

DP

99/06

Surrey, B.C.

Called to the Bar: May 14, 1963

Discipline hearing panel: October 9, 1998

Peter Keighley, as a one-Bencher panel by consent

Todd Follett, for the Law Society

Murray Clemens, Q.C., for DP

Summary

While acting as an officer under the *Land Title Act*, DP purported to witness a signature when he knew that the person signing the document was not the person named in the document and did not possess a power of attorney for the person named in the document. The hearing panel found that DP's conduct constituted professional misconduct. The panel reprimanded him and ordered that he pay a \$5,000 fine and costs of the disciplinary proceedings.

Facts

DP performed legal services for several people and a numbered company in the purchase of property. There were eight investors in the project who had invested funds in 1993 and had received shares in the company.

The project was entirely vendor-financed until the end of 1993 at which time the investors found a mortgage company to provide financing for part of the purchase price. As a condition of financing, the mortgage company required the eight investors to sign unlimited joint and several guarantees for the amount of mortgage funds. A mortgage commitment letter to this effect was signed by all the investors.

DP proceeded to have the investors sign their respective personal covenants on the mortgage documents, and he witnessed their signatures as an officer under the *Land Title Act*. One of the investors, Mr. B, had left for England shortly after signing the commitment letter but before signing the mortgage.

Another of the investors, Mr. D, said he had instructions from Mr. B to sign on Mr. B's behalf. When DP asked whether Mr. D had a power of attorney to do so, Mr. D said he did not. DP told Mr. D that he could not execute the mortgage for Mr. B.

Mr. D telephoned Mr. B's sister in England and spoke to her in Punjabi. From what DP could determine from his limited understanding of Punjabi, Mr. D left a message for Mr.

B to call back. When the call was returned, DP talked to the caller. He satisfied himself that it was Mr. B and that Mr. B authorized Mr. D to sign on his behalf. DP asked Mr. B if he could execute and fax a power of attorney but was told that it would be too late.

DP observed Mr. D sign Mr. B's name on the mortgage document and witnessed the signature, although he knew that Mr. D did not possess a power of attorney for Mr. B. The document was subsequently registered in the Land Title Office.

The mortgage company later took judgment against Mr. B as covenantor under the mortgage, but Mr. B had the mortgage set aside and defended it on the basis that he did not sign the covenant and did not authorize Mr. D to sign on his behalf. Mr. B commenced an action against DP for any liability Mr. B might incur as a covenantor under the mortgage. This action is being defended.

DP was not a participant in the project and did not benefit from the transaction other than his legal fees in the transaction. He did not attempt to hide his actions. As DP's counsel pointed out to the panel, the Form D document signed by the investors was also not necessary for registration of the mortgage against title to the property in the Land Title Office, although it was a required condition of financing by the mortgage company.

Section 43 of the *Land Title Act* sets out the effect of an officer's signature:

The signature of the officer witnessing the execution of an instrument by an individual is a certification by the officer that

(a) the individual appeared before and acknowledged to the officer that he or she is the person named in the instrument as transferor;

(b) the signature witnessed by the officer is the signature of the individual who made the acknowledgment.

Decision

The hearing panel determined that DP had purported to witness a signature when he knew that the person signing the document was not the person named in the document and did not possess a power of attorney for the person named in the document. His conduct constituted professional misconduct.

Penalty

The hearing panel noted that DP's misconduct was a serious matter. Section 43 of the *Land Title Act* and the provisions of the *Professional Conduct Handbook* give the solicitor or officer a significant role in preventing fraud in real estate practice and procedure. The requirement that a solicitor or officer certify or verify the signature of a person is a crucial element in the protection of the public.

The panel then reviewed DP's 35 years in the profession, his good reputation and the respect he had from other lawyers and from members of the judiciary. Although he had undergone a conduct review in 1993, that matter resulted from a medical condition from which he had since recovered and no further action had been necessary.

One of his colleagues, in a letter provided to the panel noted that "... it is typical of DP's character that, if he had to stumble, it was in no way of financial benefit to himself but rather in a foolish attempt to facilitate the closing of a transaction, no doubt subject to the familiar pressure from the parties anxious to complete and relying on the word and representations of someone he believed he could trust, to his subsequent regret."

The panel ordered that DP:

1. be reprimanded;
2. pay a \$5,000 fine, by April 30, 1999; and
3. pay \$1,000 as costs of the discipline proceedings, by April 30, 1999.

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