NEW ZEALAND LAWYERS AND CONVEYANCERS DISCIPLINARY TRIBUNAL

Decision No: [2010] NZLCDT 9

LCDT 026/09, 04/09

IN THE MATTER of the Law Practitioners Act 1982

BETWEEN **AUCKLAND DISTRICT LAW SOCIETY**

Applicant

AND **JOHN DORBU**

Respondent

CHAIR

Judge D F Clarkson

MEMBERS OF TRIBUNAL

Ms J Gray

Ms C Rowe

Ms M Scholtens QC

Mr W Smith

HEARING at AUCKLAND on 9-13 and 16-20 November 2009, 11 December 2009.

APPEARANCES

Mr H Keyte QC and Mr M Treleaven for New Zealand Law Society

Respondent Mr Dorbu in Person

DECISION OF NEW ZEALAND LAWYERS AND CONVEYANCERS TRIBUNAL

Introduction

[1] The practitioner faces 12 charges which fall into three groups, filed at two different times. Charges 1 to 10 were laid in September 2008. Charges 11 and 12 were laid in October 2009. All charges were denied by the practitioner although in the course of the hearing, charges 11 and 12 were implicitly acknowledged by him.

The Charges

[2] Because of the events from which the charges arise, there is a linking of charges 1-7 which all relate to what will be referred to as the "Barge Litigation".

Charges 1-7

(1) Between January 2002 and November 2006 he was a party to a conspiracy by unlawful means.

(2) Being the holder of a practising certificate of a Barrister Sole, between about June 2002 and September 2002 he acted as a solicitor when he was not holding a current practising certificate as a Barrister and Solicitor in breach of s.56(2) of the Law Practitioners Act 1982.

(3) Between January 2002 and November 2006 he breached Rule 1.04 of the Rules of Professional Conduct for Barristers and Solicitors ("the Rules") by acting for more than one party in the same transaction in circumstances where there existed irreconcilable conflicts among the interests of the parties which conflicts could not be cured by the prior informed consent of all parties.

(4) On or about 5 June 2003 and/or 16 September 2003 Mr Dorbu breached Rule 8.01B of the Rules in that he swore affidavits for

discovery and knowingly failed to discover (the documents set out in the particulars of charge).

(5) In or about June 2002 he breached Rule 6.02 of the Rules in that he communicated directly and in writing with the client of another practitioner in relation to a matter in which the practitioner was, or had previously been dealing with the other practitioner.

(6) In or about June 2002 and/or August 2006 he breached Rule 6.01 of the Rules in that he failed to promote and maintain proper standards of professionalism in relations with other practitioners.

(7) In or about June 2003 he breached Rule 8.01 of the Rules in that he misled the Court by knowingly swearing and filing a false affidavit.

[3] Charges 8 and 9 relate to a complaint from a fellow practitioner Mr G, and charge 10 to a complaint made on behalf of a finance company by its solicitors (the “KA complaint”).

Charge 8

(1) Between about 3 August 2005 and 29 August 2006 he breached Rule 8.04 of the Rules by attacking Mr G’s reputation without good cause and/or by being a party to the filing of Court documents attacking Mr G’s reputation without good cause without first satisfying himself that such allegation could be properly justified on the facts of the case.

Charge 9

(1) Between about 3 August 2005 and 29 April 2006 he breached Rule 6.01 of the Rules in that he failed to promote and maintain proper standards of professionalism in relations with other practitioners by attacking the reputation of Mr G without good cause.

Charge 10

(1) On or about 18 December 2007 he breached Rule 8.01 of the Rules in that he misled the Court by swearing and filing an affidavit in which he knew he gave a false answer(s) to interrogatories.

[4] The preceding charges (1 to 10) relate to behaviour which allegedly occurred before the commencement of the Lawyers and Conveyancers Act 2006 ("LCA") but were brought by the Auckland Standards Committee No. 3 of the New Zealand Law Society ("NZLS") after the coming into effect of the LCA, and therefore fall to be considered under the transitional provisions of the LCA, ss.351(1) and 352 .

[5] The two more recent charges (11 and 12), relate to behaviour alleged to have occurred after the commencement of the LCA and will be considered under that Act alone.

Charge 11

(1) On or about 23 June 2009 he breached Rules 10 and/or 13.2 of the Conduct and Client Care Rules 2008 ("the Rules") by sending an email which failed to promote and maintain proper standards of professionalism in his dealings and/or undermined the dignity of the Judiciary.

Charge 12

(1) On or about 25 June 2009 he breached Rules 10 and/or 13.2 of the Rules by sending an email which failed to promote and maintain proper standards of professionalism in his dealings and/or undermined the dignity of the Judiciary.

Background

The Barge Litigation

[6] This litigation arose out of a complex set of commercial transactions in which the practitioner was integrally involved. These transactions were the subject of civil litigation which came before His Honour Priestley J over a lengthy period in February and March 2005. His Honour's reserved judgment was released on 27 October 2005 and clear and decisive factual findings were made (CIV-2002-404-1771, *I Barge v Freeport Development Limited &* Ors, 27 October 2005, Priestley J, Auckland High Court).[1] All of the parties relevant to this series of transactions were named in that decision so no attempt is made to anonymise them in this judgment. A summary of the transactions is as follows:

[7] Freeport Developments Limited ("Freeport") purchased a property in Anzac Avenue, Auckland ("the property"), becoming registered proprietor on 17 January 2001. That registration concurrently recorded a mortgage to the BNZ secured against the title to the property.

[8] The shareholders in Freeport were Yen Fa Chen (67.5%) ("Mrs Chen") and Tai Wen Lin (12.5%) and four other shareholders holding five shares each. Freeport instructed an agent, Mr Muir, to act on the sale of the building at Anzac Ave; and on 19 September 2001 Freeport entered into an agreement for the sale of the property with Whitaker Properties Limited or nominee ("Whitaker"). The purchase price was $1.05 million plus GST (if any). Whitaker lodged a caveat over the title to the property on 22 November 2001. On 28 February 2002 Mr McDell of Knight Coldicutt (acting for Freeport) wrote to Whitaker cancelling the contract.

[9] In February 2002 Mrs Chen contacted the real estate agent, Victoria Zhou, and on 20 February 2002 signed a listing authority envisaging a tender date of 28 March 2002. Mrs Chen indicated, as previously, her solicitors to be Knight Coldicutt. The specific contact person was Lydia Shau, who was working under the

[1] CIV-2002-404-1771, *I Barge v Freeport Development Limited &* Ors, 27 October 2005, Priestley J, Auckland High Court

supervision of the partner Mr T McDell, an experienced conveyancing solicitor. Mrs Chen made a payment to Victoria Zhou of $4876.28 to cover marketing and advertising expenses for the building. (This is important because it was part of Mr Dorbu's defence that the listing was only a valuation oriented exercise and not evidence of an intention to sell.)

[10] Mr Barge saw an advertisement for the property, inspected it on Saturday 2 March 2002 and signed a conditional agreement to purchase it for $1.1 million (inclusive of GST) on Monday 4 March 2002. Mrs Chen was out of the country so the agreement was signed on Freeport's behalf by Mrs Chen's daughter Vivian Chu ("Vivian"). Mr Dorbu later disputed Vivian's ability to commit the company to the agreement and therefore the agreement's validity, (this was determined in the proceedings before Priestley J who upheld its validity). Not only did Vivian confirm she had her mother's authority to sign, there was in fact a valid power of attorney held by Freeport's solicitors in her favour. This document emerged only in the course of non-party discovery.

[11] Some days later on 7 March 2002 a Mrs Jiao contacted the real estate agent Ms Zhou, expressing an interest in the same property.

[12] On 12 March 2002 Mr Barge declared the agreement unconditional and paid a deposit of $110,000 into the Trust account of Freeport's solicitors Knight Coldicutt. On 21 March 2002 Mr Barge's solicitors, Castle Brown lodged a caveat on his behalf to protect his interest as purchaser. Settlement was due to occur on 4 April 2002 however prior to that Freeport needed to remove the caveats over the title to the property including one which had been lodged by the previous purchaser Whitaker. The Whitaker caveat subsequently lapsed on 9 May 2002.

[13] In the meantime Ms Zhou had met with Ms Jiao and had shown her the property. Ms Jiao inquired as to whether there was any way of owning the property if she offered cash or more money. She also inquired whether the vendor was "Asian or Kiwi".

[14] The approach of Freeport's solicitors to the removal of the caveats is detailed in paragraphs 55 to 63 of His Honour's judgment and we do not propose to repeat this. Suffice it to say that understandably Knight Coldicutt took a robust approach to the transactions asserting to Whitaker that the contract was over, but at the same time asserting to Castle Brown on behalf of Mr Barge that until the Whitaker caveat had lapsed it was not in a position to declare the contract unconditional. Castle Brown advised they were in a position to settle the purchase on the due date of 4 April 2002. The traditional "dummy mortgage" technique was adopted to trigger withdrawal of both caveats. On 13 May 2002 Knight Coldicutt made an offer on Freeport's instructions to Mr Barge to walk away from the agreement for a payment of $30,000. This offer was declined and Mr Barge wished to complete the agreement. He made application to the High Court that his caveat not lapse and an order to that effect was made by consent on 17 May 2002.

[15] Mr Dorbu received instructions to act for Freeport sometime in May 2002. It was originally denied by Mr Dorbu but later accepted in the course of the hearing that he acted for all of the parties who were found by the High Court to have deprived Mr Barge of his entitlement to the property by means of the transactions described below.

[16] According to his evidence, Mr Dorbu was instructed by Taiwanese solicitors to act for Freeport in the sale of its shares.

[17] There was a purported "preliminary share transfer agreement" dated 10 September 2001 between Freeport (which of course did not own the shares in itself) and the Harsono Family Trust signed by one person (S W Huang) only. There was also an "agreement for sale and purchase of shares in Freeport Limited" notarised on 19 June 2002 between Freeport Limited and the Harsono Family Trust again signed only by S W Huang. However the deed establishing the Harsono Family Trust is not dated until 27 July 2002. The settlor of that Family Trust is Dr Hseuh Wu Huang and the trustees are Dr Huang, Mrs Jiao (the interested purchaser of the Anzac Street property) and Shou Chen Chiao. The title page for the trust deed records Mr Dorbu's name and address in the position usually reserved for the firm responsible for preparation of the documents.

