

Abbotsford, B.C.

**Called to the B.C. Bar** January 15, 1976

**Discipline hearing panel:** February 24, 1997

K.F. Warner, Q.C., Chair, R.C. Gibbs and P.J. Keighley

C. Wiseman, for the Law Society

A. Vertlieb, for Mr. Chetty

### **Summary**

Mr. Chetty represented Mrs. G on a matrimonial appeal. Mrs. G was then under a court order that required her to transfer to Mr. G her interests in two properties. Mrs. G nevertheless instructed Mr. Chetty to witness her signature on a release of lis pendens and to prepare and file a subsequent release of lis pendens so that she could arrange for a mortgage of her interests in the properties. By following Mrs. G's instructions, Mr. Chetty assisted her to breach the terms of the court order. He was guilty of professional misconduct.

### **Facts**

Between March, 1993 and September, 1994, Mr. Chetty acted for Mrs. G on a matrimonial appeal. Mr. and Mrs. G held two properties jointly, but ownership was disputed. Mrs. G's former lawyer had filed a lis pendens against those properties in 1991 on her behalf following the trial. In late 1992 the B.C. Supreme Court ordered Mrs. G to transfer the properties to Mr. G.

Mr. Chetty represented Mrs. G on an appeal of the court decision on asset division, maintenance and costs. Shortly after the appeal was filed in March, 1993, Mrs. G applied to a mortgage company (A Corporation) for a loan secured by a mortgage of her interests in the two properties. A Corporation, without knowing about the court order, asked Mrs. G to remove her lis pendens from the properties before the mortgage was registered and to refile the lis pendens afterwards. Mr. Chetty witnessed Mrs. G's signature on this release of lis pendens and forwarded it to A Corporation's lawyer for registration.

The following month A Corporation transferred the mortgage to Mrs. T as mortgagee. In 1994 Mrs. T received an opinion from her lawyer that Mrs. G's mortgaging of the properties raised issues of contempt, fraudulent conveyance and fraud, and that the security was of questionable validity.

Mrs. G then approached two different financial institutions to arrange to refinance the mortgage loan. In August, 1994 W Corporation asked Mr. Chetty to release the lis pendens on Mrs. G's property. Mr. Chetty prepared and filed the release, after which the W Corporation filed its mortgage. The previous mortgage on title, held by Mrs. T, was cancelled.

In an affidavit to the Court of Appeal, Mrs. G deposed that Mr. Chetty had advised her he would have nothing to do with the mortgaging or subsequent refinancing of the properties. Mr. Chetty did not charge a fee for witnessing Mrs. G's signature on the release.

The B.C. Court of Appeal adjourned Mrs. G's appeal and found that she was in contempt of court in breaching the Supreme Court order.

Mr. Chetty had been pressured throughout by a very difficult and demanding client. Mrs. G told Mr. Chetty that the lenders and other lawyers in this transaction were aware of the court order. In September, 1994, Mrs. G began representing herself.

### **Verdict**

The panel found that Mr. Chetty's conduct constituted professional misconduct, given his knowledge of the terms of the court order, his awareness that his actions assisted Mrs. G in contravening the terms of the order and his failure to enquire of other interested parties as to their knowledge of the existence and impact of the order.

**Penalty**

The hearing panel ordered that Mr. Chetty:

1. be reprimanded and
2. pay \$2,000 as costs of the discipline proceedings, within one year.

*Discipline Case Digest — 1997: No. 3 September (Chetty)*