

CONCERNING

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

AND

CONCERNING

a determination of the Waikato Bay of Plenty Standards Committee 1

BETWEEN

MR CD

Of North Island

Applicant

AND

MR XS

Of North Island

Respondent

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

DECISION

Background

[1] In early 2008 the Applicant personally filed proceedings against the Respondent's client.

[2] By letter dated 4 February 2008, the Respondent advised the Applicant that he considered that the claim against his client personally was unsustainable, and could be struck out. He advised however that his client was willing to try and resolve matters and suggested a meeting be held for this purpose.

[3] Thereafter matters continued without resolution.

[4] In July 2009, the Respondent prepared and filed an application for dismissal of the proceedings, pursuant to which the Court made an order striking out the Applicant's Statement of Claim and awarding costs in the sum of \$7,555.12.

[5] The Respondent's application had sought costs "at suitable scale rate".

[6] The Applicant subsequently successfully issued proceedings against the correct defendant.

[7] On 24 July 2010 the Applicant lodged a complaint with the New Zealand Law Society against the Respondent, alleging that he unnecessarily delayed proceedings with regard to his initial proceedings and that the costs claimed were excessive. Although he did not indicate what remedy he was seeking, he was presumably seeking for the costs to be either reduced or waived.

[8] The Standards Committee considered the matter and issued its determination on 10 September 2010, in which it declined to take any further action in respect of the complaint pursuant to section 138(1)(f) of the Lawyers and Conveyancers Act 2006.

[9] It would have been helpful to the Applicant if the Committee had recorded that section 138(1)(f) of the Act provided that a Standards Committee may in its discretion, decide to take no action on any complaint if, in the opinion of the Committee “there is in all the circumstances an adequate remedy or right of appeal ...that it would be reasonable for the person aggrieved to exercise.”

[10] The Committee therefore considered that the Applicant had remedies available to him through the Court.

Review

[11] In his application for Review, the Applicant noted that the Standards Committee had not responded to his complaint that the costs claimed and awarded were excessive. As recorded in his complaint, he considered that the Respondent had abused the Court process by unnecessarily delaying matters and then applying after more than a year for the Applicant’s proceedings to be struck out.

[12] The Respondent did not act for the Applicant. He had no duty to him. He does, however, have a duty to the Court and a general duty to use legal processes for proper purposes. In this regard, the following rules of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 are relevant:-

Rule 13 The overriding duty of a lawyer acting in litigation is to the Court concerned.

Rule 2.3 A lawyer must use legal processes only for proper purposes.
A lawyer must use nor knowingly assist in using, the law or legal processes for the purpose of causing unnecessary embarrassment, distress, or inconvenience to another person’s reputation, interests, or occupation.

[13] Having noted those Rules, it is however pertinent to note that the proceedings filed were the Applicant's proceedings. It was up to him to prosecute those, and to use the procedures of the Court if he felt that the Respondent was unnecessarily delaying matters.

[14] He could also have withdrawn the proceedings if he accepted that he had filed the proceedings against the wrong party.

[15] The Respondent had no duty at all to hasten the progress of the Applicant's proceedings. It cannot be said that the Respondent's conduct was such as to offend against the Rules.

[16] In addition, the order for costs was an order made by the Court. Neither the Standards Committee nor this Office have jurisdiction to alter an order made by the Court. Any challenge to an award of costs made by the Court must be pursued through the Court process.

[17] For the reasons set out above, I confirm the Standards Committee decision.

Decision

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

DATED this 27th day of May 2011

Owen 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:

CD as the Applicant
XS as the Respondent
The Waikato Bay of Plenty Standards Committee 1

The New Zealand Law Society