

THE LAW SOCIETY OF BRITISH COLUMBIA

IN THE MATTER OF THE *LEGAL PROFESSION ACT*, SBC 1998, C. 9

AND

SIMON LIN

(a member of the Law Society of British Columbia)

RULE 3-7.1 CONSENT AGREEMENT SUMMARY

1. On November 24, 2022, the Chair of the Discipline Committee approved a consent agreement proposal submitted by Simon Lin (the “Lawyer”) under Rule 3-7.1 of the Law Society Rules (“Rules”).
2. Under the proposal, the Lawyer admitted that he committed the following misconduct, and that it constituted professional misconduct pursuant to s. 38(4) of the *Legal Profession Act*:
 - i. On October 28, 2017, the Lawyer commissioned an Affidavit without ensuring that the affiant who swore the affidavit was the same person named in the affidavit, contrary to the Commentary under Appendix A of the *Code of Professional Conduct for British Columbia*.
 - ii. Between August and December 2017, the Lawyer performed legal services purportedly for JS, whom he had not received instructions from as he failed to properly identify his client, contrary to Rule 3-100 of the Law Society Rules.
 - iii. Between September 2017 and May 1, 2018, notwithstanding the information he had received from three affidavits, the Lawyer continued to act on the S. Litigation and the G. Files and failed to make reasonable inquiries about TG’s interest in those files, contrary to rule 3.2-7 of the Code of Professional Conduct of British Columbia, and specifically its Commentary regarding the “duty to inquire”.
 - iv. In February 2018, the Lawyer continued to act on the S. Litigation after a conflict of interest arose between PS and TG, contrary to rule 3.4-1 of the *Code of Professional Conduct for British Columbia*.

3. Under the proposal, the Lawyer agreed to be suspended from the practice of law for a period of eight (8) weeks, commencing on December 5, 2022 and concluding on January 29, 2022.
4. In making his decision, the Chair of the Discipline Committee considered an Agreed Statement of Facts dated November 7, 2022, and a letter to the Chair of the Discipline Committee. The Chair also considered that the Lawyer did not have a prior professional conduct record.
5. In approving the consent agreement proposal, the Chair of the Discipline Committee considered that the proposed suspension was consistent with the outcome in prior, similar matters.
6. This consent agreement will now form part of the Lawyer's professional conduct record.
7. Pursuant to Rule 3-7.1(5) of the Rules, and subject to Rule 3-7.2 of the Rules, the Law Society is bound by an effective consent agreement, and no further action may be taken on the complaint that gave rise to the agreement.
8. The admitted facts set out in the Agreed Statement of Facts have been summarized below.

Summary of Facts

Member Background

9. The Lawyer was called and admitted as a member of the Law Society of British Columbia on August 8, 2014. The Lawyer practices mostly in the area of litigation. Since July 2016, the Lawyer has been a sole practitioner.
10. The Lawyer has also been called as a lawyer in California (since 2016) and Ontario (2019), and had a temporary permit to practice in Quebec (2019 to 2020). The Lawyer has no disciplinary history in BC or any other jurisdiction.

Misidentification of Affiant

11. On August 4, 2017, PS, GS and TG attended the Lawyer's office without an appointment to discuss a legal claim related to a Burnaby, BC property (the "Property") with the Lawyer (the "Meeting").
12. At the Meeting, the Lawyer was provided with copies of a Certificate of Pending Litigation and Notice of Civil Claim for litigation related to the Property (the "S. Litigation"). PS, GS and TG were not named parties in the S. Litigation, but PS had the same surname as the Plaintiff, JS.

13. At the Meeting:
 - a. PS represented to the Lawyer that the S. Litigation was his case when, in fact, JS was the Plaintiff;
 - b. TG introduced himself to the Lawyer as a “real estate consultant” who was helping PS with the S. Litigation.
 - c. The Lawyer filled out client intake forms for both PS and TG, and took copies of their identification, but did not review PS’s identification or cross-check PS’s identification with the Plaintiff’s name on the Notice of Civil Claim.
 - d. The Lawyer presented a computer-generated retainer letter to PS for his signature, based on the client information provided by PS. PS signed it using his full name.
 - e. PS authorized TG to provide instructions on the S. Litigation and pay the legal fees.
14. From August 2017 to December 2017, the Lawyer honestly but mistakenly believed that PS was JS, and that he was representing the Plaintiff JS in the S. Litigation.
15. On October 28, 2017, PS attended the Lawyer’s office to execute an affidavit (the “Affidavit”) in the S. Litigation. The Lawyer drafted the Affidavit following PS’s account of the relevant facts and documents. At the time of drafting, the Lawyer honestly believed that PS was JS.
16. Before PS executed the affidavit, the Lawyer followed the procedure for affirming affidavits and asked PS to confirm the following: that he was JS, that he reviewed the affidavit, and that the contents were true. PS provided the requested confirmations. The Lawyer then witnessed PS execute the Affidavit. The Affiant was listed as JS.
17. On December 13, 2017 at a case planning conference, the issue of the sex of JS was raised. This was the first time the Lawyer considered that PS may not be JS.
18. Following the case planning conference, the Lawyer reviewed his file and realized that he had witnessed PS sign as JS on the Affidavit.
19. After discovering the misidentification, the Lawyer immediately contacted a Law Society practice advisor for guidance. Thereafter, the Lawyer promptly advised the court and the

opposing party of the Lawyer's mistake, and apologized. The Lawyer took steps to correct the Affidavit.

