

THE LAW SOCIETY OF BRITISH COLUMBIA

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

AND

SIMON BIANCARDI

(a member of the Law Society of British Columbia)

RULE 3.7-1 CONSENT AGREEMENT

1. On December 19, 2023, the Chair of the Discipline Committee approved a proposal submitted by Simon Biancardi (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 professional misconduct:
 - i. Between April 2017 and January 2021, in relation to 13 files, he acted for clients and permitted his trust account to be used in circumstances that triggered a positive duty to make reasonable inquiries about the client(s), the subject matter, and/or the objectives of the retainer, but he failed to make reasonable inquiries.
 - ii. Between April 2017 and January 2021, in relation to 16 files, he failed to comply with the client identification and verification rules set out in the Rules.
 - iii. In November and December 2019, in relation to one file, he acted in a conflict of interest by representing both the borrower and the lender in a loan transaction, contrary to rule 3-4.1 of the *Code of Professional Conduct for British Columbia*.
3. The Lawyer consented to a suspension of six (6) months. He has undertaken to not receive or otherwise handle any trust funds, and to not open or operate a trust account, including

by not making or authorizing trust withdrawals, until relieved of this condition by the Executive Director of the Law Society of British Columbia (“Law Society”). He has also undertaken to not practise in the area of real estate law until relieved of this condition by the Executive Director of the Law Society.

4. The Chair of the Discipline Committee considered an Agreed Statement of Facts and a letter containing the Lawyer’s consent agreement proposal. The Chair of the Discipline Committee also considered that the Lawyer does not have a prior professional conduct record. This consent agreement will now form part of the Lawyer’s professional conduct record.
5. 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.
6. The admitted facts, set out in the Agreed Statement of Facts, have been anonymized and summarized below.

Summary of the Lawyer’s Background and of the Misconduct

Lawyer’s Background and Practice Overview

7. The Lawyer was called to the bar and became a member of the Law Society on May 1, 2007. Since then, he has worked at several large firms in Vancouver, as in-house counsel in Burnaby, and as a sole practitioner in West Vancouver.
8. During the material time, the Lawyer was a sole practitioner, practising law through his own law firm, Biancardi Law Corporation (the “Firm”). Currently, he is no longer practising in private practice, and is working in industry.
9. The Lawyer has practised primarily in the areas of corporate, commercial, and real estate law.
10. Prior to his call to the bar in British Columbia, in 1994, the Lawyer was licensed as a solicitor in England.

Law Society Investigation and Admitted Discipline Violations

11. In May 2020, the Law Society conducted a compliance audit of the Firm. One of the issues identified was the Lawyer's failure to fully comply with the Law Society's client identification and verification rules. The Lawyer was advised to amend his practices.
12. In January 2019, a regulatory body in British Columbia demanded information from the Lawyer about certain payments received into his trust account. The Lawyer declined to provide the information on the basis of solicitor-client privilege. Subsequently, the demand was withdrawn.
13. In the interim, the Law Society commenced an investigation into the Lawyer's trust accounting practices. The investigation uncovered a number of deficiencies related to a group of interrelated persons and/or parties, primarily involving the Lawyer's failure to uphold his trust account gatekeeper responsibilities by making inquiries in circumstances where the subject matter of the file was unusual or where the objectives of his retainer was unclear. The Lawyer also failed to fully abide by his client identification and verification duties, which was especially troubling given the advice he received about this during his compliance audit. Lastly, the Lawyer acted in a conflict of interest by representing both sides in a loan transaction.

File #373-001 – Sale of Property

14. The Lawyer was contacted on behalf of a private lender that had provided a first and second mortgage on a single-family home with an accepted offer already in place. The Lawyer was asked to handle the conveyancing of the property. His client was the owner and seller of the property.
15. There were a number of unusual elements to this file which ought to have raised red flags for the Lawyer. For example, although the Lawyer opened the file in the name of the registered owner and seller, he received instructions from the lender, and his instructions were not always copied to the owner/seller. The order to pay provided that \$100,000 should be paid to the owner/seller, which was odd because the total mortgage amount payable to the lender was \$933,359, and the sale proceeds were only \$892,323.63.

