

CONCERNING

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

AND

CONCERNING

a determination of a North Island Standards Committee

BETWEEN

MR J S

Applicant

AND

MR C L

Respondent

Introduction

[1] This is a review of a decision of a North Island Standards Committee which considered a complaint by Mr JS against Mr CL, a consultant to the firm of XYZ. The Committee resolved to take no further action on the complaint and Mr JS seeks a review of that decision.

Background

[2] Mr JS is legally qualified and worked as a lawyer for over eight years before leaving to pursue a career in financial services. His partner's father (Mr VT) died intestate in mid-2010 after being ill for some time and left "a complicated estate that involved a trust (the ABC Trust), a will rendered invalid through remarriage and a draft will that was not executed".¹

[3] Following Mr VT's death, his widow (Mrs AT) sought legal advice from Mr CL. Mr JS effectively acted for his partner and her siblings. He engaged a barrister, Mr KD, to assist and the trust was represented by Mr RB who was also a trustee.

[4] In his complaint, Mr JS describes what developed:²

¹ Letter JS to Lawyers Complaints Service (27 September 2012).

² Above n 1.

What followed was a fairly drawn out and tense process for the descendants and Mrs AT and their families. In summary, a claim was made to invalidate the trust and seek the distribution of all property as NZ law requires when a person dies intestate. This was refuted and eventually all matters were dealt with under a settlement agreement. There was significant acrimony over most matters in the settlement process.

[5] The complaint concerns ownership of funds held by XYZ firm in its trust account prior to payment to Mrs AT in accordance with the terms of the settlement agreement. If the money belonged to the trust Mr JS asserts that the trustees were entitled to be advised when the funds were paid into XYZ's trust account and receive the accrued interest. If the money belonged to Mrs AT, Mr JS suggests that she was poorly advised by Mr CL, in that she was therefore receiving her own money in settlement of the disputes between her and Mr VT's children.

[6] Mr JS claims that clause 3 of the settlement agreement (which records that the funds were held by XYZ firm "on behalf of the trust")³ confirms that the funds were trust property and therefore the trustees should receive the accrued interest.

[7] Mr JS's complaint centres on Mr CL's communications regarding the money paid into the trust account by AT's daughter, "representations made regarding those funds in the...trust account, the terms of the settlement agreement and subsequent communications". He specifically states that he and the people he represents:⁴

...would like to know the dates the funds went in and out of XYZ's trust account and for the interest to be paid to [the trustees'] account. The oral direction of the deceased [that when the loan was repaid it was to be paid to his widow]⁵ was never raised prior to the execution of the settlement agreement and the terms of that agreement contradict that assertion.

Standards Committee decision

[8] The Standards Committee considered the complaint and the lawyer's response and concluded that it "could find nothing to substantiate a claim that Mr CL had acted inappropriately...consider[ing] that he had acted in the best interests of his client, followed her instructions and kept her informed".⁶ It observed that Mr JS "was entitled to seek independent legal advice if he intended to make a claim against the estate..."

³ Settlement Agreement dated 18 February 2011 at p 3.

⁴ Above n 1.

⁵ As asserted by Mr CL in his letter to the NZLS (15 November 2012).

⁶ Standards Committee Decision dated 31 May 2013 at [8].

The Committee's decision was therefore to take no further action because that "would be inappropriate".

Application for review

[9] Mr JS has sought a review of the Standards Committee decision. In taking issue with the Committee's conclusion Mr JS submits that paragraphs 2 and 3 are "incorrect so the decision does not address [his] complaint".⁷ After confirming that he did not query the payment out of the trust account to the widow (because that was agreed in the settlement agreement) he clarifies what is the main issue, namely:⁸

The Settlement Agreement did not direct that the accrued interest [was] to be given to [Mrs AT] and the interest accrued must form part of the trust property as it was derived from funds held for the trustees by XYZ as per [clause 3] of the Settlement Agreement.

