

**LEGAL COMPLAINTS REVIEW OFFICER
ĀPIHA AROTAKE AMUAMU Ā-TURE**

[2020] NZLCRO 129

Ref: LCRO 172/2019

CONCERNING

an application for review pursuant to section 193 of the Lawyers and Conveyancers Act 2006

AND

CONCERNING

a determination of [Area] Standards Committee X

BETWEEN

CB

Applicant

AND

HM

Respondent

DECISION

The names and identifying details of the parties in this decision have been changed.

Introduction

[1] Ms CB has applied for a review of the determination by [Area] Standards Committee X to take no further action with regard to her complaints about Mr HM.

[2] The background facts are well known to the parties and will not be repeated here, other than to say that the catalyst for Ms CB's complaints was the judgment of Associate Judge [name] issued on [date], in which the Judge declined Ms CB's action in damages against [Company A] and [Company B], and made a summary judgment order against Ms CB, thereby bringing her claim to an end. As a result, costs were ordered against Ms CB which ultimately resulted in her bankruptcy.

[3] Ms CB and her brother had developed a proposal to subdivide a large area of land owned by them through various trusts. They entered into an agreement with [Company A] in which each party agreed to carry out certain functions to effect the subdivision.

[4] The consent of [Company B] was required as an affected neighbour. [Company B] consented to the subdivision on the basis that agreement was reached with Ms CB and her brother with regard to fencing and other works to be carried out. The agreement also related to rights of way that were needed to enable the subdivision to proceed.

[5] The details of the agreement were to be agreed between them before the subdivision could be completed and titles issued.

[6] There were extensive delays in reaching agreement and ultimately Ms CB issued proceedings against both [Company A] and [Company B].

[7] Ms CB's action against [Company A] alleged a failure on its part to lodge the documents with Land Information New Zealand to effect the subdivision, whilst the claim against [Company B] related to the terms of the fencing covenant agreement.

[8] This summary is brief and does not include all of the twists and turns that have occurred over the years since the plan to subdivide the land was envisaged as far back as 2002 but is sufficient for the purposes of this decision.

Review

[9] Mr HM's involvement with this matter commenced in 2014 when Ms CB's brother sought an opinion on issues arising from the proposed subdivision. Mr HM canvassed the possibilities of an action in damages against various parties. However, he was cautious about the likelihood of success and warned VA about the difficulties in quantifying damages.

[10] Proceedings were duly issued and the outcome was as set out in [2] of this decision.

[11] Ms CB's complaints against Mr HM are varied, but centre on his conduct of the litigation. In her application for review of the Standards Committee's determination, Ms CB seeks 'justice'.

[12] I have thoroughly reviewed all of the material provided with the complaint to the Standards Committee and provided by Ms CB in support of her application for review. The material provided is significant and traverses all of the events occurring over the years during which the proposal to subdivide was developed and the agreements with [Company B] and [Company A].

[13] It is important to note here that whilst the Standards Committee determination refers to the fencing covenant agreement being 'executed', the same version was not executed by all parties. The terms of the agreement were not therefore agreed.

The review hearing

[14] A hearing took place with Ms CB on 23 July 2020. Ms CB was accompanied by her brother. Mr HM elected not to attend.

[15] Ms CB is unhappy with the outcome of the litigation and is endeavouring to alter that by means of her complaints about the lawyers involved. At the commencement of the hearing (and previously in correspondence) I explained the limitations of the review process to Ms CB and her brother and it was necessary on a number of occasions during the hearing to remind them that they needed to focus on their complaints about Mr HM.

[16] In this regard, I refer to the decision of the High Court in *Siemer v Legal Complaints Review Officer*,¹ where the Court made various comments about the principles governing the complaints and review process:

[48] Mr Siemer's complaint therefore amounts to a collateral challenge to the judgment itself and constitutes an abuse of process.

[51] In my opinion, the LCRO was right (as was the Standards Committee) to decline to consider Mr Siemer's complaint, because to do so would necessarily entail the relitigation of matters already considered by this Court.

[52] That finding represents a complete answer to all of Mr Siemer's claims in this proceeding (save for his predetermination argument), because the principle of public policy which underpins findings of abuse of process is intended to catch all collateral challenges, no matter how they are framed in a procedural sense.

[17] In previous decisions I also have commented on the relationship between the court process and the role of the complaints and disciplinary procedure:

The complaints process is not to be used as a substitute for court proceedings.²

¹ HC Auckland CIV-2010-404-986, 25 February 2011.

² LCRO 42/2020 (7 July 2020) at [14].

In any litigation there will generally be what could be termed a “winner” and a “loser”. It would be untenable for this decision to support the principle that it necessarily follows that there would be a finding of unsatisfactory conduct against the lawyer for the “loser” in any litigation.³

[18] Applying those comments, the remedy for Ms CB is through the Courts. The complaints process does not provide the means to achieving her desired outcome.

Decision

[19] The result of this review is to confirm the determination of the Standards Committee to take no further action with regard to Ms CB’s complaints about Mr HM.⁴

DATED this 29TH day of JULY 2020

O Vaughan
Legal Complaints Review Officer

In accordance with s 213 of the Lawyers and Conveyancers Act 2006 copies of this decision are to be provided to:

Ms CB as the Applicant
Mr HM as the Respondent
Ms TD and Mr RP as Related Persons
[Area] Standards Committee X
New Zealand Law Society
Secretary for Justice

³ *RCN v MA LCRO 2/2019* (27 May 2020) at [99].

⁴ Pursuant to s 211(1)(a) of the Lawyers and Conveyancers Act 2006