16. The Lawyer admits he ought to have made inquiries about why the lender agreed to share net sale proceeds with the seller.
17. The Lawyer did not obtain and record his client's telephone number and occupation, as required.

File #384-001 – Purchase of Property

18. In May 2017, the Lawyer was retained by an individual in relation to the purchase of two properties. That individual and another family member had incorporated a company for the purpose of holding the properties. The individual advised the Lawyer that she had recently returned to Canada after working overseas for some years.
19. The Lawyer did not make inquiries about why her family member was the director of the company, which was purportedly created to hold title to property, when the properties being purchased were allegedly being financed by the individual and her husband.
20. The property purchase price of one of the properties was \$829,000.
21. In June 2017, the individual advised the Lawyer that she had arranged for \$880,000 to be transferred to his trust account, and provided three wire transfer confirmations from an entity in Singapore. The wire confirmations showed who the sender of the funds was and noted that the funds were for a loan. The individual also advised the Lawyer that extra funds were being provided in order for “modest upgrades” to be made to the property.
22. In June 2017, three wire transfers totaling \$879,970 were deposited into the Lawyer's trust account from the entity based in Singapore.
23. The Lawyer did not have any direct contact with the director of the property holding company until after the funds were received. At that time, the Lawyer sent a buyers' statement of adjustments to his clients that indicated the amount received in trust was \$879,970, and that an estimated \$33,961 would be forwarded to the property holding company upon completion. Subsequently, an existing mortgage on the property was discharged, and the Lawyer paid the excess funds of \$33,958.06 to the property holding company, as instructed.

24. The Lawyer admits that the unusual features of this transaction, including that the funds came into his trust account from an overseas entity in an amount in excess of the purchase price, ought to have prompted him to ensure he made inquiries to satisfy himself he was not being involved in illegal activities.
25. The Lawyer admits that he did not obtain or record the occupation of the director of the property holding company, and the name, address, and occupation of his client's shareholders. The Lawyer only requested and obtained contact information for the director of the property holding company after the contract of purchase and sale had been signed, when this information should have been obtained prior to the transaction. He also failed to obtain a copy of the securities register to verify information about the ownership of the property holding company.

File #413-001 – Property Purchase

26. In October 2017, the Lawyer was contacted by a real estate agent in relation to the purchase of a property by an individual. The real estate agent provided the Lawyer with the contract of purchase and sale. The Lawyer was retained by the individual.
27. The Lawyer understood that the individual did not work outside the home and that the funds for the purchase were purportedly being provided as part of a divorce settlement. The Lawyer did not consider this to be unusual.
28. The purchase price for the property was \$1,000,000. According to the purchaser's statement of adjustments, after a \$50,000 deposit, \$970,063.16 was needed for closing.
29. The Lawyer received a total of \$1,149,980 in his trust account from unrelated overseas parties, whereas the property purchase price was \$1,000,000. The Lawyer failed to see this as a red flag.
30. In November 2017, the Lawyer issued a trust cheque for \$179,830 to his client for the excess funds. The Lawyer did not inquire why the excess funds had been provided to him instead of to his client directly.

File #486-001 - Transfer of Mortgage

31. In mid-December 2018, an individual emailed the Lawyer on behalf of his company (“Company X”) regarding a mortgage transfer. Company X had agreed to refinance and pay out two existing mortgages registered against a residential property (“Property A”) held by a second company (“Company Y”). The Lawyer was asked if he was available to do this transaction over the holidays. The Lawyer agreed to be retained.
32. The Lawyer first had contact with the individual in file #373-001, discussed above.
33. The Lawyer did not verify information about Company X by obtaining a securities register for that company.
34. The Lawyer did obtain a securities register for Company Y. The register showed that its sole shareholder was another company, which in turn was owned by an individual with ties to other files discussed below.
35. The Lawyer was advised that Company X was a recently incorporated company for which nothing had been “set up yet”.
36. The Lawyer admits that he failed to verify information about Company X (or any information about the ownership of the company at all), including information about its director’s occupation.

