

Elizabeth Eu See Lee

Vancouver, BC

Called to the Bar: June 13, 1986

Discipline hearing: August 2, 2002

Panel: Peter J. Keighley, QC, Chair, Ralston S. Alexander, QC and Robert D. Diebolt, QC

Report issued: August 2, 2002; indexed as [2002] LSBC 29

Counsel: Todd R. Follett, for the Law Society; Christopher E. Hinkson, QC, for Ms. Lee

Summary

While acting on a matrimonial file, Ms. Lee received documents from the opposing counsel. These documents were provided on Ms. Lee's undertaking to deliver back to counsel a series of postdated cheques by a particular date and to send back filed copies of the documents. Ms. Lee made use of the documents, but failed to provide the postdated cheques within the required timeframe and failed to return a copy of one of the filed documents. Ms. Lee delivered a bank draft for the first payment three days after the required date. She told opposing counsel that her client was opening a bank account locally and that the postdated cheques would be issued from that account to ensure they were valid and negotiable; she in fact provided the cheques several months later. Ms. Lee admitted that her failure to provide counsel with the postdated cheques by the required date and her failure to send a filed copy of one of the documents constituted a breach of her undertaking and amounted to professional misconduct. The hearing panel noted that Ms. Lee's breach of undertaking was not deliberate in the circumstances. The panel accepted Ms. Lee's admission and proposed disciplinary action, and ordered that she pay a \$2,000 fine and \$1,000 in costs on or before September 30, 2002.

Facts

In June, 2000, while representing the husband on a matrimonial file, Ms. Lee received documents from the lawyer representing the wife. Ms. Lee received these documents on the undertaking that she deliver back to the wife's lawyer by July 1 a series of cheques for \$10,000 each (one dated July 1 and the balance postdated), and further to send back filed copies of the executed consent order, notice of withdrawal and divorce certificate in due course. Ms. Lee made use of the documents she received, but failed to provide the cheques by July 1 and failed to return a copy of one of the filed documents.

On July 4 Ms. Lee delivered a bank draft for \$10,000 representing the first payment, which was received by the other lawyer on July 5. Ms. Lee advised that her client, who was resident overseas, would open a new bank account locally and that it was Ms. Lee's

intention that the postdated cheques be issued from that account to ensure they were valid and negotiable.

The wife's lawyer drew Ms. Lee's attention to her failure to provide the required materials, but did not specifically refer to the matter as a breach of undertaking. The lawyer subsequently complained to the Law Society on October 10.

Ms. Lee forwarded a \$10,000 cheque to the wife's lawyer on October 18, along with a copy of the filed divorce certificate. She sent the remainder of the postdated cheques to that lawyer on November 29. She failed to provide a copy of the filed notice of withdrawal.

Admission and penalty

Pursuant to Rule 4-22, Ms. Lee admitted that her failure to provide the postdated cheques by the required date and her failure to send a filed copy of the notice of withdrawal constituted a breach of her undertaking and amounted to professional misconduct.

Counsel for the Law Society and for Ms. Lee supported her proposed admission and penalty on the basis that her breach of undertaking was not deliberate. Both suggested that, had she taken more care at the outset to frame the undertaking in a manageable form, Ms. Lee might have avoided the circumstances giving rise to the breach.

The panel considered a number of previous discipline decisions in which the penalties for breach of undertaking ranged from a \$1,000 fine for negligent or otherwise non-deliberate breaches to a \$7,000 fine for a lawyer who was either mistaken as to his obligations or had ignored them. Although satisfied that Ms. Lee's conduct deserved a penalty at the lower end of the spectrum, the panel was not prepared to endorse a fine as an appropriate penalty for all breaches of undertaking simply because a lawyer is careless, forgetful or confused. The beneficiary of an undertaking is entitled to require strict compliance with the terms.

That said, the panel accepted Ms. Lee's proposed admission and penalty and accordingly ordered that she pay on or before September 30, 2002:

1. a fine of \$2,000; and
2. \$1,000 towards costs of the proceeding.