

**NEW ZEALAND LAWYERS AND
CONVEYANCERS DISCIPLINARY TRIBUNAL**

Decision No. [2010] NZLCDT 32

LCDT 08/10

IN THE MATTER of the Lawyers and Conveyancers
Act 2006

AND

IN THE MATTER of **JUN YU** of Auckland, Solicitor

CHAIR

Judge D F Clarkson

MEMBERS OF TRIBUNAL

Mr J Clarke

Mr C Lucas

Ms C Rickit

Mr P Shaw

DECISION ON APPLICATION FOR INTERIM STAY OF PROCEEDINGS

[1] The Practitioner has applied for an Interim Stay of the proceedings before the Tribunal, under No LCDT8/2010.

[2] The Stay is sought on the following terms:

“1.1 The practitioner will expeditiously advance the current inter-pleader proceedings brought in the name of his firm in the High Court at Auckland;

1.2 In the event that it considers that there has occurred or is occurring any undue or unnecessary delay in the prosecution or resolution of the High Court proceedings, the Society has leave to apply to the Tribunal for further orders or directions including an order rescinding the stay;

1.3 The practitioner will provide the Society with copies of any affidavits filed in the High Court proceedings, any judicial minutes and any ultimate judgment of the High Court;

1.4 If the High Court proceedings settle or are otherwise resolved the practitioner will promptly advise the Society and the Tribunal.”

[3] On that basis the New Zealand Law Society does not oppose the making of the order sought, and abides the decision of the Tribunal.

[4] The Tribunal has considered the application, and having regard to the basis of the application, namely:

“2.1 By statement of defence and counterclaim in the High Court proceedings dated 25 August 2010, the complainant named in the charge has sued the practitioner’s firm making factual allegations

against the practitioner which in significant respects mirror the allegations made in the charge and seeking damages;

- 2.2 Accordingly, a number of the same factual and legal issues concerning the disputed relationship between the practitioner and the complainant are now the subject of the High Court proceedings and are likely to be adjudicated upon by the Court;
- 2.3 In the circumstances it is appropriate that the issues in dispute between the practitioner and the complainant be determined in the High Court rather than in the Tribunal, both in order to avoid inconsistent factual findings as between the Court and the Tribunal and to enable the Tribunal (if required to do so) to dispose of the charge on the basis of the High Court's findings and determinations of law;
- 2.4 By effectively permitting the complainant to pursue concurrent claims and allegations against the practitioner both in the Tribunal and in the High Court, the Tribunal would be countenancing an abuse of process."

the Tribunal considers that the Interim Stay should be granted on the aforementioned terms.

DATED at AUCKLAND this 6th day of October 2010

Judge D F Clarkson
Chair