File #486-002 – Refinancing of Property A

37. The Lawyer was retained by the same client in file #486-001, with respect to the refinancing of Property A.
38. In January 2019, the Lawyer was advised that a wire transfer in the amount of \$3,900,000 had been sent to him. The funds came from a third-party Marshall Islands company. The funds exceeded the amount required for the refinancing by \$138,197.23. Subsequently, the Lawyer paid funds out to a law firm and a financial institution to pay off the existing mortgages.

39. The Lawyer did not inquire about the connection or relationship between the third-party Marshall Islands company and his client, Company X. He also did not make any inquiries about why there were excess funds, or why the funds were coming from a Marshall Islands company.
40. As with file #486-001 above, the Lawyer did not obtain the securities register for Company X, or any information about the ownership of Company X. He also did not obtain information about the director's occupation.

File #503-001 – Property Sale

41. The Lawyer was retained by a company in relation to a property sale. In March 2019, closing funds amounted to \$8,364,026.69.
42. In April 2019, the director of his corporate client told the Lawyer that the sale proceeds should be disbursed pursuant to joint venture agreements. The director asked that a total of \$2,136,800 be paid to Company X, as payment of a loan. In addition, two separate payments of \$654,888 were made to two unrelated companies; \$453,384 was paid to another company involved in files #554-001 and 554-002, discussed below; and \$755,640 was paid to a third company involved in files #515-001 and 612-001, discussed below.
43. The Lawyer did not make any inquiries about the alleged loan from Company X or the purported joint venture agreements.
44. The Lawyer did not properly identify or verify information about his client, including by obtaining a securities register or other shareholder information. As such, it was unclear to the Lawyer who owned the company.

File #515-001 – Property Sale

45. In June 2019, the Lawyer received an email from an individual, asking him to represent his company in relation to a property sale. The Lawyer was provided with a purchase agreement, and confirmed that conditions had been removed pursuant to an addendum.
46. After the sale completed, the Lawyer released \$123,801.71 to his client.

47. The Lawyer completed a corporate records search of his client. The results showed that the individual who had contacted him was the sole director of his corporate client. The Lawyer did not obtain a securities register or shareholder information for his client, and did not obtain information about the instructing individual's occupation.

File #543-001 - Loan

48. In November 2019, the Lawyer spoke with an individual known to him about a loan from Company A to Company B. The Lawyer's hand-written notes included information about the individual's former occupation, that \$1.2 million would be coming from Europe, and that the individual's brother would be involved in the loan.

49. In November 2019, the Lawyer received an email from the brother, confirming that Company A wanted to engage the Lawyer to represent its interests in perfecting a \$1.2 million loan to Company B. The Lawyer was asked to review loan documents and to make appropriate changes.

50. The loan documents indicated that the actual lender was a company with a similar name to Company A, and was not Company A. The loan agreement had already been signed.

51. The loan agreement described that Company B owned 240,000 shares in Company C; and that one of the borrowers was the registered owner of one share in Company D.

52. As part of the transaction, the share certificate for the one share had been pledged to the lender in a share pledge agreement. The Company D share was to be "assigned to the order of the lender".

53. It was unclear why the Lawyer opened the file under the name of Company A instead of the actual lender. A corporate search showed that the actual lender was incorporated just days before agreeing to the \$1.2 million loan. The brother was listed as the director of the lender.

54. In November 2019, the Lawyer received \$1,188,000 into his trust account. The funds came from Company A, which had a St. Kitts and Nevis address, and not the lender.