[10] Under the heading "What outcome is sought?" Mr JS asks for the review "to consider if XYZ should advise the trustees of the date the funds were deposited into their trust account, the date they were paid to Mrs AT and the quantum of interest derived".

[11] Mr CL declined to formally respond to the application for review, preferring to rely on his earlier response and submissions to the Standards Committee. Mr JS sent a further email on 29 July 2013 suggesting that the review focus on two issues: - firstly, was the \$5,000 in the trust account for a number of months up to and including the date the settlement agreement was signed, and secondly, should interest generated by those funds be paid to the trustees rather than to Mrs AT.

Review

[12] This review has been conducted 'on the papers' in accordance with s 206(2)(b) of the Lawyers and Conveyancers Act 2006 with the consent of both parties.

[13] As a preliminary comment, I must record that I am at a loss to understand the vigour with which this matter has been pursued by Mr JS. One would have thought that he may have been able to bring some objectivity into what he has acknowledged in the complaint has not been the 'finest hours' for any of the parties involved. The complaint, and now this review, continues the acrimony between the parties.

⁷ Application for Review dated 24 June 2013 at Part 7.

⁸ Above n 7.

[14] I note that the complaint was unable to be resolved by the Complaints Service early resolution process, and without knowing what each party's stance was, I merely observe that the failure to resolve this complaint at that stage does not reflect well on either Mr JS or Mr CL (or both of them).

[15] I am now obliged to complete this review.

[16] Mr JS's formal complaint covers a number of matters, in essence focused on the trust account money, its "ownership", bearing in mind the wording of clause 3 of the settlement agreement, and raises questions as to the adequacy of Mr CL's representation of Mrs AT. There is no specific reference to the interest generated by the repaid monies, although Mr JS's 11 March 2013 letter in reply does identify it as an issue, and this is made clear by the wording of his application for review as quoted above.

[17] Clause 3 of the settlement agreement records that the funds were held by XYZ "on behalf of the Trustees." Mr CL advises that he and his client had some concerns over the wording of this clause. He has advanced a somewhat tenuous interpretation of a process whereby the funds were "momentarily...transferred into the nominal ownership of other parties..."⁹

[18] Apart from the issue of who was entitled to the accrued interest, ownership of the funds prior to payment in accordance with the settlement agreement is largely irrelevant. What is relevant is that it was agreed that they would be paid to Mrs AT as part of the money to be paid to her. In this regard, Mrs AT accepted payment of the funds regardless of who she thought they belonged to, in order to achieve resolution.

[19] Mr JS considers that Mr CL had given poor advice to Mrs AT by letting her agree to accept payment of her own funds in settlement of the disputes. It may very well be that instead, Mrs AT was not concerned with arguing this point, but was more concerned to achieve a resolution. In any event, she herself, has expressed complete satisfaction with Mr AT's advice.¹⁰

[20] The Standards Committee resolved to take no further action in respect of the complaints because it considered that further action was inappropriate. It may have wrongly identified the issues in paragraphs 2 and 3 of its decision but the overall outcome was correct.

⁹ Letter CL to Lawyers Complaints Service (5 March 2013).

¹⁰ Letter Mrs AT to NZLS (16 November 2012).

[21] I do not intend to engage in a consideration of the issues as suggested by Mr JS in his email to this Office dated 29 July 2013 for the reason that in the particular circumstances of this matter, I consider that the complaints raised are trivial (s 138(1)(b) Lawyers and Conveyancers Act) and further action is unnecessary or inappropriate (s 138(2)). I stress that this decision is based on the particular circumstances of this case and is not to be taken in any way as derogating from a lawyer's obligations in terms of the Lawyers and Conveyancers Act 2006 and the Conduct and Client Care Rules.¹¹

[22] **Decision**

Pursuant to section 211(1) of the Lawyers and Conveyancers Act 2006 the decision of a North Island Standards Committee is confirmed.

DATED this 19th day of May 2014

O W J 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:

Mr JS as the Applicant
Mr CL as the Respondent
Mr MW as a Related Person
The North Island Standards Committee
The New Zealand Law Society

¹¹ Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008.