

CITATION: *Legal Services Commissioner v Lim* [2011] QCAT 291

PARTIES: Legal Services Commissioner
(Applicant)
v
Georgia Chin Hua Lim
(Respondent)

APPLICATION NUMBER: OCR238-10

MATTER TYPE: Occupational regulation matters

HEARING DATE: 9 March 2011

HEARD AT: Brisbane

DECISION OF: **Justice Alan Wilson, President**
Assisted by:
Mr M Woods
(Practitioner Panel Member)
Dr S Dann
(Lay Panel Member)

DELIVERED ON: 16 June 2011

DELIVERED AT: Brisbane

ORDERS MADE:

- 1. Ms Lim is publicly reprimanded.**
- 2. She is also ordered to pay a fine in the sum of \$7,000 within 90 days to the Legal Practitioners Interest on Trust Accounts Fund.**
- 3. She is to pay the Applicant's costs fixed in the amount of \$1,500 to the applicant within 90 days.**

CATCHWORDS: PROFESSIONS AND TRADES –
LAWYERS – COMPLAINTS AND
DISCIPLINE – DISCIPLINARY
PROCEEDINGS – PROFESSIONAL
MISCONDUCT – where respondent charged
with knowingly making a misleading
statement to a Court, in an affidavit sworn by
her – where she admits the charges – where
her conduct represents professional
misconduct – appropriate penalty

Legal Profession Act 2007, ss 418, 419, 456
Legal Profession (Solicitors) Rule 2007,
 r 14.1

Legal Services Commissioner v Hackett
 [2006] LPT 015, cited
Legal Services Commissioner v Ramsden
 [2006] LPT 010, cited
Legal Services Commissioner v Sorban
 [2009] LPT 5, cited
Legal Services Commissioner v Voll [2008]
 QCA 293; [2008] LPT, cited

APPEARANCES and REPRESENTATION (if any):

APPLICANT: Ms E Prasad, Solicitor,
 representing the Legal Services
 Commissioner

RESPONDENT: Mr O’Gorman SC
 instructed by McMillan Legal for the
 respondent

REASONS FOR DECISION

- [1] Ms Lim, a young lawyer aged 27, has admitted that in January 2010 she knowingly swore a false affidavit in proceedings in a Sydney court that she was conducting for a client. She accepts that she should be publicly reprimanded and the only remaining question in the proceedings is whether she should also be fined (and, if so, how much); or, perhaps, obliged to undergo a period of supervision. She also acknowledges that she must pay the Commissioners’ costs.
- [2] At the time she swore the affidavit she was working for a lawyer representing a debt collection agency. The work involved long hours, and considerable pressure. She also had some problems with her family in Malaysia, and her partner had been unemployed for some time.
- [3] In late 2009 she took instructions for a client at the debt collection agency to commence debt proceedings in the Local Court in Sydney. Her client was claiming about \$5,400 for a dishwashing detergent dispensing system. The defendant filed a defence and cross claim but, for reasons that are not clear, she did not have instructions in respect of the cross claim when the time for filing a defence to that pleading had passed. On the advice of a Sydney barrister she filed a Notice of Motion and an affidavit, in which she attempted to explain the failure and its attendant delay.
- [4] In the affidavit she swore that her failure to file her client’s defence to the cross claim was due to an administrative error – that the document had been sent to her New South Wales’ agent in mid December, but posted to an incorrect address, and not received until much later. (The barrister, it should be observed, did not suggest any of this.)