55. The Lawyer paid his legal account and in accordance with the order to pay forwarded the balance of \$1,186,304.25 to Company C, and not the borrower Company B.
56. It appears that this purported loan from the actual lender to Company B was actually a purchase of shares in Company C by Company A, and a purchase of the Company D share, with the actual lender ending up as the bare trustee of the Company D share. The funds came from St. Kitts and Nevis and not Europe as initially indicated. The Lawyer did not make inquiries about the true nature of the transaction, or why the funds were coming from a source different from what was originally indicated.
57. The Lawyer did not make efforts to obtain information about the shareholders of his client or the lender. Further, he did not obtain information about the occupation of the company's director.

File #547-001 – Property Purchase

58. On November 24, 2019, the Lawyer was approached by the individual involved in file #543-001 on behalf of the same lender involved in file #543-001, regarding a property purchase.
59. The individual indicated that the company lender would loan \$319,500 to another company, in order to complete the property purchase. The individual instructed the Lawyer to secure his company's position with a Deed of Trust and to register the conveyance of the property. The Lawyer was advised that the borrower/purchaser was represented by another lawyer.
60. The terms had been agreed to by the time the Lawyer was contacted. The terms included that as security, the borrower would pledge his shares in his company.
61. The Lawyer received corporate documents showing that the borrowing company had been incorporated a few days earlier; that the borrower was the director and sole shareholder of his company; and that 1,000 common shares had been issued to him.
62. As the Lawyer opened the file in two names, the lender and the borrower, it was unclear who he was acting for.

63. File materials indicated that the Lawyer acted for the borrower with respect to the conveyance. However, the Lawyer received most of his instructions from the individual who contacted him on behalf of the lender, and the Lawyer sent draft documents to that individual and not to the borrower.
64. Although the file was opened in the names of Company A and the borrower, the company that actually provided the funds was a third entity.
65. On December 4, 2019, the Lawyer invoiced the borrower for the conveyance, as well as for the preparation of all documents for the loan. The original loan instructions were that the Lawyer's fees were to be deducted from the loan proceeds.
66. The Lawyer did not examine whether a conflict of interest existed. He did not obtain an acknowledgement of a conflict of interest, nor did he recommend to the parties that they should obtain independent legal advice about any potential conflict of interest.
67. In November 2019, the Lawyer received \$319,500 from Company A via a bank in Switzerland. The same day, the Lawyer transferred net sale proceeds of \$313,964.32 to the borrower's lawyer.
68. It is unclear why the funds came from Company A, with an address in St. Kitts and Nevis via a Swiss bank account instead of from the stated lender, a BC company. The Lawyer failed to make any inquiries in this regard.
69. The Lawyer failed to obtain and/or verify and record information about the occupations of the directors and shareholders of the companies involved.

File #553-001 – Release Charge over Property

70. In December 2019, counsel for a numbered company emailed a mortgage payout statement request to the individual involved in files #486-001, 486-002, 543-001, 543-002, 543-003, 547-001, and 553-001 discussed above, on behalf of Company X. The lawyer noted the request was urgent as their client was coming the next day to sign vendor documents. The Lawyer was retained by Company X to certify the discharge and to

receive payment from the numbered company. The payout was with respect to a mortgage that had been registered in 2010, and which had not been registered by the Lawyer.

71. The mortgage payout statement from Company X stated, “[w]e confirm that we will accept \$300,000 in full payment and satisfaction of the above mortgage debt”.
72. The Lawyer did not obtain information about Company X’s director’s occupation, or any shareholder information related to Company X.
73. On December 31, 2019, the Lawyer executed a Form C discharge with his client. That same day, the Lawyer sent the document to opposing counsel with a request to provide the payout funds directly to the lender.
74. The closing was moved and then proceeded on January 7, 2020. When opposing counsel followed up regarding the address for the payout cheque, they were advised to send the funds to the Lawyer’s trust account and not directly to the lender.
75. In January 2020, the Lawyer received \$300,000 into his trust account, which represented the balance owing of the mortgage registered on the subject property. Pursuant to a direction to pay that he received from Company X, he paid the net amount of \$299,585.25 to an unrelated entity that was involved in files #373-001 and 486-001, discussed above.
76. The Lawyer did not make inquiries about why the funds had not been directed to his client, as initially discussed, and instead were sent to an entity with no apparent connection to the matter.