[18] On 10 June 2002 Freeport as mortgagor signed a loan agreement with Shou Lung Chiao (as mortgagee) for a loan of $476,300. This loan will be referred to again. On 21 June 2002 the Hong Kong solicitors for Mr Shou Lung Chiao (the purported mortgagee) made demand under s.92 of the Property Law Act 1952 on Freeport for the first unpaid instalment of the purported mortgage despite the drawdown not being scheduled until a month later. That demand stated that Mr Shou Lung Chiao was mortgagee despite the fact that at that date the BNZ was still mortgagee of the Freeport owned property at Anzac Avenue.

[19] On 10 July 2002 Mr Dorbu wrote to the BNZ requesting that the BNZ assign its mortgage to the nominated third person in a transfer that he then sent to them. This was initially resisted, however Mr Dorbu pointed out the relevant provisions in somewhat threatening language and the BNZ relented and on 11 July 2002 signed a transfer of the mortgage and sent these documents to Mr Dorbu. The transfer of the mortgage was signed correct by Mr Dorbu despite the fact that he was a Barrister Sole. The registration of the transfer of the mortgage enabled the mortgagee sale that defeated Mr Barge's caveat.

[20] As part of a purported mortgagee sale, Mr Shou Lung Chiao entered into an agreement as mortgagee to sell the property to Mrs Jiao for the sum of $1.1 million plus GST (if any). The date of this agreement is determined by a fax detail which records 15 July 2002, that being a date prior to the expiry of the Property Law Act notice namely 21 July 2002.

[21] On 29 July 2002, without involving any firm of solicitors in the conveyancing transaction, Mr Dorbu instructed Chester Grey, a firm of chartered accountants to prepare a settlement statement for the sale of the property. The letter of instruction stated that Mr Dorbu also acted for the mortgagee Mr Shou Lung Chiao. The letter of instruction also required a deduction for Legal Fees of $6,500, although no Bill of Costs was attached, and there was no clarity as to who was being charged the legal costs, although the subsequent settlement statement suggests deduction from the balance paid to Freeport.

[22] A transfer dated 12 August 2002 to transfer the property from Mr Shou Lung Chiao to Hsueh Wu Huang, Yi Hua Jiao and Shou Chen Chiao was certified correct by Mr Dorbu. A further transfer dated 2 August 2002 to transfer the property from Mr Shou Lung Chiao as mortgagee under mortgage D572239.4 to Hsie Wu Huang, Yi Hua Jiao and Shou Chen Chiao with a consideration of $1,237,500 (inclusive of GST) was certified correct by Mr Dorbu. Mr Dorbu lodged the various transfers for registration having signed them correct. The registration of the transfer pursuant to the mortgagee sale defeated Mr Barge's caveat.

[23] Extensive litigation ensued with respect to the transactions; Mr Barge sought specific performance of his agreement and pleaded a conspiracy by unlawful means. While this eventually culminated in a judgment in his favour, and an order that the property be vested in his name, the cost of the protracted litigation and the delays involved have resulted in Mr Barge being unable to afford to retain the property and suffering a loss of over $292,000.00 in unrecoverable legal costs, as well as serious health issues from the associated stress and anxiety.

[24] The claims were opposed at all stages and were then unsuccessfully appealed to the Court of Appeal. Finally, leave was sought to appeal to the Supreme Court. This was dismissed summarily. The court stated, after describing the pattern of events:

> "[77] The conclusion reached by Priestley J was the only one available on the evidence and the challenge to the finding of an unlawful means conspiracy is also without merit."

Procedural matters

[25] Mr Dorbu was neither a witness nor a party to the proceedings which determined the conspiracy to defraud Mr Barge. Despite that, His Honour Priestley J made lengthy comment about Mr Dorbu's involvement in the course of his decision. Indeed it was these comments which led to the Law Society instituting what was initially an "own motion" inquiry into Mr Dorbu's involvement in the transactions. This was subsequently amalgamated with the complaint made by Mr Barge through his solicitors and has resulted in the first seven charges now faced by the practitioner.

[26] Mr Dorbu was, not surprisingly, extremely concerned to be in a position to challenge the findings of his Honour Priestley J, before this Tribunal. In the course of an application for judicial review of determinations (largely as to discovery) made by this Tribunal on the first day of the hearing, Mr Dorbu also sought the High Court's ruling on this issue. Both Counsel for the Law Society and the Tribunal accepted that Mr Dorbu was not bound by the findings to the extent they affected him before the Tribunal as he was neither a party nor a witness

[27] It should perhaps be noted at this point that the first four days of the hearing before the Tribunal were occupied by the last minute interlocutory applications made by Mr Dorbu for discovery from 10 named parties including lawyers, the Registrar of the Family Court, the Bank of New Zealand, a firm of real estate agents and Mr Barge. The Tribunal declined the applications made by Mr Dorbu following which the application for review referred to was filed and Mr Dorbu was permitted time for that to be heard and determined before the substantive hearing continued.

[28] In addition, Mr Dorbu on the first day of the hearing presented the Tribunal with a medical certificate indicating that he was not in a position to attend Court that day because of back pain. However he indicated he was able to at least argue the interlocutory matters before needing to retire. He failed to appear the second day and the Tribunal had to seek further medical evidence to clarify Mr Dorbu's condition before continuing the hearing.

[29] In terms of the further discovery applications Randerson J said (paragraph 14*):*

> "It is possible that some of this material may be relevant but I agree with the view expressed by the Tribunal that much of it is sought in very general terms and they may well be more in the nature of a fishing expedition than being truly relevant to any material issue."

[30] His Honour also pointed out that Mr Dorbu could have much earlier explored the possibility of seeking the hearing Judge's permission to allow access to the documents on the court file from the Barge litigation. However that appeared to be a matter that Mr Dorbu wished to pursue and so, to facilitate this, the Tribunal

proceeded with the remaining charges rather than beginning with those relating to the Barge litigation.

[31] It can now be said that having spent some days of the hearing time in the application and Review, Mr Dorbu produced as a result of his accessing the Barge litigation file, a bundle of documents in which not a single new relevant document was included. Indeed most of the documents already appeared in the Society's bundles.

[32] In terms of the findings of Priestley J insofar as they related to Mr Dorbu himself, Mr Keyte had properly accepted before Randerson J that since Mr Dorbu was neither a party nor witness to the Barge litigation that he was not bound by the findings made by Priestley J. Randerson J held:

> "It follows that, to the extent that findings made by Priestley J in the named proceeding are relevant to the disciplinary proceedings before the Tribunal, Mr Dorbu must be at liberty to challenge those findings."

[33] We consider that, in the course of the hearing before us, Mr Dorbu had significant and ample opportunity provided to him to challenge the relevant findings of Priestley J through his own evidence and through his ability to cross-examine key witnesses in the Barge litigation including Mr Barge himself, Mr Colin Girven and Mr Doug Hickson, solicitors for Mr Barge, and Mr Michael Fisher, Barrister who acted on behalf of Mr Barge in the litigation.

[34] To summarise Mr Dorbu's position concerning the transactions: he alleged first, that Freeport had never intended to sell the Anzac Ave property, but were merely "testing the market" to establish a value for the purposes of the purported sale of the shares in Freeport.

[35] Secondly, that the repayment of the BNZ mortgage without it being discharged (as would have normally occurred), but rather by transfer to a private financier was in order to secure an advantageous financing arrangement for Freeport Limited.

[36] In respect of this it is to be noted:

(1) The Evidence of Victoria Zhou was that Mrs Chen had completed a listing agreement, supplied her solicitors contact details and paid a considerable sum for advertising the property.

(2) At no time was Freeport in default of its mortgage to the BNZ, sufficient funds always having been made available by Mrs Chen to cover payments. There may have been occasions when it was in default for a mere few days but it is clear the bank was not concerned about that because they had the guarantee of Mrs Chen. Furthermore at the time the replacement loan was entered into the Freeport BNZ accounts were in credit.

(3) The financier is the brother of Mrs Jiao who was the person keen to purchase the building from Freeport after they had entered into an agreement with Mr Barge.

(4) In terms of the loan agreement itself there were also unusual terms in that the drawdown date for the advance was 11 July 2002. It was recorded (contrary to the above information) that the mortgagor was facing financial difficulties; interest was to be charged at 11 percent which was higher than the rate charged by the BNZ; the mortgagor was to pay a fortnightly instalment of $2015.12 on the date of the agreement namely 10 June 2002 even though the funds were not being advanced until a month later.

[37] The alleged defaults leading to the "mortgagee sale", which are also unusual, have been recorded above. Further comments about the pattern of the transactions under consideration, as described by the Court of Appeal are also set out under the Findings and Discussion section of this decision.

Background to Charges 8 and 9 – the G complaint

[38] Both charges arise out of the course of events which occurred when Mr G, a Barrister, was representing Mr and Mrs R in a civil claim in the District Court. Mr and Mrs R were claiming damages from a company, W Properties Limited, whose

director was Mr S. By early October 2004, although a statement of defence to the claim had been filed, the defendant's solicitor had withdrawn. On 17 September 2004 Mr S had left a phone message for Mr G indicating he wished to discuss settlement. Mr G immediately sent a letter of reply by fax that day advising Mr S that Mr G was away on leave from 20 September to Friday 1 October and that Mr S could contact his instructing solicitors to discuss the possibility of settlement. On 4 October in reply to a call from Mr S which had arrived during his absence, Mr G sent a further fax message to Mr S. That message outlined some issues concerning the Court case, acknowledged Mr S's approach to meet and discuss settlement and gave a brief outline of what might happen if settlement was not reached.

[38] On 6 October Mr G sent a fax message to Mr S regarding a meeting to be held in Mr G's chambers in Auckland on 14 October to discuss possible settlement. The meeting took place on that date between Mr S and Mr G. Notes of the meeting were produced in evidence. In the course of that meeting various settlement figures were discussed and at one point Mr S wrote a figure on Mr G's pad indicating a settlement offer. On 27 October Mr G sent a further fax outlining the discussion regarding settlement. Further calls were exchanged, and o n 5 November 2004 Mr G followed up with a further fax message to Mr S, reminding Mr S that a formal proof hearing in the matter was scheduled for 11 November.

[40] On 9 November 2004, Mr G's fax message to Mr S records receipt of the original Memorandum Admitting Relief, and the basis on which it would be held unactioned pending payment being made on the agreed terms. It also clearly set out that if no payment was made by the due date, the memorandum allowed for judgment to be immediately obtained for a figure $4000 in excess of the settlement (prompt payment) figure. Mr S was directed to deal directly with the instructing solicitors.

[41] The instructing solicitors wrote on two dates in February 2005 confirming the settlement arrangements and indicating the judgment for the higher figure would be sought if payment was not received. On 3 March 2005 no payment having been received from Mr S or his company, judgment was obtained Upon Admission in the Hamilton District Court.

