

Donald Douglas McLellan

New Westminster, BC

Called to the Bar: May 17, 1971

Discipline hearing: October 29, 2003

Panel: Margaret Ostrowski, QC, as a single Benchers panel by consent

Report issued: November 12, 2003; indexed as [2003] LSBC 40

Counsel: Luisa Hlus, for the Law Society and Albert Roos, for Mr. McLellan

Summary

While representing Mr. S in a matrimonial matter and taking steps to implement a settlement negotiated between the parties, Mr. McLellan breached his undertaking to the lawyer who represented Mrs. S. He did so by refinancing and discharging an existing mortgage from certain properties without first providing documentation on the new mortgage to the lawyer for Mrs. S or obtaining that lawyer's approval, as he had undertaken to do. Mr. McLellan admitted that his conduct constituted professional misconduct. Pursuant to Rule 4-69, the Discipline Committee and the hearing panel accepted Mr. McLellan's admission and his proposed penalty and ordered that he be reprimanded, pay a \$3,000 fine and pay \$1,000 as costs.

Facts

Mr. McLellan represented Mr. S in a matrimonial matter, which was resolved by a consent order in July, 1999. Under the settlement, Mrs. S was to receive funds from the sale of properties belonging to M Co., a company owned by Mr. and Mrs. S. Those properties were to be sold after some of them had been subdivided.

A credit union mortgage was registered against the properties. It was agreed that a new "collateral mortgage" should be registered against the properties to protect the interests of Mrs. S. It was further agreed that a new private mortgage would be negotiated and registered against the properties, the proceeds of which would be used to pay out the existing credit union mortgage.

As part of the arrangements between counsel regarding the new mortgages, Mr. McLellan undertook to deliver all documents relating to the private mortgage to the lawyer for Mrs. S and to seek written approval from that lawyer before proceeding to register the private mortgage or to discharge the credit union mortgage.

Mr. McLellan obtained new financing for the properties. He proceeded to register the private mortgage in September, 1999 and to discharge the credit union mortgage on the properties owned by M Co. in December, 1999, without having first delivered all documents to the lawyer acting for Mrs. S and without obtaining that lawyer's approval, which was contrary to the terms of his undertaking.

The collateral mortgage to protect the interests of Mrs. S was subsequently registered in late December, 1999.

Mr. McLellan explained that he had taken the steps he did to avoid the bankruptcy of Mr. S and the receivership of M Co. and that there would otherwise have been no funds available for payment to Mrs. S. In his haste to complete these steps, however, he had forgotten his undertaking given some months before.

Admission and penalty

Pursuant to Law Society Rule 4-69, Mr. McLellan admitted that his conduct in breaching his undertaking constituted professional misconduct. The Discipline Committee and the hearing panel accepted his admission and proposed penalty. The panel noted that both counsel agreed that Mr. McLellan's breach of undertaking appeared to be inadvertent, that Mrs. S was not prejudiced and that Mr. McLellan had not anticipated a benefit by his actions.

The panel accordingly ordered that Mr. McLellan:

1. be reprimanded;
2. pay a \$3,000 fine within 30 days; and
3. pay \$1,000 as costs of the discipline proceedings within 30 days.