

LCRO 222/2017

**CONCERNING**

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

**AND**

**CONCERNING**

a determination of the [Area] Standards Committee [X]

**BETWEEN**

**RD**

Applicant

**AND**

**LC and BT**

Respondent

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

**DECISION**

**Introduction**

[1] Ms RD has applied for a review of a decision by the [Area] Standards Committee [X] (the Committee) to take no further action in respect of her complaint concerning the conduct of the respondents, Mr LC and Ms BT.

**Background**

[2] Ms RD instructed the practitioners to recover sums of money outstanding on a mortgage default.

[3] Mr LC was the principal involved in the matter and Ms BT a staff solicitor to whom he delegated the instructions.

**The complaint and the Standards Committee decision**

[4] Ms RD's complaint, dated 8 October 2017, was that the practitioners had dealt incompetently and less than promptly with her instructions. There was also a complaint of overcharging.

[5] The Committee decision of 10 November 2017 did not accept that view of the matter.

[6] Having reviewed the timeline of events and noting what it saw as a persisting pattern of conduct on the part of Ms RD during the period in question, involving a lenient and tolerant approach to her defaulting mortgagors, the Committee determined, pursuant to s 138(2) of the Lawyers and Conveyancers Act 2006 (the Act) that no further action on the complaint was necessary or appropriate.

[7] In making that determination, which also upheld the fees charged as being fair and reasonable, the Committee remarked:

Whilst Ms RD has her own view as to how matters could have progressed, this does not accord with her instructions to the lawyers and ...the matter was progressed in as orderly and timely a fashion as Ms RD would allow.

### **Application for review**

[8] Ms RD's 22 November 2017 review application sought a reversal of the Committee's determination and that this Office "actually see and understand how I feel after nearly two years of trying to get my money recovered ..."

### **Review on the papers**

[9] The parties have agreed to the review being dealt with on the papers. This review has been undertaken on the papers pursuant to s 206(2) of the Act, which allows a Legal Complaints Review Officer (LCRO) to conduct the review based on all information available if the LCRO considers that the review can be adequately determined in the absence of the parties.

[10] I record that having carefully read the materials proved by the parties there are no additional issues or questions in my mind that necessitate any further submission from either party. Based on the information available I have concluded that the review can be adequately determined in the absence of the parties.

### **The Lawyers and Conveyancers Act 2006**

[11] This decision is made in accordance with the following sections of the Act:

#### **199 Obligation to conduct review**

- (1) The Legal Complaints Review Officer must, on receiving an application for review that is made in accordance with this Act, conduct that review.
- (2) This section is subject to sections 200, 201, and 205.

**205 Legal Complaints Review Officer may strike out, determine, or adjourn application for review**

- (1) The Legal Complaints Review Officer may strike out, in whole or in part, an application for review if satisfied that it—
  - (a) discloses no reasonable cause of action; or
  - (b) is likely to cause prejudice or delay; or
  - (c) is frivolous or vexatious; or
  - (d) is otherwise an abuse of process.

**Purpose of s 205**

[12] Section 205 is expressed in terms substantially identical to the provisions of the High Court Rules 2016, r 15.1. The principal difference is that r 15.1 is directed to pleadings (the way that claims and defences are expressed) whereas s 205 relates to applications for review which go further than pleadings, including provision for both evidence and submissions.

[13] Moreover, strike out applications under r 15.1 will be made at the early stage of a proceeding when a claim or defence has been recently filed. Significantly, s 205 empowers this Office only to strike out; not Standards Committees where complaints are initially, and usually finally, adjudicated.

[14] In my view s 205 is intended to arm this Office with the summary ability to bar applications for review that plainly lack merit.

*Reasonable cause of action*

[15] In the context of this Office's review jurisdiction, whether an application for review "discloses no reasonable cause of action" translates neatly to an assessment of whether there are in fact reasonable grounds of complaint against the practitioner in question. The approach will be whether a set of facts, viewed objectively, could arguably justify reconsideration of a Standards Committee decision.

**Analysis**

[16] In my assessment the contemporaneous documentary record of the dealings between Ms RD and the practitioners is at odds with the stance she has taken from the point in time when she made her complaint.

[17] The defaulting mortgagors had been her tenants and the mortgage given and taken was for vendor finance.