[42] Following that, winding up proceedings were commenced against the company to enforce the payment of this judgment debt.

[43] This detail is recorded to demonstrate that Mr G had acted at all times quite properly while dealing with an unrepresented litigant, recording each step of the process and clarifying his own role.

[44] In early August Mr Dorbu applied to the Hamilton District Court to set aside the judgment against W Properties Limited. He attached in support an affidavit of Mr S. The application advanced seven grounds, three of which were considered by Mr G to be allegations of improper conduct by him. The application was opposed by Mr G's clients and at that point he stepped aside from the proceedings in order to swear an affidavit in support of that opposition. The affidavit set out Mr G's version of events and exhibited a number of documents which demonstrated that Mr S's version of events was incorrect. On 31 August Mr S then filed an affidavit in reply which was silent about the documents which challenged his evidence.

[45] The Law Society contend that from the time of the filing of Mr G's affidavit and supporting documents Mr Dorbu ought to have been aware that there was no foundation for his attack on Mr G. In evidence, Mr G acknowledged that had Mr Dorbu abandoned the attack on Mr G and his integrity at that point that he could fairly be regarded as having only vigorously pursued his client's rights. For that reason Mr G would have made no complaint. However Mr Dorbu pursued the matter through the process of the hearing. His criticisms of Mr G were roundly rejected by the Court in its judgment of 19 October 2005.

[46] Not content with that finding, Mr Dorbu filed a notice of appeal on 27 October 2005 which asserted the same grounds advanced to the District Court. Subsequently, in February 2006 he made submissions to the High Court continuing the initial allegations against Mr G as having acted improperly in respect of a litigant in person. Judgment of the High Court recorded that Mr Dorbu had:

> "... essentially rehearsed the arguments that failed to find favour with the Learned District Court Judge ..."

Background to Charge 10 – the KA complaint

[47] In the course of defamation proceedings which Mr Dorbu had personally instituted against a finance company, interrogatories were administered to him, including the following question:

> "3. Have you, since commencing practice as a Barrister and/or Solicitor in New Zealand received notice of complaints made about you to any regulatory body including, but not limited to, the Auckland District Law Society?"

[48] The answer given by Mr Dorbu was: "Yes".

[49] A further interrogatory was posed:

> "4. If the answer to 3 above is "yes":
>
> (a) Have any such complaints being made by or on behalf of any member of the Judiciary?"

[50] The answer was:

> "Yes, the ADLS committee reviewed and dismissed **the complaint**." (emphasis ours)

[51] It is alleged that at the time he swore the affidavit answering these interrogatories, Mr Dorbu knew that the answer to 4(a) was false in that the Auckland District Law Society ("ADLS") had referred to him two complaints by or on behalf of members of the Judiciary, one from His Honour Chambers J and one from His Honour Priestley J.

[52] Mr Dorbu denied this charge on the basis that he considered that the Chambers J complaint had been dismissed and that the Priestley J referral was not "a complaint" made by or on behalf of His Honour.

[53] The complaint by Chambers J was made in January 2002 and considered by the Complaints Committee in June 2002. It should be noted that some of the evidence initially filed with the Tribunal was excluded on Mr Dorbu's application and thus the details around the Chambers J complaint cannot be considered. However it

is sufficient for the purposes of determining this issue to simply consider the outcome of the complaint because it is the interpretation of that which is challenged by Mr Dorbu. In its decision of June 2002 the Complaints Committee resolved that no charges be laid against Mr Dorbu. This was conveyed to Mr Dorbu by means of a letter addressed to Mr T J Darby, Solicitor, who was assisting Mr Dorbu in respect of the complaint. The text of the letter insofar as it is relevant reads as follows:

> "22 July 2002
>
> I advise that at its meeting on 24 June 2002, Complaints Committee No. 2 resolved that no charges would be laid against Mr Dorbu in relation to the complaint by Justice Chambers.
>
> However, the Committee directed that Mr Dorbu should be advised that it is imperative that he be scrupulously accurate and honest when answering questions put to him by a Judge. Would you please pass that on to Mr Dorbu.
>
> The Committee also resolved that, although the matter was not of sufficient gravity to warrant the making of a charge, the inquiry was justified and that Mr Dorbu should be asked for submissions on the question of whether or not any costs order should be made against him ..."

[54] The letter then sought submissions from Mr Dorbu on this issue. Subsequently the Committee resolved not to impose any costs order against Mr Dorbu.

[55] The first issue for the Tribunal to determine is whether the answer "Yes. The ADLS Committee reviewed and dismissed the complaint" fairly and honestly reflected the contents of the letter above.

[56] The second issue which arises under this charge relates to the referral by Priestley J of his decision in respect of the *Barge* litigation dated 27 October 2005 to the Law Society for investigation of Mr Dorbu's actions in relation to the various transactions which were the subject matter of that litigation.

[57] The situation is somewhat confused because initially the Law Society referred this judgment on to Mr Dorbu *"as a .. complaint in which His Honour is critical of (Mr Dorbu's) actions in the matter and your representation of your client."* The Society then set out, in its letter to Mr Dorbu of 8 November 2005 the particulars of

the concerns held. The somewhat confused position is because subsequently, on 1 December 2005, the former Professional Standards director of the ADLS wrote to Mr Dorbu in the course of which he said:

> "Kindly note that this matter is not being investigated as a complaint from Justice Priestley. Rather, the investigation is pursuant to a District Council resolution in terms of s.99 of the Law Practitioners Act 1992".

[58] That section refers to the ability of the Society to conduct an "own motion" investigation and this was how it was being now put to Mr Dorbu. The position became further complicated because in the course of further correspondence between the Society and Mr Dorbu a complaint was received (on 14 March 2006) from Castle Brown, the Solicitors for Mr Barge, in respect of Mr Dorbu's actions. Thus on 15 March 2006 the ADLS Professional Standards director wrote to Mr Dorbu's counsel, then Mr Pidgeon QC, as follows:

> "I acknowledge receipt of your letter of 13 March 2006. This was put before the Society Complaints Committee No. 2 at its meeting on 14 June 2006. On the same date, a complaint was received from Castle/Brown, Solicitors on behalf of Ivan Barge. The issues raised there seem to be largely similar to those raised under this complaint number. For practical purposes, the Committee has resolved that it may be more practical and expedient to now advance this matter on the basis of the complaint received from Castle/Brown. This will ensure that any duplicity in the various complaints is avoided."

[59] Mr Dorbu relies on this correspondence to justify him having answered the interrogatories in respect of a singular complaint only. He argues that there was by that stage no complaint by Priestley J extant.

Background to Charges 11 and 12

[60] These charges arose out of Mr Dorbu's response to an interim decision in the course of these proceedings. Although the two charges were nominally denied initially, it was clear by the conclusion of the hearing that they were admitted and indeed Mr Dorbu wrote (and produced to the Tribunal) a letter of apology to His Honour Priestley J in respect of the matters contained in the charges. Thus the background description will be brief.

[61] Mr Dorbu had sought that the Tribunal issue a witness summons to Priestley J in order that he could be challenged about his findings in the *Barge* litigation. On 23 June 2009 the Tribunal declined this application and provided its reasons by written decision, conveyed to Mr Dorbu, initially by email. That same day Mr Dorbu emailed the then case manager of the Tribunal, including in his email the following comments:

> "... Justice Priestley is a racist Judge and his decision against me in my absence is couched in racial bigotry. Unfortunately the legal fraternity will protect him and he seems to be able to get away with it as far as his coming to testify before this Tribunal is concerned. I will use legal constitutional means to now ask him to testify."

[62] This email was copied to Mr Treleaven, solicitor at the New Zealand Law Society ("the Society") Auckland Branch.

[63] On 25 June 2009 Mr Dorbu sent a further email to Mr Treleaven at the Society repeating the racist slurs concerning His Honour Priestley J,and going on to make the very serious allegation that His Honour had "perjured himself". He then extended his criticism to the legal fraternity generally in saying:

> "But of course the Law Society is not looking for the truth but to send the black lawyer out of the legal fraternity. Let the whole world see the institutional racism by which you function.
>
> I take it that you do not wish the Judge to stand by his judgment in that you are more than happy to use his judgment against me as a foregone conclusion of fact and law. And you expect me to go down silently. Let's wait and see. I promise you, I will not go down silently. You have no power over me and do not attempt to intimidate me."

[64] In his letter of apology dated 17 November 2009 Mr Dorbu indicates to His Honour that at the time of the emails (which he wrongly places at September 2009) he was distressed about the consequences of the judgment "aforementioned". He seems to be there referring to His Honour's reserved decision which had been delivered more than four years earlier. However, he goes on to point out that he has "recovered" and composed himself and withdraws his comments that the Judge was racist.

Findings of Fact and application to Charges

Charge 1: Party to Unlawful Means Conspiracy

[65] A succinct definition of an unlawful means conspiracy is provided in the judgment of the Court of Appeal in the *Barge*[2] matter, the decision delivered by Robertson J:

> "An unlawful means conspiracy occurs when a
>
> > "combination of persons ... act in concert so as to intentionally injure the plaintiff in his trade or other legitimate interests by an act which is independently unlawful": *SSCB: Lintas New Zealand Limited v Murphy* [1986] 2 NZLR 436 at 461 (HC).[3]
>
> Thus there are three essential elements to this tort:
>
> (a) An agreement or combination;
>
> (b) An intention to injure the plaintiff; and
>
> (c) An unlawful act/means."

[66] And

> "[70] An unlawful means conspiracy requires an overt act that is independently actionable at the suit of the plaintiffs: *Lintas*. The unlawful means in this case was, first, the commission of the tort of inducing a breach of contract. Secondly, the absence of any sustainable ground that there was any breach of a mortgagee/mortgagor relationship coupled with the failure to give notice to Mr Barge of the mortgagee sale as required by ss 92(4) and 4A of the Property Law Act. ... This statutory obligation was breached.
>
> [71] We are satisfied that the appellants, Freeport, Shou-Lung Chiao and Mrs Chen all acted in combination to injure Mr Barge. We accept the submission of Mr Beck that an intention to injure is a critical aspect of this tort. Unlike a conspiracy to injure, however, an unlawful means conspiracy does not require a predominant purpose to injure the plaintiff. It is enough that the intent to injure is a concurrent or even subsidiary purpose. ..."
>
> [72] Bearing in mind that test as against the actions which were taken, it is not surprising that the Judge found at [195]:

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[2] *Yeo Yi Hua Jiao & Ors v Ivan Barge* CA236/05 Court of Appeal, decision delivered by Robertson J, 19 July 2006 at [69]

[3] *SSCB: Lintas New Zealand Limited v Murphy* [1986] 2 NZLR 436 at 461 (HC).

