

2013 : No. 02 Summer

Milan Matt Uzelac

Vancouver, BC

Called to the bar: June 26, 1975

Discipline hearing : January 30, 2013

Panel : Barry Zacharias, Chair, Woody Hayes and John Waddell, QC

Report issued : March 26, 2013 (2013 LSBC 11)

Counsel : Alison Kirby for the Law Society; Milan Matt Uzelac appearing on his own behalf

Facts

In January 2008, Milan Matt Uzelac was retained by a client in connection with an asset purchase of a business. Part of the broader transaction involved refinancing a residential property owned by the client.

Uzelac received mortgage instructions from the bank to register a new mortgage in the amount of \$700,000 in favour of the bank. The new mortgage was to form a first charge on the residential property. At the time of the refinancing, there were two pre-existing mortgages on the residential property, a first mortgage to the same bank and a second mortgage to a different bank.

On February 1, 2008, Uzelac registered the new mortgage and released funds to the client. The new mortgage was registered behind the first and second mortgages. The bank held back funds to pay out its own mortgage, but Uzelac did not pay out or deal with the second mortgage. His actions were contrary to his undertaking involving the bank's instructions.

Uzelac failed to report to the bank on the status of the registration of the mortgage within 90 days, contrary to his undertakings. He also failed to advise the bank that he had released the funds advanced by the bank on February 1, 2008, without first obtaining and registering the new mortgage as a first charge against the property.

The bank wrote to Uzelac on several occasions between January 2009 and January 2011. Uzelac failed to provide a substantive response to any of these letters. In-house counsel for the bank made a complaint to the Law Society in June 2011.

In subsequent correspondence to the Law Society, Uzelac noted that the pay out of funds contrary to the bank's instructions was inadvertent. In particular, there may have been confusion in the priority of mortgages because there was already a first mortgage on title in favour of the same bank.

Admission and disciplinary action

The Discipline Committee authorized a citation against Uzelac for breach of undertaking by releasing mortgage funds without registering the mortgage as a first charge as instructed and failing to report to the bank on the status of the registration of the mortgage, failing to report to the bank that he had released the mortgage funds without securing its position as instructed and failing to answer communications from the bank.

Uzelac admitted that his conduct amounted to professional misconduct.

While the offending conduct related to only one transaction, it continued over time as the details of the initial error became known to Uzelac. The bank suffered no economic loss, but was left without a first priority for the full funds secured, and the discharge of the first mortgage cannot be registered without seriously undermining its priority position.

The panel acknowledged that Uzelac gained no personal advantage from the transaction.

The panel also considered Uzelac's discipline history. In 2003, he was subject to three citations related to failures of accounting and record-keeping obligations; breach of three practice conditions regarding trust accounting; and a rules breach for failure to report unsatisfied judgments. Uzelac voluntarily withdrew from practice for nine months as a result of these citations.

While there was no pattern of related misconduct, the panel agreed that Uzelac's prior conduct history meant a strong sanction must be applied to provide deterrence as well as ensure the public's confidence in the integrity of the legal profession.

The panel accepted Uzelac's admission that he had committed professional misconduct and ordered that he:

1. be suspended from practice for six weeks; and
2. pay \$2,000 in costs.