[18] It is obvious that Ms RD had a close and at the time longstanding relationship with the mortgagors. Throughout the period in question she was constantly in touch with them and repeatedly willing to afford them latitude even when equally repeatedly, their efforts to put matters right appear to have involved more words than action.

[19] When Ms RD first approached Mr LC by email on 21 December 2015 she wrote that the mortgagors were in default “due to illness, etc, however it has gone on for too long” and she had told them that if payments did not resume she was going to call in the loan.

[20] But an hour or so later she advised Mr LC she had given them another chance.

[21] Her next approach to Mr LC seems to have been in late February 2016 when she advised they were paying regularly.

[22] There was then a considerable delay (for which the practitioners were not responsible) in obtaining the mortgage transaction file from the legal office that had originally acted for Ms RD.

[23] On 15 April 2016, before the file had arrived at his office, Mr LC wrote to Ms RD recording her instructions in detail, including that he should write a “nice” letter to the mortgagors about the arrears.

[24] Mr LC also noted that although the mortgagors would be obliged to indemnify Ms RD for legal recovery costs, she was nevertheless obliged to pay her lawyers for the work done.

[25] Shortly thereafter Ms BT assumed the carriage of the matter.

[26] All the while, Ms RD was obviously in very regular touch with the mortgagors.

[27] Given the gist of her current complaint, one of her later communications with the mortgagors is telling.

[28] In writing to the mortgagors on 17 March 2017 about getting the house onto the market she said:

I cannot help you further for obvious reasons, and this will be my final effort before I proceed with legal action to recover the money owing to me. ...

If you do not move on with this process and very soon., I can take the property to “mortgagee” sale to recover my money. ...

This is a last resort *which my lawyer wanted to do back in August 2016 but I have held off.* ...

I am giving you until April 14 2017 to ... get the property to market. ...

## **Discussion:**

### *Nature of instructions*

[29] Ms RD’s complaint (and now application for review) are fairly and squarely premised on the proposition that the lawyers were to proceed with alacrity to enforce recovery of the outstanding monies, and they failed to do so.

[30] However, as can be seen from above, whilst that may be Ms RD’s perspective now, it was far from her position at the time that matters.

[31] When regard is had to her own words in March 2017 and, consistently with them, the way in which matters had developed up until then, the unavoidable conclusion is that Ms RD has lost sight of her original attitude of indulgence.

[32] The unavoidable conclusion is that there is no reasonable ground of complaint against the practitioners, or no reasonable cause of action to underpin the primary aspect of her review application.

### *Fees*

[33] When the practitioners rendered their first account on 28 October 2016 they wrote:

In the event that the account is not paid by [the mortgagors] within the next seven days then we look forward to receiving payment from you of this invoice. ...

[34] That was consistent with what Mr LC had conveyed in his 15 April 2016 letter when he wrote that although the mortgagors would be obliged to indemnify Ms RD for legal recovery costs, it was she who was obliged to pay her lawyers for the work done.

[35] The invoice itself, which was for \$2,720, included:

NOTE WHILE THESE FEES ARE RECOVERABLE FROM THE MORTGAGORS ... ON THEIR DEFAULT UNDER [Ms] RD’S LOAN AGREEMENT AND MORTGAGE THE OBLIGATION REMAINS WITH ... [Ms] RD TO PAY US IN THE FIRST INSTANCE

[36] The same notation was on the second and final 28 February 2017 invoice for \$2,1226.25.

[37] The materials before me do not disclose any evidence to objectively sustain the view that Ms RD was not liable for those fees. Moreover, having regard to the work actually done by the practitioners, those fees are not susceptible to criticism in terms of rr 9 and 9.1 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008.

[38] There is every indication that the fees charged reflect the fact that matters stretched out because Ms RD repeatedly extended latitude to the mortgagors.

### **Publication**

[39] Pursuant to s 206(4) of the Act I direct that this decision be published so as to be accessible to the wider profession in a form anonymising the parties and bereft of anything as might lead to their identification.

### **Decision**

[40] Pursuant to the provisions of s 205(1)(a) of the Act, Ms RD's application for review is struck out on the grounds that this Office is satisfied that it discloses no reasonable cause of action as that term is explained at [15] above.

**DATED** this 31<sup>st</sup> day of July 2019

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**R Maidment**  
**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:

Ms RD as the Applicant  
Mr LC and Ms BT as the Respondents  
[Area] Standards Committee [X]  
New Zealand Law Society