> It seems a safe inference for me to draw, and particularly having regard to the involvement of Mr Dorbu acting for all defendants, that the clear intention and purpose of [Shou-Lung Chiao and the appellants] they being united by family ties as well as common objectives, was to ensure that they acquired the building for their own purposes without regard to [Mr Barge's] prior claim, thus damaging his interest in the building.

[73] **In this case there is a spiders web of what, on the face of it, are contrived machinations to create a position which, in reality, never existed to enable the appellants to acquire the Anzac Ave property, thereby defeating Mr Barge's rights to the building.** *(Emphasis ours)* With the active and knowing assistance of the appellants, Mrs Chen, on behalf of Freeport, involved herself in a commercially disadvantageous financing arrangements which was facilitated by the appellants and family members associated with them. Together they used the same legal representative and all purported to engage powers which factually were unavailable. Together they breached the most fundamental obligations in respect of persons with interests in mortgages. The only conclusion, in the absence of any explanation, is that it was a contrivance to subvert the rights which Mr Barge had acquired under his original agreement for sale and purchase."

[67] Much of Mr Dorbu's evidence and challenges to witnesses before the Tribunal was effectively to challenge the conspiracy finding as opposed to his role in it. . The finding is *res judicata* insofar as the parties to the *Barge* litigation are concerned. For example, Mr Barge's rights have been determined. Mr Dorbu was able to challenge those findings of the High Court, Court of Appeal and Supreme Court insofar as they related to his own conduct and the consequential charges before the Tribunal. He did not provide any credible alternative explanation for his role in the contrivances.

[68] In the course of cross examination by Mr Dorbu, Mr Hickson, Solicitor for Mr Barge posed an important question for the Tribunal. That is:

> "How likely is it that a group of people, some of whom are not in New Zealand, and none of whom would have known New Zealand law, and all of whom have limited or no English, could have come up with this scheme in the absence of Mr Dorbu?"

[69] In determining Mr Dorbu's involvement in the unlawful means conspiracy it is important to look at the whole pattern of transactions which again is most succinctly set out in the judgment of the Court of Appeal at paragraph [74]:

> "... Standing back and looking objectively at the available material, the following is revealed. Once Mr Barge had turned down the $30,000 offer from Freeport to walk away from his contract, and Mr Dorbu had become the

legal representative both of Freeport and the appellants, a clear pattern emerged:

- The unsustainable denial of the binding nature of the contract, which had been signed by Vivian Chu;
- Mrs Chen, as the major shareholder and prime operator of Freeport, making contact with Shou-Lung Chiao, who was the brother of the first appellant, to raise funds. Mrs Jiao had an active involvement in this arrangement.
- Mrs Chen asserting that there was a problem with the Bank of New Zealand when there was none;
- Freeport entering into a financing arrangement with Shou-Lung Chiao on terms which were significantly less advantageous to those which existed with the Bank of New Zealand and which there was no evidence could not have continued;
- Documenting a clearly void sale of shares in Freeport from a vendor which owned no shares to a purchaser which had not been created;
- Creating the Harsono Family Trust as the instrumentality for acquiring the property without disclosing the reality of what was happening;
- Endeavours to invoke, albeit unsuccessfully, the provisions of s 92 of the Property Law Act by Mr Dorbu acting as the legal representative of both Freeport and the appellants;
- The creation of paper trails which were inconsistent and economically and commercially unintelligible;
- The mutual orchestrating by Mrs Chen and Mrs Jiao and family members of a funding stream to repay the Bank of New Zealand mortgage which endeavoured to hide the true source of funds;
- Requiring an assignment of the existing Bank of New Zealand mortgage to Shou-Lung Chiao rather than discharging and registering a new mortgage;
- Mr Dorbu orchestrating activity on behalf of all the parties, notwithstanding the clear conflict between their respective positions and interests but which they all accepted and saw no problem with;
- Generally creating an artifice which had no historical or commercial reality and which, in the absence of any challenge or excuse, could only be a dishonest means of subverting Mr Barge's clear rights.

> [75] No matter how stringently the onus is expressed, or what level of intention is required, when parties who could challenge the inevitable inferences remain silent, the Court is bound to conclude that this was all intended to ensure that Mr Barge's rights were avoided by means which were dishonest and unsustainable.
>
> [76] The appellants cannot ask an appellate Court to speculate about theoretical possibilities. They chose not to give evidence. The material which is available from them in affidavits filed at pre-trial stages is contradictory, inconsistent and reeks of a deal to jettison Mr Barge's rights. Their determination in this regard knew no bounds. Individually, and collectively, they were prepared to prevaricate and lie.
>
> [77] The conclusion reached by Priestley J was the only one available on the evidence and the challenge to the finding of an unlawful means conspiracy is also without merit."

[70] Mr Dorbu sought to persuade the Tribunal that his part in these transactions was simply directed to obtaining an advantageous financial outcome for his client. The client referred to was Freeport. Mr Dorbu's evidence was that this was by means of securing a preferable and more flexible finance arrangement for that company. The alternative explanation (and that advanced in the *Barge* case), is that he was assisting Freeport to obtain the additional $122,000 (approximately), which would have been obtained from the sale to Harsono Family Trust as opposed to the sale to Mr Barge.

[71] At the same time he sought to persuade us that in fact there had never been an intention to sell the building but rather to sell the shares in the company that owned the building. Ironically, Mr Dorbu was anxious for the Tribunal to have the evidence of the real estate agent Victoria Zhou. He produced to the Tribunal her brief of evidence in the *Barge* litigation after he had taken the opportunity of fully searching that file. However Ms Zhou's brief of evidence contradicts Mr Dorbu's suggestion that the property was not to be sold, because she confirms Mrs Chen's instructions to her to sell, and that Mrs Chen signed the listing agreement and provided a cheque for marketing expenses.

[72] It will also be recalled that Mr Dorbu had, in the initial stages of his involvement in the *Barge* transaction, sought to challenge it on the basis of lack of authority of Mrs Chen's daughter to sign the agreement for sale and purchase. Again Ms Zhou's brief of evidence confirms that Vivian Chou, Mrs Chen's daughter,

had told her that Freeport's lawyers held a power of attorney in her favour. It is the failure to disclose this power of attorney which is the subject of other charges.

[73] Mr Dorbu was not able to provide the Tribunal with a reasonable explanation as to why he engaged a firm of accountants to prepare a settlement statement in respect of the mortgagee sale and thus found himself in the situation of, as a barrister, signing a number of documents correct for the purposes of the Land Transfer Act. Had his purposes been straightforward and innocent as he contends, there was no reason for this circuitous process; rather, a firm of solicitors could have been instructed. However, it is also clear that no firm of solicitors could properly have signed the bogus documents correct as they were clearly not so.

[74] As to the second part of the unlawful means conspiracy; that is the absence of any sustainable grounds for a mortgagee sale and the failure to give proper notice under the Property Law Act to Mr Barge as caveator. This also implicates Mr Dorbu as part of the conspiracy. Although the Property Law Act notice, according to Mr Dorbu, emanated from a firm of solicitors in Hong Kong, Mr Dorbu well knew that the alleged default was dated at a time when the mortgage was still held by the Bank of New Zealand. He admitted in the course of cross examination that he recognised something "suspicious" or "fishy" about it. Knowing this, he proceeded to certify the subsequent transfer as correct for the purposes of the Land Transfer Act.

[75] We adopt, with respect, the finding of Priestley J at paragraph [111] of the *Barge* High Court decision as follows:

> "[111] There is a clear statutory obligation imposed by ss 94(4) and 92(4)A to give notice of a s 92 demand to a caveator. Mr Dorbu was well aware that the plaintiff was a caveator. He was well aware too that Castle Brown were acting as his solicitors. Castle Brown's refusal, during this time frame, to enter into correspondence with Mr Dorbu who patently had no instructing solicitor, cannot possibly relieve the second defendant of his s 92(4)A obligations. Furthermore, the relevant statutory provisions and forms relating to caveat's especially provide for a caveator's address for service. In this instance the plaintiff stipulated address for service on the caveat was the offices of his solicitor Castle Brown in Newmarket."

[76] It is noteworthy that in his affidavit in the *Barge* proceedings, Shou-Lung Chiao described Mr Dorbu as the "facilitator" of the transactions.

[77] His Honour Priestley J had the following comments to make specifically about Mr Dorbu in the course of his decision:

> "[128] Two things are abundantly clear from the evidence. The first is that Mr Dorbu provided extensive professional assistance (quite apart from his role as counsel in this and related proceedings) for all defendants, particularly in the form of preparing deeds of trust, a settlement statement, and various conveyancing documents. Again, depending on Mr Dorbu's instructions (which might not necessarily provide him with a shield) it is a matter of concern to the Court that a New Zealand lawyer should be instrumental in assisting to carry out a series of arrangements which had the clear objective of attempting to collapse the plaintiff's interests in the building. But it is not improper, and indeed in a commercial context it is legitimate, for a lawyer to endeavour to extricate a client from one contract for the purposes of achieving a better result through another contract. But such a process must be achieved by lawful, not unlawful means."

[78] Despite vigorous attempts by Mr Dorbu to challenge this finding, his attempts to provide any form of rational explanation for his involvement, other than to facilitate the unlawful means conspiracy, utterly failed to persuade us. Mr Dorbu's evidence was contradictory, obfuscating and his explanations were simply not plausible and did not withstand any form of scrutiny.

[79] In the course of cross examination he admitted it was his idea to transfer the mortgage – he said his clients "wouldn't have a clue". That certainly answered the question posed earlier in evidence by Mr Hickson [68], referred to above. While contending on the one hand that his client's intention was to hold the property, within four days of the transfer of the mortgage, a mortgagee sale agreement had been drawn up.

[80] At no stage did Mr Dorbu answer the question which was posed in the judgment of the Supreme Court in *Barge*, in response to the suggestion that the applicants had no reason to think that the Barge agreement was valid, namely: "Why then did you bother to go through the elaborate arrangements which the Court of Appeal fairly described as a spider's web?"