File #554-001 – Refinancing

77. In approximately December 2019, the Lawyer was retained by the company involved in files #486-001 and 486-002 discussed above (“Company Y”), in relation to a refinancing.
78. In December 2019, counsel for the lender emailed the Lawyer to request copies of the register of directors and information of the covenantor, in relation to the refinancing. The Lawyer relayed this information to his client’s representative and requested copies of the same.

79. In December 2019, the Lawyer received incorporation documents and the central securities register for Company Y from the client's representative. The representative was the sole director of Company Y. Another company ("Company Z") was shown to be the sole shareholder of Company Y.
80. The Lawyer subsequently emailed the client's representative with documents that required his signature. The documents were signed by him and notarized in Mexico.
81. On December 13, 2019, the Lawyer received corporate documents from Company Z, showing that the client's representative's wife was the sole shareholder of Company Z.
82. After they received the corporate records for Company Z, counsel for the lender requested a guarantee and postponement from the client's representative's wife, on the basis that she was the true owner of Company Y. It appears that the lender had not been informed of this structure.
83. On December 19, 2019, the owner of Company Z signed the requested documents before the same notary public in Mexico.
84. On the closing date, the Lawyer received \$3,018,744.22 to his trust account.
85. The Lawyer did not make inquiries about why he was asked to subsequently disburse funds to parties other than the owner of the property being re-financed. The Lawyer did not make inquiries as to why there was an urgency in obtaining mortgage funding in 2019.
86. The Lawyer did not obtain and verify information about the occupation of Company Y's director.

File #554-002 – Property Sale

87. In June 2020, the Lawyer received an email from the instructing individual in file #554-001, on behalf of Company Y, advising, "[w]e have sold this house, with closing on June 25, and would like you to act for us in transferring title and discharging the mortgage...".

88. In June 2020, the Lawyer executed a Form A transfer form with his client. The Lawyer was instructed to deposit the net sale proceeds into Company Z's bank account.
89. The sale proceeds of \$5,297,905.50 were deposited into the Lawyer's trust account. On June 26, 2020, the Lawyer obtained a Form C release from the lender's counsel, and it was registered with the Land Title Office. The outstanding mortgage balance of \$3,118,021.41 was paid to the lender's counsel. The Lawyer then issued a trust cheque in the amount of \$1,885,892.45, made payable to Company Z.
90. The Lawyer did not inquire why the net sale proceeds were to be paid to Company Z instead of to the seller, Company Y.
91. The Lawyer did not record information about the occupation of Company Y's director.

File #543-003 – Loan

92. In September 2020, the borrower in file #547 completed the purchase of a second property.
93. In September 2020, the Lawyer received an email from an individual involved with Company A. The individual was calling in relation to a loan that Company A wished to make to an individual. The loan was for \$650,000, and was to be set up as a line of credit to construct a house and workshop and was needed because of a hold-up by a bank in advancing funds on a construction mortgage. The Lawyer was advised that the documents were "as before", and that the first advance would be \$200,000. The Lawyer was instructed not to register the line of credit on title.
94. The loan agreement was signed in September 2020. That same day, Company A paid the first advance of \$200,000 into the Lawyer's trust account, and the Lawyer released the funds to the borrower.
95. The Lawyer received a second payment of \$200,000 from Company A into his trust account in October 2020. He paid the funds out to the borrower the next day.