20. After the Lawyer discovered the misidentification, he sought clarification from PS and TG. The Lawyer was advised that JS was PS's niece, and had authorized PS to sign documents on her behalf. The Lawyer requested documentation in support of this assertion.
21. On December 23, 2017, the Lawyer met JS for the first time. JS provided the Lawyer with an authorization she had signed on March 15, 2016, stating that she "Appoint[ed] PS as Power attorney [sic] to sign any document behalf of me [sic]". The Lawyer commissioned a new Power of Attorney allowing PS to act on JS's behalf.
22. After the incident, the Lawyer reformed his client intake procedures to ensure that he would cross-check names on documents moving forward and properly verify identification.

Failure to Make Reasonable Inquiries

23. In addition to the S. Litigation matter, the Lawyer opened more than 10 other files at the request of TG on matters either for TG, his family members, his associates, or related corporations (the "G. Files"). Some of these matters were minor or limited-retainer matters. Five of the G. files involved the defence of foreclosure actions.
24. In some instances, the Lawyer acted on files when:
 - a. TG's interest in the subject property was not clear and it appeared he could have had a beneficial interest in the subject property, and
 - b. TG was not a named party in the litigation and his relationship to the parties was not obvious.
25. During the course of acting in the S. Litigation and on the G. Files, the Lawyer received affidavits as follows:
 - a. An affidavit (the "August 31, 2017 Affidavit") indicating that TG had previous criminal charges and other legal difficulties that stemmed from his past real estate activities and, therefore, did not carry out transactions in his own name; instead, he carried on business through close associates, such as RB (one of the opposing parties in the S. Litigation);

- b. An affidavit (the "November 3, 2017 Affidavit") indicating that RB was acting as a proxy for TG in the S. Litigation, alleging that TG has a history of acting fraudulently in real estate deals, and alleging that TG and RB were subject to a default court judgment; and
- c. An affidavit (the "December 6, 2017 Affidavit") indicating that TG was the beneficial owner of the lands at issue in the S. Litigation and the corporate owner was his nominee. The December 6, 2017 Affidavit also explained TG's history of fraud and attached a copy of a Court Services Online printout that listed all of the court actions involving TG.

(collectively, the "Three Affidavits")

- 26. The Lawyer asked TG about the allegations made against him in the Three Affidavits. TG's explanation was that the affiants were making the allegations up as a distraction, and that he was merely acting as a real estate consultant for his friends. The Lawyer accepted TG's explanation and continued to act on the G. files.
- 27. In late April, 2018, the Lawyer was further informed by a close friend of PS's about TG's suspicious past, and told the Lawyer that TG should not be trusted at all. The Lawyer promptly reviewed all the G. Files and conducted court searches for matters involving TG. Based on the results of his review, the Lawyer concluded that he should withdraw from the G. Files.
- 28. On May 1, 2018, the Lawyer advised TG in writing that he was withdrawing from the G. Files.
- 29. On May 7, 2018, the Lawyer discovered that TG was an undischarged bankrupt.
- 30. After the Lawyer had withdrawn, TG continued to contact the Lawyer from time to time. The Lawyer did not take on any new work for TG after May 1, 2018. On June 26, 2019, the Lawyer blocked all communications from TG.
- 31. The Lawyer's trust account was not used for any financial transactions, directly or indirectly, on the G. files and the Lawyer did not structure, advise, or provide any conveyancing on any of the underlying real estate transactions involving TG.

Conflict of Interest

32. In mid-February 2018, the Lawyer became aware that TG and PS had conflicting opinions on settlement of the S. Litigation. PS instructed the Lawyer not to inform TG of PS's efforts to settle. The Lawyer stopped following TG's instructions, but did not tell TG he was doing so. The Lawyer continued to meet with TG regarding the S. Litigation. On PS's instructions, the Lawyer also continued to accept payment from TG for PS's invoices.
33. After April 9, 2018, the Lawyer did not accept any further fees from TG on the S. Litigation and the Lawyer incurred a loss with respect to outstanding unpaid fees.
34. The Lawyer acknowledged that he acted in a conflict of interest and should have withdrawn from representation when the conflict between PS and TG on the S. Litigation matter arose.

Mitigating Factors

35. The Lawyer was a relatively new lawyer when these events occurred, having been called for approximately three years.
36. When the Lawyer became aware of his misidentification of PS and JS, the Lawyer sought advice from a Law Society practice advisor, and promptly advised the parties and the court. He apologized and made efforts to correct his error.
37. Following the misidentification, the Lawyer suffered from medical issues that impacted his focus, judgment and mental state. The Lawyer has received medical care and is no longer affected by the medical issues.
38. The Lawyer eventually removed himself from acting on the G. Files and stopped taking payment from TG.
39. The Lawyer sincerely acknowledged his mistakes and has taken steps to ensure his mistakes are not repeated.
40. The Lawyer fully cooperated in efforts to resolve the matter, admitted his misconduct, and has consented to an eight-week suspension.