[81] At the point of the resumed hearing when he was being cross-examined about his role in transferring the mortgage, Mr Dorbu became extremely agitated and began to shout. After being warned about his decorum he modified the evidence that he had earlier given about the transfer having been his idea, and said: "It's not my

idea......It is the law." And later: "It was the law and the right thing to do and I will stand by it every day". This was a reference to the point that one could legally transfer a mortgage. But it did not take into account the fuller picture. His declaration is, sadly, indicative of Mr Dorbu's misunderstanding of his obligations as a legal practitioner, which misunderstanding and indeed belligerent refusal to accept wrongdoing, recurred throughout the hearing in his evidence and conduct of his defence.

[82] The signing correct and lodging for a registration of the transfer (acts Mr Dorbu accepted he did) following the bogus mortgagee sale was another example of Mr Dorbu acting dishonestly in pursuit of the outcome of defeating Mr Barge's interests.

[83] In Mr Dorbu's affidavit in opposition, sworn 13 February 2009, in these proceedings, at para [61] he says:

> "Neither the affidavit of Ms Chen or that of Ms Chou to the effect that there was no power of attorney or other authority from Freeport vested in Vivian Chou to sell the company's property to the best of my knowledge has ever been contradicted."

[84] How Mr Dorbu can put such a proposition to the Tribunal when in fact he had seen the power of attorney that contradicts those assertions, a document which was one of the core pieces of evidence in the *Barge* litigation, is of concern to the Tribunal and demonstrates Mr Dorbu's inability to see or accept any interpretation which differs from his own.

[85] Mr Dorbu repeated in his closing submissions the argument that, contrary to the findings in the courts, Mr Barge had no valid contract with Freeport. For example, he argued there was no acceptance of the offer in law; in particular that Ms Chou had no "actual, implied or ostensible" authority to sell the property. He relied on certain evidence, not accepted in the courts, that Ms Chou had made a mistake in signing the agreement, and hence the offer of "compensation" (an offer of $30,000.00 made to Mr Barge to walk away from the agreement). He also argued that Ms Chen's evidence in the High Court that she had not given her daughter a power of attorney to sell Freeport should be accepted, as with her assertion that the

property was not for sale due to the prior sale of the shares. There were a number of similar points raised about the evidence in the High Court, and the view of the law taken by respective courts.

[86] This Tribunal considers it is bound by the consecutive findings of the courts on these matters. However it has considered the evidence and arguments referred to us by Mr Dorbu and we consider the factual position to be clear. The Courts have given reasons for their findings of fact and we can see nothing in Mr Dorbu's arguments that could undermine them.

[87] Mr Dorbu also argued that no acts were in fact unlawful. The same comment is made in response, adding that findings of law are also relevant and accepted.

[88] Finally, Mr Dorbu reiterated in his closing, an argument that had been raised at different stages, which was that it was his belief at the time that was relevant. He did not know about any conspiracy – he was told and understood that there was no valid power of attorney. It would appear on this theory that at first he was unaware of the existence of the relevant document at all, but that later when he became aware of it he accepted Ms Chou's explanation that she did not intend it to extend to binding Freeport on such matters, and he considered that this was a legally sustainable position.

[89] Thus his position when he came to close his case, was to both argue that there was in fact no unlawful acts to conspire in, and that even if there were, that it was his understanding at the relevant time that was important. In summary, his position was that he genuinely believed that in fact and law there was no valid sale and purchase agreement between Mr Barge and Freeport, and therefore to the extent that he may have assisted the "defeat" of Mr Barge's "invalid caveat", he was acting perhaps foolishly, but in good faith, in the belief that what he was doing was proper, and in the best interests of his client.

[90] The Tribunal is well aware of the unusual nature of the allegations contained in this particular charge and for that reason remind ourselves of the requirement for very clear evidence and careful scrutiny to support a finding, on the balance of probabilities, that it is made out. Before the hearing commenced, we had been

provided with 10 volumes of evidential material comprising over 2000 pages. We heard witnesses and submissions for some 10 days, and a further 631 pages of evidence was received. It is a very serious allegation, however we find that there is ample evidence to sustain the charge and we find it proved.

Discussion

[91] The law on what constitutes misconduct in professional capacity could hardly be described as prescriptive but has been clarified over recent years in a number of leading decisions.

[92] In particular we refer to the recent decision of a full Court of the High Court in *Complaints Committee No. 1 of the Auckland District Law Society v C* [2008] 3 NZLR 105[4]. That decision departed from the earlier authority of *Atkinson v Auckland District Law Society* (NZLPDT: 50/8/90, N Marque, Chair)[5] preferring the approach in Australia in relation to a medical practitioner; *Pillai v Messiter* (No. 2) (1989) NSWLR 197, 200, a decision of the Australian Court of Appeal.[6] The relevant passages are from the dictum of Kirby P:

> "The words used in the statutory test ('misconduct in a professional respect') plainly go beyond that negligence which would found a claim against a medical practitioner for damages: *Re Anderson* (at 575). Departures from elementary and generally accepted standards, of which a medical practitioner could scarcely be heard to say that he or she was ignorant could amount to such professional misconduct: ibid. But the statutory test is not met by mere professional incompetence or by deficiencies in the practice of the profession. Something more is required. It includes a deliberate departure from accepted standards or such serious negligence as, although not deliberate, to portray indifference and an abuse of the privileges which accompany registration as a medical practitioner ..."

[93] In the *C* case, the necessity to establish intentional wrongdoing in order to establish professional misconduct was rejected, at paragraph [33]:

> "To conclude, the *Atkinson* test adopted by the Tribunal incorrectly includes within the definition of professional misconduct falling within s.112(1)(c) and in other respects, is not particularly helpful. The Tribunal erred in directing itself that intentional wrongdoing is an essential element of a charge under

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[4] *Complaints Committee No. 1 of the Auckland District Law Society v C* [2008] 3 NZLR 105
[5] *Atkinson v Auckland District Law Society* (NZLPDT: 50/8/90, N Marque, Chair)
[6] *Pillai v Messiter* (No. 2) (1989) NSWLR 197, 200, a decision of the Australian Court of Appeal

> s.112(1)(a). While intentional wrongdoing by a practitioner may well be sufficient to constitute professional misconduct, it is not a necessary ingredient of such conduct. The authorities referred to above (and referred to in the Tribunal decision) demonstrate that a range of conduct may amount to professional misconduct, from actual dishonesty through to serious negligence of a type that evidences an indifference to and an abuse of the privileges which accompany registration as a legal practitioner."

[94] The case before us is in no way borderline. While Mr Dorbu argued he firmly believed he was acting in the best interests of his client Freeport, and believed certain things that were not sustainable on the evidence (such as the lack of validity of the Barge sale and purchase agreement due to the lack of a valid power of attorney), the totality of the evidence clearly points to intentional wrongdoing.

[95] Having regards to component elements relevant to this charge and the findings we have made about Mr Dorbu's involvement in these transactions the tribunal finds Charge 1 proved and there can be no doubt that this constitutes professional misconduct.

[96] If, as Mr Dorbu urged upon the Tribunal, he knew nothing of any conspiracy, then while the substance of the charge is not proved, Mr Dorbu's actions in combination displayed such an extraordinary naivety and lack of judgement, competence and professionalism as to amount by themselves to serious professional misconduct. However the Tribunal does not accept, as matter of evidence that Mr Dorbu did not know he was facilitating the unlawful means conspiracy which would have a consequence of injuring Mr Barge.

Charge 2: Barrister acting as a solicitor in breach of section 56(2) – Mr Dorbu's defence of authorization by s 65(2)(c)

Mr Dorbu's submission

[97] Mr Dorbu argues that he did not benefit directly or indirectly from the transactions and believed at the time that, consistent with the scope of his instructions, he was empowered by s 65(2)(c) of the LPA 1982 to carry out those activities. His instructing solicitors were not domiciled in NZ, and he did not charge any fees to the overseas solicitors on whose behalf he had certified documents. He

refers to *Auckland District Law Society v Dempster* [1995] 1 NZLR 210 (HC)[7] in support.

[98] Section 65 relevantly provides:

> "Qualified persons only to act as conveyancers
>
> (1) Except as provided in subsection (2) of this section, no person, other than the holder of a current practising certificate as a barrister or as a solicitor or as both, or a person acting under the supervision of such a holder, shall draw or prepare for or on behalf of any other person –
>
> (a) Any conveyance …
> (b) Any deed …
>
> (2) Subsection (1) of this section shall not apply to –
>
> (a) …
> (b) …
> (c) Any conveyance, deed, or agreement that is drawn or prepared by filling in a printed form, if –
> (i) The printed form was drawn or prepared by a person who, at the time when it was drawn or prepared, was the holder of a current practising certificate as a barrister or as a solicitor or as both; and
> (ii) It could reasonably be expected that the form could be properly completed by the persons likely to complete it, whether or not they were holders of such certificates; and
> (iii) No charge is made directly or indirectly for the drawing or preparation of the conveyance, deed, or agreement or for any service incidental to it."

[99] In *Dempster* the Court considered the meaning of "[a]cts as a solicitor" under s 64(1)(a) which makes it an offence to act as a solicitor if not enrolled as such under the Act. The context was whether a former Assistant District Land Registrar could undertake conveyancing. Mr Dempster argued he was not holding himself out as a qualified solicitor. However the Court found that Mr Dempster was "acting as a solicitor" because he was carrying out work ordinarily done by solicitors. The court (Blanchard J) noted at p 214:

> "I doubt very much however whether the expression 'Acts as a solicitor' in s 64(1)(a) requires more than that the defendant does work of a kind ordinarily done by solicitors, It does not seem to me there is in that portion of the subsection any requirement that the person must also be professing to be a solicitor. It cannot be the case that persons who do the work normally done

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[7] *Auckland District Law Society v Dempster* [1995] 1 NZLR 210 (HC)

> by a solicitor can escape a prohibition on acting as a solicitor simply by proclaiming, as they do so, that they are not in fact solicitors" pp 214-5

[100] This has an analogy here as Mr Dorbu claimed that by describing himself as a barrister he did not hold himself out as a solicitor. The case does not support Mr Dorbu's argument.

[101] *Dempster* was referred to by this Tribunal's predecessor in *ADLS v McKee,* 3 March 2003*.* Mr McKee was involved in negotiations, he drew settlement statements, he attended on the settlement, he attended to matters such as the Building Code Compliance Certificate; he physically banked the cheque received for his clients, he may have even given undertakings in relation to the settlements. The Tribunal found he was acting in and doing the ordinary work of a solicitor in a conveyancing transaction.

