

Breach of Undertaking

ARSADVASTAR (ARTHUR) DARABSHA BARIA

Vancouver, B.C.

Called to the bar: September 11, 1978

In 1991 Mr. Baria represented the vendors in the conveyance of two parcels of property that were subject to mortgages. On July 30, 1991 Mr. Baria gave these undertakings, which the purchasers' solicitor (L) accepted:

With regard to mortgage registered against the premises under number AD 252957 and AD 252759, we hereby undertake as follows:

- (a) to firstly hold back in our trust account funds sufficient to pay out the said mortgage, to request a registerable discharge of mortgage from the mortgage holder who in this case are [N] and the representative of the estate [of P] through their counsel, and upon receipt of the same to file in the Land Title Office, and provide you discharge particulars upon receipt of the same.*
- (b) upon failure of receipt of executed discharge of mortgage from the foregoing parties within a reasonable time, to apply under the Land Title Act into court for an order discharging the mortgage from title upon payment of funds sufficient to pay out the balance due into court.*

The conveyance completed on July 30, 1991.

On of the mortgagees had died prior to the transaction, and Mr. Baria sought an executed discharge from the executor after the grant of probate in December, 1991. He did not in fact receive the discharges. The lawyer for the purchasers (L) followed up with Mr. Baria in December to inquire why he had not received copies of the discharges.

In March, 1993 the purchasers contracted to resell the property. To complete the new conveyance, L had new discussions with Mr. Baria and, with Mr. Baria's consent, placed him on further undertakings that he would obtain and file the discharges or would make the necessary court applications to obtain the discharges within the subsequent weeks.

The solicitors for the new purchasers in the second conveyance agreed to complete the transaction on the basis of Mr. Baria's further undertakings and on L's undertaking to enforce Mr. Baria's earlier undertakings.

By September, 1993, Mr. Baria had still not fulfilled his undertaking, and L requested an update. On November 24 Mr. Baria provided L with copies of the registered mortgage discharges. The Land Title Office, however, subsequently rejected the discharges. Mr. Baria did not inform L of the rejection, and L found out from the new purchasers on February 16, 1994.

Mr. Baria then obtained new discharges, which he successfully registered in April, 1994.

On December 4, 1996, Mr. Baria admitted to the Discipline Committee that he had breached his undertaking when, having not obtained discharges from the mortgagees, he failed to apply under the *Land Title Act* for a court order discharging the mortgages from title. The Discipline Committee accepted this admission and asked that it be endorsed on Mr. Baria's professional conduct record.

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