

Lawyer T

99/04

North Vancouver, B.C.

Called to the Bar: May 10, 1977

Discipline hearing panel: October 8, 1998

Robert Diebolt, Q.C., Chair, William Everett, Q.C. and Peter Ramsay

Majority decision by Mr. Diebolt and Mr. Everett; dissent by Mr. Ramsay

Kimberly Campbell, for the Law Society

Allan Seckel, for Mr. T

Summary

Mr. T prepared a writ and a statement of claim on behalf of a company that was representing itself in an action. Mr. T noted his office as the address for delivery and the documents bore his backing sheet. The lawyer for one of the defendants sent an appearance to Mr. T's office and later asked him for an extension of time for filing a statement of defence pending receipt of particulars. Mr. T knew that the defendant's lawyer believed that Mr. T was acting for the plaintiff company in the matter, but he failed to advise her that this was not the case. He then prepared and filed documents for default judgment. Mr. T admitted to professional misconduct in failing to advise opposing counsel that he was not the lawyer for the plaintiff in this matter. A majority of the discipline hearing panel accepted this admission and Mr. T's proposed disciplinary action, and ordered that he be reprimanded, pay costs, submit to a practice review and any follow-up recommendations of the Competency Committee and refrain from drafting or filing pleadings on behalf of litigants whom he does not represent.

Facts

In July, 1996 Mr. T prepared and had his registry agent issue a writ of summons and a statement of claim on behalf of a numbered company. The company was bringing an action against Mr. P and a bank. The documents were executed by a principal of the plaintiff company and the address for delivery was specified as "c/o Kenneth N. Taschuk, Barrister and Solicitor ..." The writ and statement of claim bore Mr. T's backing sheet. Mr. T represented the company on different matters, but not on this litigation.

Ms. D, who was the lawyer for the defendant Mr. P, delivered an appearance under cover of a letter dated July 23 to Mr. T. In her letter she requested that Mr. T acknowledge service of the appearance.

Mr. T neither acknowledged service of the appearance, nor advised Ms. D of any reason he was unable to do so. In particular, he did not advise Ms. D that he did not act as

solicitor for the plaintiff company in this particular action. The company did not communicate on its own with Ms. D in respect of the delivery of Mr. P's appearance.

On July 26 Ms. D wrote to demand particulars of Mr. T with respect to the statement of claim. She also requested that she be allowed additional time to file a statement of defence on behalf of her client until she had received the particulars. Mr. T did not reply to this letter. The plaintiff company did not communicate with Ms. D either.

Mr. T prepared and had his registry agent file on behalf of the company a bill of costs and an application for judgment in default of defence against Mr. P. The material bore Mr. T's backing sheets. Mr. T did not advise Ms. D in advance that the materials would be filed.

The plaintiff company was granted default judgment against Mr. P.

Ms. D first learned of the default judgment on September 6 after the plaintiff company had issued a garnishing order attaching Mr. P's wages. The company refused Ms. D's request to have the default judgment set aside.

By this time, the plaintiff company had retained a law firm to act on its behalf.

Mr. P ultimately applied to court to set aside the default judgment and the garnishing order. The court allowed the application and awarded special costs against both the company and Mr. T. The judge stated that it appeared to him that Mr. T was on record for the company. When asked by the judge why he did not reply to Ms. D's correspondence, Mr. T said that he believed it was the company's obligation to respond and he did not consider himself at liberty to respond without instructions from the company.

Admission and disciplinary action

Pursuant to Rule 469 (now Rule 4-22) Mr. T admitted to the Discipline Committee and the discipline hearing panel that his conduct constituted professional misconduct.

Mr. T admitted misconduct in causing default judgment to be entered against Mr. P and causing a garnishing order after judgment to be issued, all without notice to Mr. P's lawyer when:

- he knew Mr. P was represented by a lawyer;
- he knew Mr. P's lawyer apparently believed that he acted as lawyer for the plaintiff;
- Mr. P's lawyer had made a request of him in his apparent capacity as lawyer for the plaintiff to allow her additional time to file a statement of defence in the action;

- he had done nothing prior to the entry of the judgment to advise Mr. P's lawyer that:
 - he did not consider himself to be acting as lawyer for the plaintiff despite the fact that the writ and statement of claim gave his office as the plaintiff's address for delivery;
 - because he did not act as the plaintiff's lawyer, he was unable to allow Mr. P's lawyer additional time for filing;
 - Mr. P's lawyer should not assume that the mere making of her request would mean she would be allowed additional time, and unless a statement of defence was filed on behalf of Mr. P within the time limits, default judgment might be taken and enforced.

A majority of the hearing panel, Mr. Diebolt and Mr. Everett, accepted Mr. T's admission and his proposed disciplinary action. They noted that their decision was based on two considerations. First, they relied on the submissions of both counsel for the Law Society and for Mr. T that the disciplinary action fell within the range of dispositions for similar cases in the past. Second, they relied on submissions of both counsel that there was insufficient evidence to warrant a conclusion that Mr. T had a deliberate intent to mislead. They noted that Mr. T did not have a discipline record, although he was at the time under a separate citation that dealt with different conduct. They also expressed the hope that Mr. T would not fall into such error in the future.

The majority of the panel, in accepting the admission and proposed disciplinary action, ordered that Mr. T:

1. be reprimanded;
2. submit to a practice review by the Competency Committee and comply with any recommendations of the Committee;
3. no longer draw or file pleadings for clients in respect of proceedings in which he is not, or will not become, the solicitor of record;
4. pay \$5,193.97 as costs of the discipline proceedings.

Dissent

One of the members of the hearing panel, Mr. Ramsay, did not accept that there was no evidence or insufficient evidence of deliberateness on the part of Mr. T. He said he would have rejected Mr. T's proposed disciplinary action.