[102] The Tribunal, referring to *Dempster*, noted the very limited permission given by section 65(1) to the drawing or preparation of 3 categories of documents. It noted the distinction between the drawing of documents as set out in s 65(1) and the ability of (inter alia) barristers to draw such documents for which there is some historical background. In particular it noted the distinction between drawing the documents on the one hand and, on the other, of acting on a conveyancing transaction and furthering and completing such a transaction as Mr McKee, and Mr Dorbu, did.

[103] Finally*, Complaints Committee No 1 of the ADLS v* ***APC****,* (CIV 2007-404-4646, 29 April 2008)[8] is an appeal to a Full Court of the High Court (Randerson, Williams and Winkelmann JJ) from a decision of the Tribunal. Mr C, who held a practicing certificate as a barrister, issued two separate solicitor's certificates to Westpac Banking Corporation certifying that it was in order for the Bank to make loans in respect of conveyancing transactions. He was charged, like Mr Dorbu, with breach of s 56(2) of the LP Act 1982 by acting as a solicitor when he did not hold a practising certificate as a solicitor. The Tribunal had found that there was a breach and the conduct was unacceptable, but Mr C had not engaged in intentional wrongdoing so as to amount to professional misconduct. It was that last point with which the Court firmly disagreed.

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[8] *ADLS v* ***APC****,* (CIV 2007-404-4646, 29 April 2008)

[104] The Court noted without disagreement the Tribunal's interpretation of s 65:

> "[19] The Tribunal observed that s 65 allows barristers, solicitors, and barristers and solicitors holding current practising certificates to draw or prepare three categories of documents. First, any conveyancing of real or personal property within the meaning of the Property Law Act 1952. Secondly, any deed within the meaning of the Property Law Act relating to real or personal property and, thirdly, any tenancy agreement. It held that it does not authorise barristers to be involved in conveyancing to any wider extent and does not authorise a practitioner who does not hold a solicitor's practising certificate to do work which the holder of such certificate may do. It referred to its previous decision in *McKee* ..., in which the Tribunal drew a distinction between the drawing of deeds, complex or otherwise, on the one hand, and acting in a conveyancing transaction, on the other. Generally, the former was an area of work in which barristers had long been instructed. The latter was the ordinary work of a solicitor and outside the scope of a barrister's work in terms of the narrow ambit of s 65(1)."

[105] The Court noted the Tribunal's conclusion that Mr C's completion of the Solicitor's Certificates was something that he should have only done if he held a practising certificate as a solicitor or barrister and solicitor. He had involved himself in solicitor's work. The Court then noted the Tribunal's findings on the gravity of the conduct and held that the Tribunal was wrong to require 'intentional wrongdoing' as an element of the charge. The Court held the Tribunal was correct in its view that Mr C purported to act as a solicitor in issuing the certificates, in that he undertook work usually done by a solicitor. However the Court held that his conduct amounted to misconduct in his professional capacity. Various points made by Mr C such as seeking the advice of the Professional Standards Director at the Law Society and of members of the Friends Panel (which the Court described as "shallow" inquiries) and the description of himself as 'barrister' in dealings with the Bank did not mitigate the charge, in the Court's view.

Conclusion

[106] Thus s 65(2)(c) is confined to, essentially, filling out printed form documents when three requirements are met: the printed form was drawn up by a barrister or solicitor; the form could reasonably be expected to be properly completed by non-solicitors; and no charge is made for the filling out of the form. The acts listed in the particulars of the Charges at paras 2.1 to 2.7, which Mr Dorbu accepts he did, go well beyond filling out pre-drawn forms and constitute acting as a conveyancer

without an appropriate practicing certificate. They are not the sort of matters which may properly be completed by non-solicitors. We make no finding as to whether Mr Dorbu did or did not receive any payment for his services, as it would make no difference to our finding. Mr Dorbu cannot bring himself within the limited exception of s 65(2)(c). Accordingly, we find professional misconduct to have been proved.

Charge 3: Acting for more than one party where irreconcilable conflicts exist

Rule 1.04 reads:

> "A practitioner shall not act for more than one party in the same transaction or matter without the prior informed consent of both or all parties."

[107] In closing submissions counsel for the Society conceded that the first particulars in respect of this charge were incorrectly phrased in that it should have referred to the transfer of mortgage not "the sale of the property". Furthermore Mr Keyte conceded that this particular part of the charge was unsustainable and that it was upon the second particular that the Society relied. That particular charge is that "in the purported mortgagee sale of the property" from Shou-Lung Chiao to the trustees Mr Dorbu acted for the mortgagor (Freeport), mortgagee under the assigned mortgage (Shou-Lung Chiao) and purchaser (the trustees). In the judgment of Priestley J in the *Barge* litigation His Honour had this to say at para [123]:

> "I am satisfied that at all material times during this phrase Mr Dorbu was, regardless of any conflict he may have been in, acting for all the defendants at all stages of the implementation of the arrangements. He was also acting as counsel for Freeport."

[108] His Honour went on in subsequent paragraphs to meticulously specify the relationship and agency between Mr Dorbu and each of the parties referred to. He then summarized at paragraph [128]:

> "Two things are abundantly clear from the evidence. The first is that Mr Dorbu provided extensive professional assistance (quite apart from his role as counsel in this and related proceedings) for all defendants, particularly in the form of preparing deeds of trust, a settlement statement, and various conveyancing documents."

[109] Mr Dorbu was given the opportunity of challenging this finding about him, which had been made in his absence. He did not successfully challenge this finding in the proceedings before us. In cross examination Mr Keyte put to Mr Dorbu a letter

written on his behalf by his former counsel Mr Pidgeon QC whereby there was no denial of acting for a number of parties but rather a suggestion that the "parties for whom he was acting" were not in a conflict situation. Mr Dorbu at one point attempted to say that he was only acting for Freeport but then accepted that because his name appeared on a number of documents for other parties that he would "not disagree" that he was acting for all of them.

[110] The issue then becomes whether there was a conflict or potential conflict between those parties. We refer to closing submissions for the Society and accept those submissions that there were *"irreconcilable conflicts … from the purchasers point of view, they paid money for a title which was always going to be defective because of the shortcomings of the mortgagee sale procedure."* Counsel also correctly points out that from the point of view of the mortgagee Mr Chiao he also was in need of independent advice as to the validity of the effect of the *Barge* agreement and caveat. Mr Dorbu had certified the transfer of the mortgage to the mortgagee and had informed Chester Grey, the firm of accountants whom he asked to prepare the settlement statement that he acted for the mortgagee. He also confirmed to His Honour Harrison J that he had acted for the mortgagee.

[111] In respect of the mortgagor company he acknowledges he acted for Freeport Development Limited. Mr Keyte referred the Tribunal to the decision of *Clarke Boyce v Mouat* [1993] 3 NZLR 641[9], a Privy Council decision providing authority for the principle that a practitioner should never act for all parties in any case of irreconcilable conflict. Counsel points to the lack of informed consent from all parties which he says can be:

> "Inferred from the bizarre overall circumstances of the purported mortgagee sale. Surely no one in their right mind would have consented to proceed to purchase the property and allow Mr Dorbu to certify the transfer correct had they been fully informed about all the shortcomings of the procedure, the difficulties of getting around the *Barge* caveat, and the existence of the power of attorney which authorized the sale to *Barge*."

[112] It is clear that the directors of Freeport, one of Mr Dorbu's clients, knew of the existence of the power of attorney which validated the *Barge* purchase but kept this

[9] *Clarke Boyce v Mouat* [1993] 3 NZLR 641

knowledge from the Harsono Trust, that is the eventual purported purchaser, and also clients of Mr Dorbu.

[113] We accept the submissions of the Society that there were irreconcilable conflicts between the clients for whom Mr Dorbu acted and find that the second particular of Charge 3 is proved.

[114] Acting for more than one party where an irreconcilable conflict existed, was found to constitute professional misconduct in the decision of *Complaints Committee of the Canterbury District Law Society v W* [2009] 1 NZLR 514[10]. Although in that case there was the additional default of failing to obtain an independent valuation, we do not consider Mr Dorbu's defaults to be less serious. He was acting in circumstances where there were such obvious and serious conflicts, that we consider misconduct in professional capacity has been clearly established.

Charge 4: that the defendant knowingly failed to discover certain documents

The Charge

[115] The Law Society charges that on or about 5 June 2003 and/or 16 September 2003 Mr Dorbu swore affidavits for non-party discovery in proceedings brought by Mr Barge, in which he knowingly failed to discover four particular documents plus a category of documents, being -

(1) The memorandum of transfer (Bank of New Zealand to Shou-Lung Chaio) dated 11 July 2002.

(2) The memorandum of transfer (Shou-Lung Chaio to Hsie-Wu Huang, Yi Hua Jiao and Shou Chen Chiao) dated 2 August 2002.

(3) The memorandum of transfer (Shou-Lung Chaio to Hsueh-Wu Huang, Yi Hua Jiao and Shou Chen Chiao) dated 12 August 2002.

[10] *Complaints Committee of the Canterbury District Law Society v W* [2009] 1 NZLR 514

(4) Documents recording Mr Dorbu's dealings with the Bank of New Zealand and/or its solicitors in connection with the transfer of the mortgage to Shou-Lung Chiao.

(5) The Harsono Family Trust deed.

[116] These documents were relevant and, indeed, important to the proceedings as they related to the transfer of the mortgage from the BNZ to Mr Chiao and then on to the Harsono Family Trust. Mr Dorbu had personal knowledge of these documents as he had certified the transfers as correct for the purposes of the Land Transfer Act, and had prepared the Harsono Family Trust document and/or witnessed Ms Jiao's signature. He had had dealings with the BNZ and/or its solicitors in connection with the transfer of the mortgage to the Shou-Lung Chiao. He accepted this in evidence.

[117] The Law Society charges that Mr Dorbu breached Rule 8.01 of the Rules (6th Edition) which requires as follows:

> "In the interests of the administration of justice, the overriding duty of a practitioner acting in litigation is to the court or the tribunal concerned. Subject to this, the practitioner has a duty to act in the best interests of the client."

Mr Dorbu's response

[118] Mr Dorbu's response to this charge was simply that the documents were no longer in his possession at the time he was asked to swear and file the non-party affidavit of documents. He had returned the files to the instructing solicitor and so did not see it as his responsibility any more.

Relevant Facts

[119] Mr Hickson, who was solicitor for Mr Barge in proceedings to set aside summary judgment and sustain his caveat, gave evidence about obtaining discovery orders against non-parties on behalf of his client, including from Mr Dorbu. Mr Dorbu admits that he did swear and file three affidavits of documents pursuant to those orders but says that he did not knowingly fail to disclose the particular documents.

