

LCRO 09 /08

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 No 2

BETWEEN

COMPLAINANTS N of Tirau

Applicant

AND

LAWYER K of Hamilton

Respondent

DECISION

Background

[1] The applicants are in dispute with certain neighbours (Company T) regarding the use of land in a rural residential subdivision. The applicants sent letters of complaint regarding the use of the land to Transit New Zealand and the Council. Those letters were on a letterhead using the words "XX Heights". "XX Heights" is the name of the subdivision that the applicants, with others, occupy.

[2] On 21 August the lawyer for Company T, Lawyer K wrote to the applicants. In that letter he:

- Asserted that the applicants did not have the right to use the letterhead "XX Heights" claiming it to be misleading and in breach of intellectual property rights;
- Requested copies of the letters of complaint; and
- Demanded that the applicants cease and desist using the letterhead immediately.

The tone of the letter might be described as aggressive.

[3] On 19 September 2008 the applicants complained to the Law Society about the conduct of Lawyer K in sending the letter of 21 August. The Society referred the matter to the Waikato Bay of Plenty Standards Committee No 2 for consideration. That Committee dismissed the complaint by a decision of 21 November 2008. The applicants now apply to this office for that decision to be reviewed. The parties have consented to this matter being considered without a formal hearing and therefore in accordance with s 206(2) of the Lawyers and Conveyancers Act this matter is being determined on the material made available to this office by the parties.

Consideration

[4] The applicants described the letter of 21 August from Lawyer K to be “groundless” and “outrageous” in a letter of 14 October 2008.

[5] One of the fundamental duties of a lawyer is to protect and promote the interests of his or her client to the exclusion of the interests of third parties (Rule 6 Lawyers Conduct and Client Care Rules).

[6] Balancing this obligation is Rule 12 which provides that “a lawyer must, when acting in a professional capacity, conduct dealings with others, including self represented persons, with integrity, respect, and courtesy”. That obligation must of course be viewed against the fact that lawyers practice is what is often a necessarily conflict ridden environment.

[7] The issue for determination is whether the letter of 21 August fell foul of professional standards. A breach of Rule 12 would by virtue of s 12(c) of the Lawyers and Conveyancers Act amount to unsatisfactory conduct. Similarly conduct which “would be regarded by lawyers of good standing as unacceptable, including conduct unbecoming a lawyer... or unprofessional conduct” would amount to unsatisfactory conduct as defined by s 12(b) of the Lawyers and Conveyancers Act 2006.

[8] I am satisfied that in this case Lawyer K did not breach any professional standards. It is a usual incident of professional practice for letters sometimes to be sent in a brusque and aggressive tone. The letter was not overtly discourteous and it is concluded that in this regard Rule 12 was not breached.

[9] The other aspect of the complaint was that there is no basis for the assertion that the applicants are not entitled to use the term “XX Heights” on their letterhead. The applicants appear to have taken legal advice on this matter and are of the view that

they are so entitled. The Standards Committee did not enquire into this question. It was quite appropriate for it to decline to do so in all of the circumstances. Even if the claim made by Lawyer K was tenuous, given his professional obligation to act in the interests of his clients to the exclusion of the interests of third parties, he was entitled to act in this way. The obligations owed by lawyers to third parties are modest. A lawyer is generally entitled to assert rights on behalf of a client which may or may not ultimately be upheld.

[10] The contents of the letter of 21 August and its tone are, in terms of legal practice, unexceptional. It is concluded that lawyers of good standing would not regard the sending of a letter of that nature as unacceptable, conduct unbecoming a lawyer, or unprofessional conduct.

Conclusion

[10] The application for review is declined and the decision of the Standards Committee is upheld.

DATED this 3rd day of February 2009

Duncan Webb

Legal Complaints Review Officer