96. In January 2021, the Lawyer was asked to prepare an amended loan agreement to reflect an additional \$35,000 being advanced. The amendment was finalized the same day.
97. Later that month, the Lawyer received a further \$284,715 from Company A. The funds were paid out to the borrower the next day.
98. Even though, during the compliance audit, the Lawyer was advised by the Law Society that he needed to obtain the required client identification and verification for this specific corporate client, he did not obtain information on the client's shareholders when he opened this new file. The Lawyer acknowledges this is an aggravating factor.
99. The Lawyer failed to inquire why he was instructed to send trust funds to a different but seemingly related company instead of the stated borrower.

File #612-001 – Property Sale

100. The Lawyer acted for a corporate client in a real estate sale.
101. The instructing individual was also involved in files #486-001, 554-001, 554-002, and was the director of the corporate client in this file. His wife was the company's president and secretary. According to the securities register, the company was owned by Company Z.
102. The property to be sold had a mortgage registered against it by a mortgage lender. The payout statement indicated that the payout amount was \$3,059,568.04.
103. The Lawyer had obtained a signed order to pay ("Order to Pay 1") with a hand-written date of January 18, 2021. Order to Pay 1 directed that the balance of \$4,501,739.28 was to be paid to the seller.
104. On January 18, 2021, the instructing individual emailed the Lawyer with instructions about how to pay out the sale proceeds. He noted that \$360,394 was to be paid pursuant to a participation agreement, \$1,939,187 was to be paid pursuant to a loan repayment, and that the balance was to be paid to an "associated company".

105. Eleven minutes later, the instructing individual emailed again, asking the Lawyer to deduct \$372,500 for GST, and to send a cheque for that amount to the client, in care of Company Z.
106. The next morning, on January 19, 2021, the Lawyer replied “[w]ill do”. He then received the sale proceeds of \$7,563,486.10 from opposing counsel into trust. He emailed his client to advise that the sale had gone through and that he would be dealing with the funds in the morning.
107. On January 20, 2021, the Lawyer emailed his client an order to pay (“Order to Pay 2”), which did not reflect the emailed instructions from January 18th. Order to Pay 2 stated that the mortgagor should be paid out the existing mortgage of \$3,060,235.72, that GST of \$372,500 should be paid, that an unrelated company should be paid a mortgage of \$3,050,294.58, and that the balance of \$1,078,944.70 should be paid to the client.
108. A short while later, the instructing individual emailed back a signed Order to Pay 2 with the date of signing filled in as January 18, 2021.
109. The Lawyer issued his account and issued trust cheques in accordance with Order to Pay 1, with the adjustment for the GST payment.
110. The Lawyer did not inquire why the net proceeds were to be distributed to parties with no apparent connection to the transaction and for which he did not have any supporting documentation and in amounts that differed from Order to Pay 2.
111. The Lawyer did not make any inquiries about or record why he received an order to pay back-dated by the signatory, knowing that the line items in Order to Pay 2 did not correlate to his instructions and the payments made that same day.
112. The Lawyer did not record information about the occupation of his client’s director.

Knowledge about his Clients

113. During the investigation, the Law Society investigator brought to the Lawyer’s attention that allegations of illegal conduct had been made against some of his clients. The Lawyer

advised that he had no knowledge of any alleged unlawful activities of his clients at the time he represented them, and that he had become aware of such activities only when advised of them by the Law Society investigator.

Mitigating Factors

114. The Lawyer is remorseful and has admitted his misconduct.
115. Since July 2021, he has not taken on any new clients, and since October 2022, he has declined to act on real estate matters. In October 2023, he left private practice entirely.
116. The Lawyer is in the process of closing his trust account, and has agreed to undertake not to operate a trust account until he is relieved of this undertaking by the Executive Director of the Law Society.
117. The Lawyer has not practised real estate law since October 2022, and has agreed to undertake not to practise real estate law until he is relieved of this undertaking by the Executive Director of the Law Society.