

2005: No. 03 September - October

Sanjeev Sanj Rai

Surrey, BC

Called to the bar: May 23, 2001

Discipline hearing: August 24, 2005

Panel: Robert W. McDiarmid, QC, Chair, Robert C. Brun, QC and G. Glen Ridgway, QC

Report issued: September 9, 2005 (indexed as 2005 LSBC 37)

Counsel: Stuart Cameron, for the Law Society, and William Clark, for Mr. Rai

Facts

In December 2003 Mr. Rai was retained by CM, a mortgage company, as the mortgagee in a residential mortgage transaction. The mortgage applicants were SG and PG and they had arranged with CM for a mortgage loan of \$300,000.

On a title search, Mr. Rai discovered that the registered owners of the property were Mr. and Mrs. G (the parents of SG and PG) and that there was a first mortgage in favour of W credit union and a second mortgage in favour of M credit union already on title.

Mr. Rai received the mortgage proceeds in trust from CM. He registered the CM mortgage and paid out the M credit union second mortgage. He later received a payout statement from W credit union and realized there would be insufficient funds to pay out and discharge its first mortgage.

The Land Title Office refused to register the CM mortgage on the basis that SG and PG were not the registered owners.

CM complained to Mr. Rai, and copied its letter to the Law Society.

Mr. Rai paid the balance of the funds in trust to SG and PG. He then negotiated with CM a proposal to rectify the situation. In the end, a first mortgage for \$410,000 was registered on title in favour of CM, with Mr. and Mrs. G named as the registered owners of the property and SG and PG as guarantors.

Mr. Rai later personally reimbursed CM for its legal expenses and other expenses, in the amount of \$7,000.

Admission

Pursuant to Rule 4-22, Mr. Rai admitted that he had failed to ensure that his clients SG and PG had a valid registered interest in the property to be mortgaged and had failed to ensure that his client CM would receive a valid first charge on title before he released the mortgage funds. As a result, he had failed to serve CM in a conscientious, diligent and efficient manner as would be expected of a competent lawyer. He admitted that this conduct constituted professional misconduct.

Mr. Rai also admitted that he had not ceased acting for both CM and for PG and SG when a conflict arose between the parties, which was contrary to Chapter 6, Rule 5 of the *Professional Conduct Handbook* and constituted professional misconduct.

The hearing panel expressed concern that Mr. Rai, who had practised criminal and personal injury law as

an associate, had chosen to begin practising on his own in real estate law when neither his articles nor past experience had prepared him for this area. He ran afoul of his ethical obligations as a result of this lack of familiarity, compounded by staffing problems and other difficulties common with lawyers setting up in practice early in their careers.

It was also troubling that he had failed to recognize CM as his client and that he had disbursed the balance of funds held in trust to SG and PG even after he knew about problems in the transaction.

In the end, it was fortunate that the matter was resolved without loss to his client CM. The panel noted that his failure included a failure to supervise his staff, but that his conduct was not dishonest or motivated by gain.

Penalty

The Discipline Committee and discipline hearing panel accepted Mr. Rai's admission and his proposed disciplinary action and ordered that he:

1. pay a \$3,000 fine;
2. pay \$4,000 as costs; and
3. practise real estate law only under the terms of a supervision agreement and supervised by a lawyer approved by the Practice Standards Committee, until relieved of the condition by that Committee.