

STEPHEN GRANT PRICE

98/11

Langley, B.C.

Called to the bar: May 10, 1984

Discipline hearing panel: April 27, 1998

G.J. Kambeitz, Q.C., Chair, W.M. Everett, Q.C. and B.W.F. McLoughlin, Q.C.

J.P. Scouten, for the Law Society

G.J. Harris, Q.C., for Mr. Price

Summary

Mr. Price breached his undertaking by releasing documents to his client without first providing opposing counsel an executed release of claims as required.

Facts

In October, 1996 Mr. Price began acting for B Ltd., a company that disputed the amount of money it owed to A Ltd. for mining exploration services.

A Ltd. claimed \$53,429.29 against B Ltd., but the companies disagreed over the amount of the indebtedness, the adequacy of services and whether A Ltd. was entitled to certain shares of B Ltd.

The parties and their counsel met in November, 1996 and agreed to settle the claims. Under the agreement, B Ltd. would pay A Ltd. \$42,500 in satisfaction of all claims, while A Ltd. would supply B Ltd. with its work product, including a computer disk, notes, sketches, maps and other data. The parties would exchange releases.

In discussing the terms of settlement in more detail, counsel for A Ltd. proposed that he would deliver the computer disk, notes, data, sketches and other material received from his client and would also send an executed release. In his letter of December 13, 1996 in which he proposed these terms to Mr. Price, counsel for A Ltd. stated:

All of the foregoing would be sent to you on your undertaking to hold same and not release the materials to your client until such time as you have provided me with a cheque for the settlement funds and the enclosed release duly executed by your clients.

Mr. Price agreed to this proposal. He sent a cheque for \$42,500 to counsel for A Ltd. and said he would have his client sign release documents the following day.

On December 19 counsel for A Ltd. arranged for an agent of A Ltd. to deliver to Mr. Price's office a sealed box and mailing tube containing materials. The agent also delivered an envelope containing a letter that set out the terms of undertaking (which Mr. Price said he did not recall seeing), a computer disk and a form of release for execution by B Ltd. On January 6, 1997 Mr. Price sent a fax to counsel to advise that B Ltd. was unwilling to sign the release that had been provided.

Counsel for A Ltd. reminded Mr. Price that he was on an undertaking not to release any materials to his client until the release was signed.

On February 12 Mr. Price wrote to counsel for A Ltd. to say that the disagreement over the form of release could be overcome by B Ltd. simply paying another \$10,929.29 since A Ltd.'s claim of \$53,429.29 would be satisfied in full. Having received no response to this letter, Mr. Price sent counsel a cheque for \$10,929.29 on March 4. In his covering letter, Mr. Price took the position that, since full payment of A Ltd.'s claim had been made, he did not believe himself bound by his undertaking not to release the materials to his client. He provided the materials to B. Ltd. that day.

Counsel for A Ltd. expressed concern to Mr. Price, returned to him the cheque for \$10,929.29 and subsequently reported the matter to the Law Society.

Mr. Price was not experienced in civil litigation matters or in the form of undertakings, and he wrongly believed that he would no longer be bound by his undertaking in these circumstances if his client paid the full amount of the claim. Mr. Price explained that his conduct was motivated by a naive and overly enthusiastic desire to think through the problem and find a way for his client to resolve its dispute, despite the client's unwillingness to execute the release in the form provided. In hindsight, he saw that his conduct reflected a lack of professional judgement.

Decision

Mr. Price admitted that, by releasing materials to his client when he had not returned to opposing counsel a duly executed release from the client, he had breached his undertaking and that constituted professional misconduct.

Penalty

The discipline hearing panel accepted Mr. Price's admission and his proposed disciplinary action and ordered that he:

1. be reprimanded;
2. pay a \$5,000 fine by December 31, 1998; and
3. pay costs of the discipline hearing by December 31, 1998.