[120] The first affidavit is not the subject of a charge. It is dated 24 March 2003. In it Mr Dorbu briefly deposed to have only privileged documents comprising communication from overseas lawyers and file notes. In the last paragraph he stated:

> "Other documents relating to the matter which belong to the clients have been forwarded to their solicitors and/or counsel."

[121] The June affidavit notes documents in his possession (not previously listed), lists 6 categories of privileged documents (not numbered or identified with any particularity). One of the grounds of privilege claimed is that:

> "The documents are otherwise of a confidential nature and ought to be preserved, and not frittered away."

[122] The affidavit also gave an explanation of Mr Dorbu's 'service' on Mr Barge of a copy of the default notice via the 'track and trace' courier to the Pompalier Terrace address, and annexed the returned courier envelope. Finally he deposed that:

> "...I do not have any other document relevant to this matter."

[123] In the September affidavit he referred to categories of documents which were forwarded to the solicitor of the first defendant, Mr Tim Bates. He again deposed that he held no other documents, other than those listed in his June affidavit of documents. He referred to the list of documents filed on behalf of the first defendant on 24 March 2003 as disclosing the contents of the file which he had returned to Mr Bates. That list was exhibited. It does not disclose the particular documents included in the charge, although there is some general reference to correspondence with BNZ at the relevant time.

Relevant law

[124] Under HCR 8.26, a Judge may order that a non-party provide particular discovery in relation to certain documents. In such a case the Judge orders the party to file an affidavit stating "whether the documents are or have been in the person's control" and "if they have been but are no longer in the person's control, the

person's best knowledge and belief as to when the documents ceased to be in the person's control and who now has control of them" (see Rule 8.26(2)).

[125] Rule 8.21 specifies the requirements for the Schedule to an Affidavit of Documents (for party discovery). Rule 8.26 does not specify expressly that the list of documents provided must be in the form required by Rule 8.21 but Rule 8.18 provides that the default terms of a discovery order include the requirement to comply with Rule 8.21. Therefore, unless some special conditions required otherwise, Mr Dorbu was required to comply with Rule 8.21.

[126] Rule 8.21(1)(d) concerns documents no longer in the control of the deponent, and is in similar terms to Rule 8.26(2) above (with the exception of the "to the person's best knowledge and belief").

[127] In ***Discovery and Interrogatories the learned authors state:***

> "... when documents have been but are no longer in the party's possession or power, the party must decide what has become of the documents…. It is only with this information that the court can determine whether the documents sought are indeed no longer in the deponent's 'power'."[11]

[128] The whole thrust of discovery is to "require parties to civil litigation to put as many cards on the table as possible. The adversarial approach has been eroded considerably by many of the High Court Rules adopted in 1986".[12] Solicitors obligations to ensure that his or her client discovers all relevant documents and takes no steps to withhold or destroy documents that should be disclosed is well known, and critical to the fair and expeditious operation of the court and settlement of disputes. It is a "great responsibility and a heavy burden".[13]

[129] We note too, that an incorrect affidavit filed by a non-party is subject to the same obligation to promptly correct any error or supplement any omission: Rule 8.28.

Application to the facts

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[11] S D Simpson, D L Bailey and E K Evans ***Discovery and Interrogatories*** (2 ed, Butterworths, 1990) 44

[12] *Green v CIR* [1991] 3 NZLR 8, 11 per Barker J

[13] *Rockwell Machine Tool Co Ltd v EP Barrus (Concessionaries) Ltd* [1968] 2 All ER 98, 99 per Megarry J

[130] Mr Dorbu was the recipient of an order for non-party discovery. Although in this context he was not a practitioner acting for any particular party, he can properly be considered to be a "practitioner acting in litigation" within the terms of the Code of Conduct. Even if that is disputed, the Tribunal is entitled to expect that Mr Dorbu, as a practicing barrister with all the obligations of an officer of the court, understood the importance of the discovery process, the significance of the documents to Mr Barge's litigation, and his professional obligations in that context.

[131] It was clear from the minute of Harrison J of 25 February 2003 (the hearing that Mr Dorbu attended as counsel for the First and Second Defendants) that discovery was sought in relation to Mr Barge's recently expanded claim to allege allegations of a fraudulent conspiracy between all of the defendants to defeat his legitimate interest in the property. The basis for the allegations was found in documents that had been annexed to the affidavits, principally of Yi Jiao. The judge's minute recorded the position as follows:

> "[6] … The documents are compelling evidence that the series of transactions under consideration commencing with the BNZ's transfer of 11 July 2002 of the mortgage executed in its favour by Freeport to Mr Shou Lung Chiao were highly irregular. On their face they provide a proper factual basis for an arguable question that all parties to the subject transaction excluding the BNZ were tainted with knowledge that they were entered into transactions to defeat Mr Barge's rights as purchaser, sufficient to support an interim injunction pending trial of his substantive application for summary judgment.
>
> [7] Additionally, questions arose during argument about the role played by Mr John Dorbu, who appears as counsel for Freeport and Mr Chiao today, in the transactions themselves. Among other things, he signed as correct a memorandum of transfer of the mortgage from the BNZ to Mr Chiao. He appears to have acted in the capacity of solicitor for some of the parties at critical times. He has accepted my suggestion to seek leave to withdraw, which I grant, from acting as counsel for Freeport and Mr Chaio. I also record that it would be appropriate for Mr Dorbu to seek immediate independent advice about his role."

[132] Orders for non-party discovery were then made. Plainly they covered the particular documents which are the subject of this charge, and which Mr Dorbu had created, certified or witnessed only months earlier. The evidence is also that Mr Dorbu continued to attempt to remain involved in the proceedings, appearing at the judicial conference before Master Faire on 25 March. Further, he sought leave to

represent certain parties in relation to applications for non-party discovery at a hearing before Master Faire in June 2003.

[133] The Tribunal did not receive a copy of the later orders for further discovery dated 7 May 2003 in evidence. However Mr Hickson gave evidence that, having seen Mr Dorbu's third affidavit in draft form, he prepared and faxed to Mr Dorbu a more extensive draft form of affidavit which reflected the contents of the matters that were discussed before Master Thompson on 10 September. That draft also refers to the terms of the orders which are very particular in their ambit.

[134] There can be no doubt that Mr Dorbu knew that these particular documents existed and were relevant to, and covered by, the orders for discovery. If he no longer had them in his possession because, as he says, he had sent the file to Freeport's solicitors, in the particular circumstances he should have identified them by reference, whether he thought they might be covered by privilege or not.

[135] However he also knew they had not been specifically listed by Freeport's solicitors (which list he referred to in his September affidavit). Accordingly the documents had either not been among the documents forwarded to them by Mr Dorbu, or Freeport's solicitors had not carried out proper discovery. Either way, in this context it was incumbent upon Mr Dorbu to draw to the attention of the Court and parties the existence of the particular documents. He did not.

[136] The Tribunal is satisfied that Mr Dorbu failed to honour his duty to the court. Indeed, his own evidence indicated that he did not recognise nor understand his duties to the court and obligations as counsel. As in respect of a number of the other charges and indeed his own defence of the charges before this Tribunal, Mr Dorbu displayed an alarming lack of understanding of the role of counsel, and a perverse attitude to the primacy of his clients' best interests .

[137] The Tribunal finds Charge 4 proved and that this constitutes misconduct in his professional capacity under s 112(a) LPA 1982 (as charged).

Charge 5 – Charge of directly communicating with the client of another practitioner

Rule 6.02 reads:

> "It is only in very exceptional cases that a practitioner should communicate either directly or in writing with the client of another practitioner in relation to a matter in which the practitioner is, or has previously been dealing with the other practitioner."

[138] Mr Dorbu did not deny that he had directly communicated on or about 21 June 2002 with Mr Barge, the client of Castle Brown. Mr Dorbu justified this action by reference to correspondence with Castle Brown whereby they refused to communicate with him until he supplied them with the name of his instructing solicitor. Mr Dorbu did not supply this name. He argued that as a Barrister with an overseas instructing solicitor he was entitled to act.

[139] Counsel for the Society submits that the offence is made more serious by Mr Dorbu purporting to give Mr Barge legal advice and by inviting him to change solicitors in the course of his letter.

[140] The letter which comprises the communication speaks for itself. Mr Dorbu is clearly writing directly to a client whom he knows to be represented by other legal advisers. He purports in the course of that letter to give (incorrect) legal advice and concludes the letter by inviting Mr Barge to call him to discuss the matter or to "advise about your new solicitors with whom I should communicate".

[141] In our view there cannot be a more blatant breach of Rule 6.02 and we find this proved. We find that this constitutes misconduct under s 112(a).

Charge 6 – Breach of Rule 6.01: failure to promote and maintain proper standards of professionalism in relation to other practitioners.

Rule 6.01 reads:

> "A practitioner must promote and maintain proper standards or professionalism in relations with other practitioners."

[142] The first particular in support of this charge is supported by the letter referred to in the findings of the above charge, number five. There is a further particular that in writing to the Auckland District Law Society on 18 August 2006 that Mr Dorbu further breached this Rule. In the course of his correspondence with the Law Society concerning the complaints arising out of the *Barge* litigation, Mr Dorbu accused one of the solicitors who had represented Mr Barge as lacking bona fides. Later in the same lengthy letter in referring to the *Barge* litigations he, speaking of himself in the third person says:

> "Mr Dorbu painfully and deeply appreciates the intellectual gap between him and his accusers."

[143] Clearly this is a particularly insulting attack on fellow practitioners and once again we find the breach of the Rule proved to the relevant standard. Once again, this would justify a finding of misconduct, pursuant to s.112(a).

Charge 7- Misleading the Court by knowingly swearing a false affidavit

Rule 8.01 reads:

> "In the interests of the administration of justice, the overriding duty of a practitioner acting in litigation is to the court or the tribunal concerned. Subject to this, the practitioner has a duty to act in the best interests of the client."

[144] This charge also connects back to the letter written by Mr Dorbu to Mr Barge on 21 June 2002. The letter made no reference to any default notice dated 21 June 2002 being enclosed, nor did it refer to any failure by Mr Dorbu's client Freeport to meet its obligations to the lender, nor threat of mortgagee sale.

[145] In the course of proceedings referred to above under Charge 4 Mr Dorbu swore an affidavit which included the following statement:

> "2. I caused a copy of the notice to be served on Mr Ivan Barge by means of a registered track and trace courier via Courier Post. Mr Barge at the time had a caveat on the subject property situated at 45 Anzac Avenue, Auckland. I forwarded a copy of the notice to Mr Barge's then known address at 26 Pompellier Terrace, Ponsonby, Auckland.

