

**DALAM MAHKAMAH RAYUAN MALAYSIA
(BIDANGKUASA RAYUAN)
RAYUAN SIVIL NO. P-02-929-10**

ANTARA

LOH CHOW TET ... PERAYU

DAN

KOK BUN KAU ... RESPONDEN

(Dalam Mahkamah Tinggi Malaya Di Pulau Pinang
Usul Pemula No. 25-34-2009 (MT-1))

Antara

Loh Chow Tet ... Plaintiff

Dan

Kok Bun Kau ... Responden)

CORAM:

**LOW HOP BING, JCA
MOHD HISHAMUDIN BIN MD YUNUS, JCA
LINTON ALBERT, JCA**

LOW HOP BING, JCA
DELIVERING THE JUDGMENT OF THE COURT

I. APPEAL

[1] The learned Judicial Commissioner had affirmed the decision of the Advocates and Solicitors Disciplinary Board (“the DB”) ordering the Appellant (“the Advocate & Solicitor”) to pay a penalty of RM5,000.00.

[2] We have dismissed the Appeal by the Advocate and Solicitor (“A&S”) and upheld the learned JC’s decision. We now give our grounds.

II. FACTUAL BACKGROUND

[3] In 1999, the Respondent (“the Client”) appointed the A & S to obtain a Probate for the estate of the Client’s mother.

[4] The A & S informed the Client that the legal fees would be low.

[5] The Client paid a sum of RM2,000.00 as disbursements.

[6] Upon the grant of the Probate, the A & S sent a bill for RM13,471.87. The Client disputed the bill as being too high and refused to make any payment.

[7] The A & S then filed a civil claim in the Magistrate's Court and obtained judgment for the said sum ("the Judgment Sum") against the Client.

[8] The A & S allowed the Client to satisfy the Judgment Sum on or before 28 June 2006 at 12 noon. However, the Client failed to do so. As a result, the A & S filed bankruptcy proceedings against the Client, and obtained Adjudication Order and Receiving Order ("AO & RO") against the Client.

[9] On 5 July 2006, the Client paid the Judgment Sum by depositing it in the bank account of the A & S, and requested the A & S to have the AO & RO rescinded.

[10] As the Client was at the material time a bankrupt, the Judgment Sum should have been paid to the Insolvency Department and not direct to the A & S. Having received the Judgment Sum, the A & S should have paid it to the Insolvency Department.

[11] Vide letter dated 5 July 2006, the A & S informed the Client's new solicitors M/s AG Roseli & Paul that the A & S had undertaken to remit the Judgment Sum to the Insolvency Department "to be administered as part of the Judgment Debtor's estate". The Client had sent four letters to the A & S to enquire about the said undertaking given by the A & S, but the A & S had never replied thereto. The Client continued to be a bankrupt.

[12] Being dissatisfied, the Client lodged a complaint with the DB relating to the aforesaid conduct of the A & S.

[13] After due enquiry, the DB ordered the A & S to pay a penalty of RM5,000.

[14] The DB's order was affirmed by the learned JC. Hence, this appeal by the A & S.

III. MISCARRIAGE OF JUSTICE

[15] Various issues were raised by learned counsel for the A & S and the Client respectively. After due consideration, we identified the crucial question for our decision as follows:

“On the facts and the law, did the DB and the learned JC occasion any miscarriage of justice?”

[16] We note that in this Appeal, the DB has considered the factual report of the Disciplinary Committee (“the DC”). The DB has been entrusted with the responsibility of investigating and deciding on the conduct of the A & S. Whether the A & S has measured up to the professional standard expected of a member of the profession or conduct unbecoming of an advocate and solicitor is a matter which is eminently within the domain of the DB, and not the Court. This

sentiment was expressed in *Guna Muthusamy v LM Ong* [1998] 4 CLJ 878, in the following words:

“It is primarily for members of the Bar to decide what amounts to conduct unbecoming of an advocate and solicitor in particular circumstance according to standards established by members of that honorable profession. Courts must necessarily exercise caution when entertaining an appeal in which the central question is whether a particular conduct is unprofessional and cases meriting curial interference is rare. Otherwise it will be the court and not the profession that will determine the yard stick of professional behaviour”.

[17] Reverting to the instant Appeal, we are of the view that in the process of arriving at the aforesaid decision and in imposing the penalty on the A & S, the DB had not occasioned any miscarriage of justice by way of procedural unfairness or jurisdictional error. The simple and straightforward fact is that the A & S has given his undertaking to remit the Judgment Sum to the Insolvency Department and that there was a breach by the A & S of his undertaking or indeed a failure on his part to fulfil his undertaking. We agree with the DB that the A & S's breach of undertaking or failure to fulfil his undertaking clearly constitutes professional misconduct or conduct unbecoming of an advocate and solicitor. As there was no miscarriage of justice by the DB and, for that matter, the learned JC, we answer the above question in the negative.

IV. CONCLUSION

[18] For reasons given above, we upheld that the learned JC's decision which in turn affirmed the decision of the DB. There was no merit in this Appeal which we dismissed with costs of RM5,000.

[19] Decision of the High Court is affirmed. Deposit to the Client on account of the fixed costs.

DATUK WIRA LOW HOP BING

Judge

Court of Appeal Malaysia

PUTRAJAYA

Dated this 2nd day of March 2012

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REFERENCE:

***Guna Muthusamy v LM Ong* [1998] 4 CLJ 878**