origin, a gift which Peter Chaw insisted that the appellant should keep. Furthermore, on the evidence of the appellant himself, Peter Chaw informed him at the time that he did not have any money as American Express was chasing him for payment. In these circumstances, it was an irresistible inference that Peter Chaw had indeed acted under pressure in signing the Commission Agreement; and this reinforces their conclusion that the Disciplinary Committee, expressing itself as it did, must have reached the same conclusion.

Mr. Burke-Gaffney further submitted that this head of complaint was not within the terms of the formal complaint laid before the Disciplinary Committee. Their Lordships disagree, it plainly was.

Their Lordships, having considered the submissions made on the appellant's behalf by Mr. Burke-Gaffney, and having taken into account certain further points advanced in his written case, are of the opinion that the High Court were fully entitled to reach the conclusion that the appellant's conduct amounted to grossly improper conduct in the discharge of his professional duty. It follows that the appeal must be dismissed with costs.