> 3. I caused the copy notice to be sent to Mr Barge at that address because firstly his solicitor Doug Hickson of Messrs Castle Brown had indicated to me in a letter that he had no intention of engaging in further correspondence with me as counsel for Freeport Developments Limited. Secondly, No.26 Pompelier Terrace, Ponsonby was the address stated on documents filed in court by and on behalf of Mr Barge"

He then went on to say:

> "4. I have now noticed that the copy of the notice I sent to Mr Barge had been returned by Courier Post track and trace, which advised as at 28 June 2002, Mr Barge had moved from 26 Pompellier Terrace, Ponsonby …"

[146] The Society allege that Mr Dorbu knew this evidence was false because the courier package referred to contained not a default notice as deposed by Mr Dorbu but the letter of 21 June 2002, which made no reference to any such notice.

[147] The empty returned courier pack was discovered. We accept Mr Keyte's submission that it is inconceivable that if that document had been enclosed in the courier package with the letter of 21 June that there would have been no reference to it in the letter.

[148] This was clearly an attempt by Mr Dorbu to persuade the Court that the default notice had been served on a caveator (despite the fact that the address for service of documents for Mr Barge was in fact the offices of Castle Brown Solicitors).

[149] In his letter to the Law Society Mr Dorbu had said (and repeated in his evidence) that the 21 June letter to Mr Barge went before the Property Law Act notice arrived from the Hong Kong solicitor acting for the mortgagee. In evidence Mr Dorbu stated that the letter dated 21 June to Mr Barge was sent by ordinary postage envelope so it was not returned. If that is correct he may not have mislead the Court in terms of paragraph 2 of his affidavit, if he instead used the courier to deliver the Notice only, but given his evidence that the courier pack returned was empty, there is no way of validating that claim.

[150] Furthermore, Mr Dorbu well knew the address for service given by Mr Barge was the offices of Castle Brown, thus he has misled the court in that respect in paragraph 3 of his affidavit.

[151] The law in respect of this charge is set out under Charge 4 above.

[152] We consider, on the balance of probabilities, having regard to the seriousness of this allegation, that Mr Dorbu did intend to mislead the Court in this way. We find Charge 7 proved but on slightly different particulars from those pleaded. This is clearly misconduct in professional capacity.

Charge 8 – attacking a fellow practitioner's reputation without good cause

Rule 8.04 states:

> "A practitioner must not attack a person's reputation without good cause".

[153] The commentary on the rule, at (2) states:

> "(2) A practitioner should not be a party to the filing of a pleading or other court document containing an allegation of fraud, dishonesty, undue influence, duress or other reprehensible conduct, unless the practitioner has first satisfied himself or herself that such allegation can be properly justified on the facts of the case. For a practitioner to allow such an allegation to be made, without the fullest investigation, could be an abuse of the protection which the law affords to the practitioner in the drawing and filing of pleadings and other court documents. Practitioners should also bear in mind that costs can be awarded against a practitioner for unfounded allegations of fraud."

[154] We have no difficulty in finding that, from the time of receipt of Mr G's affidavit and supporting documents Mr Dorbu must have become aware that there was a version of events, particularly in so far as the other practitioner's conduct was concerned, which put seriously into question Mr Dorbu's client's version of events. Indeed Mr Dorbu's client did not deny the assertions made by Mr G as to the train of events. However, Mr Dorbu chose to ignore the alternative version and pursued the matter through not only one but two levels of the Court system. We consider that his behavior constituted an unjustified and unjustifiable attack on Mr G's reputation and the charge is proved and misconduct established.

Charge 9 – failure to maintain proper standards of professionalism in relations with other practitioners.

Rule 6.01 reads:

> "A practitioner must promote and maintain proper standards of professionalism in relations with other practitioners."

[155] Paragraph (1) of the Commentary is relevant:

> "A practitioner shall treat professional colleagues with courtesy and fairness at all times but consistent with the overriding duty to the client."

[156] This charge relied on the same facts as Charge 8; it was the attacking of Mr G's reputation without good cause which was said to found this further charge.

[157] In the circumstances, although different Rules are relied upon, we considered this to be somewhat of a duplication of alleged offences and accordingly dismiss this charge.

Charge 10 – misleading the Court by swearing and filing a false answer to interlocutories in December 2007

Rule 8.01 reads:

> "(1) A practitioner must never deceive or mislead the court or the tribunal."

[158] There is no doubt that when Mr Dorbu saw the affidavit in December 2007 that he was aware of the complaint by Chambers J, and the referral of the *Barge* decision for investigation by Priestley J.

[159] Whether the answer "yes, the ADLS committee reviewed and dismissed the complaint" was an intentional attempt to mislead the Court must be considered in two phases. Dealing with the Priestley complaint first – in order for Mr Dorbu's defence to succeed on the basis that there had only been a singular complaint, the referral of the decision of Priestley J must fail to qualify as a "complaint". This is somewhat difficult as Mr Dorbu himself wrote to the ADLS on 23 November 2005 and referred to a "complaint by Priestley J. However as indicated in the facts summary, the situation was complicated by the manner in which the Law Society

chose to treat the complaint and in particular their own letter of 1 December 2005 where they pointed out that the matter was not being investigated as a complaint from Priestley J. It will be recalled that the question asked in the interrogatory to which the above answer was supplied was “has any such complaint been made by, **or on behalf of**(emphasis ours) any member of the Judiciary?” For Mr Dorbu to suggest that the complaint was not being treated as one made on behalf of Priestley J is pure sophistry and does not fit comfortably with the obligation of an officer of the Court to fully and freely provide the unvarnished truth to the Court.

[160] However should we be wrong in this view, we move to consider the second aspect of this charge which is whether Mr Dorbu could properly say that the Chambers J complaint had been “reviewed and dismissed”. Whilst the committee had resolved that no charges would be laid against Mr Dorbu, it went on to inform him through his adviser that they considered the inquiry had been justified and therefore sought submissions as to costs which Mr Dorbu might be asked to pay. It is somewhat ironic that having been warned to be “scrupulously accurate and honest” to the Court that Mr Dorbu would then go on to characterize this finding of the complaints committee as dismissal. Indeed, in his own evidence Mr Dorbu conceded that a better answer would have been just “Yes”. He said:

> “I would have thought that, in fact, leaving it at 'Yes' would have saved everybody the trouble. By volunteering that extraneous information was very stupid in retrospect.”

[161] We consider that the answer provided by Mr Dorbu does not constitute a candid and honest answer from an officer of the Court. We therefore find this charge to have been proved. This is a serious breach of the Rules, and the earlier complaint by Justice Chambers confirms it is not the first time Mr Dorbu’s integrity in communications with the court has been called into question. We consider that it constitutes professional misconduct.

Charges 11 and 12

Rules 10 and 13.2 read respectively:

> " **Professional Dealings**
>
> A lawyer must promote and maintain proper standards of professionalism in the lawyer's dealings"
>
> **Lawyers as officers of court- Protection of the court process**
>
> A lawyer must not act in a way that undermines the processes of the court or the dignity of the judiciary."

[162] As indicated above [59] Mr Dorbu changed his approach to these charges in the course of the hearing, and this was a proper concession. The intemperate remarks made about His Honour were utterly outrageous. As an officer of the court, Mr Dorbu is expected to demonstrate absolute courtesy and respect towards members of the judiciary both in and out of court. He completely failed to do so.

[163] The Rules make it clear, that the standards expected are not merely intended to protect any individual judicial officer, but are essential to maintain the integrity of the court system. The underlying principle resides in the Separation of Powers, and is exemplified by the independence of the judiciary. Such concepts are at the heart of a free and democratic society.

[164] Thus, examples of undermining of the system by a failure to uphold these professional standards is a very serious matter indeed. Mr Dorbu then aggravated the situation by making sweeping and unjustified allegations of racism and unfairness which insulted the profession as a whole. He capped it with threatening language towards those charged with upholding the standards.

[165] We have no doubt that in respect of both charges 11 and 12 Mr Dorbu's actions constituted professional misconduct.

Further comment on credibility

[166] Mr Keyte, in his closing submissions for the Society pointed to a number of further examples of Mr Dorbu being untruthful, as disclosed by his subsequent

evidence to the Tribunal. He made this submission in the context of Mr Dorbu's repeated emphasis, during the hearing, of his own honesty.

[167] His statements about his involvement in the various transactions, as set out in his February 2009 affidavit contradicted his later evidence before the Tribunal, which clearly conceded knowledge of the Deed of Family Trust and its date (he witnessed the signatures, and his name was on the cover sheet). Further, in instructing his counsel to advise the Society he had never acted for the Mortgagee, Mr Chiao, when he had instructed the firm of accountants that he did, and then went on to sign correct and lodge the documents for registration, he was also lying. In his letter to the Society of August 2006 he says he acted in good faith throughout, yet he himself referred to the mortgagee sale transfer as "a nonsense", and there being "something fishy" about the transactions.

[168] Finally, the Society produced, as Exhibit 3, Mr Dorbu's Notice of Application for registration as a legal practitioner under the Trans-Tasman Mutual Recognition (Queensland) Act 2003. In that Mr Dorbu states:

> "I was once instructed by overseas lawyers in 2002 regarding sale and purchase of shares in a private company situated in New Zealand. The Auckland District Law Society expressly permitted me to act on those instructions. I **was later criticized by the Law Society and subjected to disciplinary proceedings in New Zealand.**" (emphasis ours)

[169] And later :

> " I know of no other matter which might bear on my fitness to be registered in Queensland as a legal practitioner or to practice in Queensland as such."

[170] The use of the past tense in this manner, and the failure to disclose that the disciplinary proceedings, the subject of this decision, were unresolved once again demonstrates either Mr Dorbu's lack of appreciation of the need for scrupulous honesty in dealings with the court and his profession, or worse demonstrates flagrant dishonesty.

[171] We consider this evidence meets the test of the Veracity Rule as set out in s.37 of the Evidence Act 2006. It is not hearsay, it is a statement by the practitioner

himself which is untruthful, and as such we rely on it to support our findings of credibility, or lack thereof, in respect of Mr Dorbu.

Penalty Hearing

[172] We invite counsel for the Society to submit written submissions in relation to penalty within 14 days. Mr Dorbu may have a further 14 days to file his submissions in reply. The parties are to advise their availability for a one-day penalty hearing to be scheduled after 28days.

DATED at WELLINGTON this 8th day of June 2010

Judge D F Clarkson
Chairperson