- [5] On its face, however, the defence which accompanied the affidavit referred to a date which meant the claim of administrative error had to be wrong. In other words, Ms Lim's untruthfulness was apparent from the very contents of her own false affidavit and, in that sense, amateurish and almost certain to be discovered.
- [6] The *Legal Profession Act 2007* defines two classes of conduct which may lead to the discipline and sanctioning of lawyers: *unsatisfactory professional conduct* (s 418) and, *professional misconduct* (s 419). The Commissioner asserts, and Ms Lim and her legal representatives accept, that an offence like this involving a misleading statement to the court (in breach of r 14.1 of the *Legal Profession (Solicitors) Rule 2007*) involves a serious breach of ethical standards which should be categorised as professional misconduct.
- [7] Here, Ms Lim not only prepared and swore an affidavit which contained false information but sought to rely on it as an apparently legitimate document for the purposes of court proceedings.
- [8] The respondent in *Legal Services Commissioner v Hackett*¹ was also charged with swearing a misleading affidavit for use in court proceedings. He was a barrister and also the chair of the management committee of a Body Corporate at a units building at the Gold Coast in which his wife owned one of the units. The Tribunal held that the Barrister, as an officer of the Court, was guilty of 'plainly professional misconduct', although not characterised by dishonesty: rather, the case involved gross carelessness or sloppiness, or dereliction which it was said had no place in the preparation of an affidavit and especially one to be sworn by an officer of the court.² The respondent barrister was publicly reprimanded, and ordered to pay a penalty of \$5,000.
- [9] In *Legal Services Commissioner v Sorban*³ the respondent solicitor had also created a false document – an email – which gave a misleading impression about certain facts relevant to a commercial transaction. The Tribunal held that the solicitor had created the false document with the intention of misleading both his clients and another party although, as here, it was not done for direct pecuniary gain. The conduct was held to amount to professional misconduct but, after allowances were made for the fact the solicitor was labouring under an extremely heavy workload, and some stress associated with uncertainty about his future as a solicitor, at an early stage of his career, he was reprimanded and fined \$1,500.
- [10] In *Legal Services Commissioner v Voll*⁴ the solicitor was facing charges associated with, among other things, lying to a Tribunal and, also, neglect and incompetence. The lawyer had been retained by clients to act in proceedings before the Queensland Building Tribunal but when the hearing commenced in Bundaberg the lawyer claimed to be unable to contact his client who, he told the Tribunal, was stranded in Sydney. In truth, his client told him he had not realised the hearing was on and it would be impossible for him to return to Bundaberg. The solicitor was found guilty of

¹ [2006] LPT 015.

² per de Jersey CJ at 8.

³ [2009] LPT 5.

⁴ [2008] QCA 293; [2008] LPT 1.

professional misconduct on both charges, publicly reprimanded, and ordered to pay a penalty of \$20,000.

- [11] A fine of \$5,000 was imposed in *Legal Services Commissioner v Ramsden*⁵ where the respondent solicitor post dated a mortgage in order to avoid stamp duty, albeit in a relatively small amount. He was also publicly reprimanded.
- [12] Ms Lim was admitted as a lawyer in Queensland in January 2007. The Commission accepts that she has cooperated during the investigation of the allegations against her and, at a reasonably early date, signified that she accepted that her conduct amounted to professional misconduct and admitted the factual allegations made against her.
- [13] After her misconduct came to light her employer at the time dismissed her and, she says, she forfeited an entitlement to wages of almost \$3,800. She did not renew her practicing certificate for 2010-2011.
- [14] In August 2010 she began working as a paralegal with her current employer, Mr McMillan, a very experienced solicitor. She now has a full-time position with him as a conveyancing clerk. He represented her before this tribunal, and has indicated that her employment is secure and he holds her in high regard.
- [15] She has no other disciplinary proceedings or history, and has filed an affidavit signifying an understanding of the nature of her wrongdoing, and insight into its seriousness, and remorse.
- [16] She has also produced a medical report from a psychiatrist, who accepts that she has an appropriate level of insight into her wrongful conduct, and exhibits genuine remorse and contrition; and, is of the opinion that both personal and work pressures 'had some degree of contribution' to her misconduct.
- [17] Upon a finding of professional misconduct the Tribunal may make any order it thinks fit, including one or more of those set out in s 456 of the *Legal Profession Act 2007*. Any penalty which is imposed is directed, primarily, to the protection of the community against unsuitable practitioners – and that protection, and the maintenance of proper professional standards, guides the Tribunal in determining penalty.⁶
- [18] The Tribunal is satisfied that the conduct outlined in the discipline application falls short of the proper professional standards required of a lawyer, and finds that the respondent (as an officer of the Court) failed in her duty of candour and integrity to the Court.
- [19] The Commissioner does not urge that Ms Lim's history, and the circumstances surrounding this offence, and arising subsequently, suggest she is unfit to practice. In the absence of any other misconduct, and in view of the other circumstances just described, the Tribunal accepts that.
- [20] Nevertheless, that misconduct was serious – in particular, it can fairly be described as more serious than what occurred in each of *Ramsden*, *Sorban*

⁵ [2006] LPT 010.

⁶ *LSC v Madden* [2008] QCA 301.

and *Hackett*. For that reason any fine should be greater than \$5,000 (the amount of the fine in *Ramsden and Hackett*). In the view of the Tribunal, a fine of \$7,000 properly reflects the comparative degree of seriousness here, and is an appropriate pecuniary penalty. The Commissioner also seeks an order that Ms Lim pay its costs, fixed at the sum of \$1,500, which she does not dispute.

[21] It was suggested in submissions on her behalf that she might be allowed to practice for a period under supervision, as an alternative to a fine. Mr McMillan generously offered to undertake that supervision. He is a very senior practitioner who was originally admitted in 1962. As it happens, however, he has already provided some supervision since August last year and the Tribunal does not believe any more is necessary, or warranted. For the reasons already set out a fine is both the necessary, and more appropriate, penalty.