

CONCERNING

An application for review pursuant to Section 193 of the Lawyers and Conveyancers Act 2006

AND

CONCERNING

a determination of the Auckland Standards Committee 2

BETWEEN

LU

Applicant

AND

VK

Respondent

DECISION

Introduction

[1] The Auckland Standards Committee 2 declined to uphold a complaint by LU (the Applicant) against VK (the Practitioner).

[2] The reason that the Standards Committee decided to take no action on the complaint was that the conduct complained of occurred more than 6 years before the commencements of the Lawyers and Conveyancers Act 2006 (the Act).

[3] The Applicant seeks a review of that decision.

Background

[4] The conduct complained of arose out of a 1998 Sale and Purchase agreement. The Practitioner's then-firm acted for the vendor. Clause 13 of the Agreement provided that the Practitioner's client would cause his lawyers (the Practitioner's firm) to retain \$6,000 "for the purpose of the vendor obtaining title". (This concerned the issuing of a freehold title to land). No undertaking was given by the Practitioner's firm and in 1993 the firm released the sum of \$6,000 to its client. A Disputes Tribunal later concluded that the Practitioner's client was in breach of the contract for having requested payment of this money to him.

[5] The adjudicator noted that the Applicant sought repayment of this sum by the Practitioner's client back to the Practitioner's firm for holding. However, the adjudicator explained that the Disputes Tribunal jurisdiction in respect of money orders did not extend to making orders that money be paid to anyone who was not a party to the proceeding. The adjudicator also noted the Applicant's concession that he was not ultimately entitled to receive the \$6,000.

[6] The Applicant's solicitor then wrote to the Practitioner to say that the remedy being sought by the Applicant was to have the \$6,000 plus interest returned by the client to the Practitioner's trust account, to be held for the benefit of the Applicant.

[7] The Practitioner immediately replied to inform the other lawyer that the law firm no longer existed, that the client had uplifted the money some 18 years ago, that the Act created a jurisdiction problem. The Practitioner expressed his unwillingness to deal further with a matter that was first opened in 1998.

[8] The Applicant filed a complaint alleging that the Practitioner was "in breach of his obligations regarding his management of [the \$6,000] in his trust account".

[9] In its determination dated 9 September 2011, the Standards Committee decided to take no further action because "the alleged payment of funds by (the Practitioner) took place approximately 15 years (sic) ago ..." and the Committee noted that Section 351(2)(b) of the Act stated that no complaint could be made about conduct that occurred (or regulated services that were delivered) more than six years before the Act came into force, namely 1 August 2008.

Application for Review

[10] The Applicant applied for review on 14 September 2011. The grounds are set out in his letter dated 12 September 2011. He said it was less than six years since he had known about the removal of the funds back to the vendor. In his view time should run from the time that he became aware of the conduct.

[11] He noted that the Disputes Tribunal had accepted jurisdiction. He wrote: "*To me there appears to be a double standard. I believe that if the Disputes Tribunal finds in my favour regarding the six year time period then the Law Society should do the same. It is the same case.*"

Considerations

[12] The complaints (against the Practitioner's client in the Disputes Tribunal and against the Practitioner in this Office) arise from the same factual matrix, but different legislation applies to each. When a person brings a claim in the Disputes Tribunal, the provisions of the Disputes Tribunals Act 1988 apply, and the ability to succeed in a claim depends on its being filed within the appropriate time period set out in that Act.

[13] The conduct complained has been considered under the transitional provisions of the Lawyers and Conveyancers Act. That is because the conduct complained of occurred before this Act commenced. The complaint could be considered only if the conduct occurred before 1 August 1993. This date is pivotal because any conduct matters that arose before that date cannot be considered by a Standards Committee.

[14] The Lawyers and Conveyancers Act has its own time limits. The crucial one in this case is set out in Section 351 of the Act. Its subsection (2)(b) states that:

“No person is entitled to make under this Act –

(b) a complaint in respect of –

(i) conduct that occurred more than six years before the commencement of this section; or

(ii) regulated services that were delivered more than six years before the commencement of this section ...”

[15] Section 351 commenced on 1 August 2008. A Standards Committee only has jurisdiction to consider complaints about conduct that occurred *before* 1 August 2002. This is a strict statutory time frame set by the Act.

[16] The Practitioner stated that the money was paid out to its client some 18 years ago. This brings the matter well outside of the statutory time frame. In these circumstances the Standards Committee was right to have declined to take any further action.

[17] For the sake of completeness, and to address the substance of the complaint, I observe that there is no evidence of any professional failure on the part of the law firm in paying out the money its client's request. The Applicant appears to have acknowledged that he has no claim to the \$6,000. While he may be entitled to interest

on that sum from the firm's former client, he cannot look to the Practitioner for a remedy.

Decision

Pursuant to Section 211(1)(a) of the Lawyers and Conveyancers Act 2006 the decision of the Auckland Standards Committee 2 is confirmed.

DATED this 17th day of April 2012

Hanneke Bouchier
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:

LU as the Applicant
VK as the Respondent
Auckland Standards Committee 2
The New Zealand Law Society