

Burnaby, B.C.

Called to the Bar May 10, 1978

Discipline hearing panel: December 5, 1994

J.M. MacIntyre, Q.C., Chair, B.B. Trevino, Q.C. and E.M. Reid, Q.C.

J.P. Whittow, for the Law Society

J.P. Scouten, for GG

Summary

GG entered into an agreement with clients to develop a property with them. In carrying out the transaction, he made it difficult for his clients to distinguish whether he was acting as a lawyer or a businessman. He drafted an agreement that was onerous and unfair to the clients. GG also failed to take steps to ensure that the clients received independent legal advice. Although he did not intend to trick his clients into entering the transaction without proper advice or to take advantage of them, he ought to have known that they would rely on him to protect their interests. After GG terminated the agreement, he contracted with another of his clients to complete the property development. He again failed to take steps to ensure that the client obtained independent legal advice on the transaction.

Facts

In the fall of 1989, through a company co-owned with his wife, GG made an agreement with clients, Mr. B and Mrs. B, to develop a property together. Mr. B was experienced in building contracting; Mrs. B was not experienced in business. In carrying out this land development transaction, GG made it difficult for his clients to distinguish whether he was acting as a lawyer or a businessman.

GG and Mr. B negotiated over the terms of the development. They agreed that GG's wife would purchase the property for \$174,900, Mr. B would build a house on the property and GG would pay construction costs up to a maximum of \$140,000, with Mr. B to cover cost overruns. The property would then be resold and the profits divided. They also agreed that Mrs. B would provide a guarantee of Mr. B's obligations under the agreement, secured by a collateral mortgage on their family home, which was registered in her name.

GG drew up the development agreement, for execution by Mr. and Mrs. B, and the personal guarantee and the mortgage for execution by Mrs. B. The agreement, guarantee and mortgage were unfair and onerous to Mr. and Mrs. B, in the following respects:

- Mrs. B received no consideration for signing the development agreement or the guarantee, or for granting the mortgage;
- Mr. and Mrs. B were not to file any builder's liens on behalf of themselves or others;
- there was express provision for GG's company to cancel the agreement, but no provisions entitling Mr. and Mrs. B to cancel the agreement.
- Mr. and Mrs. B were to pay a default penalty of \$150 per day if construction did not complete on time.

Three days before GG's company was to complete the property purchase, Mr. B came to GG's office to pick up the final version of the development agreement, guarantee and mortgage. GG told him "to go and get some legal advice on these and bring them back, signed, as soon as possible," or words to that effect. Mr. B understood GG's words to mean that he should have the documents executed before a lawyer, not that he should receive independent legal advice on them.

A paragraph in the development agreement stated that "[Mr. and Mrs. B] hereby acknowledge having received independent legal advice with respect to this agreement, such not having been given by [GG.]" When Mr. B came to pick up the documents, GG did not point out the existence of this paragraph, or

otherwise convey this information in writing. GG further failed to advise Mrs. B directly to obtain legal advice on the guarantee or the mortgage.

Mr. and Mrs. B took the documents to a lawyer for execution, but they did not request or receive legal advice from that lawyer or any other lawyer. GG did not intend to trick Mr. and Mrs. B into entering the transaction without proper advice or to take advantage of them, but he ought to have known that they relied on him to protect their interests in the transaction. He failed to take adequate steps to ensure their interests were properly protected through independent legal advice.

Mr. B did not obtain demolition or building permits for the project, and the city imposed a work stoppage order. Mr. B did not complete construction on schedule. GG terminated the agreement and, on behalf of his company, initiated foreclosure proceedings against Mr. and Mrs. B under the mortgage. On June 25, 1991, the court granted judgment in favour of Mr. and Mrs. B, and declared the development agreement, guarantee and mortgage void.

GG completed construction of the house through a different building contractor, J Ltd., and other contractors. F was the principal of J Ltd. and also a client of GG. GG failed to take steps to ensure that F obtained independent legal advice on the construction agreement.

Decision

GG admitted that his conduct constitutes professional misconduct.

Penalty

The Discipline Committee and the discipline hearing panel accepted GG's admission and proposed disciplinary action, and ordered that he:

1. be suspended for eight months, beginning January 1, 1995; and
2. pay \$3,000 as costs of the discipline proceedings, payable in eight equal monthly instalments over the period of his suspension.

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