

**IN THE INDEPENDENT  
LEGAL SERVICES COMMISSION**

**NO. 011 of 2013**

**BETWEEN:**

**CHIEF REGISTRAR  
Applicant**

**AND:**

**RAMAN PRATAP SINGH  
Respondent**

**Applicant: Mr A Chand  
Respondent: In Person**

**Dates of Hearing: 26th September 2013  
Date of Judgment: 19th November 2013**

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**JUDGMENT**

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1. The Respondent ("the Practitioner") faces the following three allegations made against him by the Chief Registrar.

**COUNT 1**

*Mr. Raman Pratap Singh a legal practitioner, from the 15th of March 2006 till date whilst acting for both the vendor and purchaser for the sale and purchase of Crown Lease No. 13340 known as Lakena/Manoca (part of) being Lot 5 on D.P. No. 2086 constituting an area of 2.4215 hectares with all improvements thereon, had unreasonably delayed seeking the consent of Director of Lands for transfer from 15th of March 2006 until the 27th of May 2010 when consent of the Director of Lands for transfer of land was consequently sought, which conduct was a contravention of section 82(1)(a) of the Legal Practitioners Decree 2009 and was an act of professional misconduct.*

**COUNT 2**

*Mr. Raman Pratap Singh a legal practitioner, on the 15th of March 2006 whilst acting for both the vendor and purchaser for the sale and purchase of Crown lease No. 13340 known as Lakena/Manoca (part of) being Lot 5 on D P No. 2086 constituting an area of 2.4215 hectares with all improvements thereon, had drafted the Sale and Purchase agreement to include a clause which stated that the vendor give possession to the purchaser of the said Crown land upon execution of the agreement when he ought to have known that such a clause would be in breach of the lease conditions for the said Crown land, which conduct was a contravention of Section 82(1)(a) of the Legal Practitioners Decree 2009 and was an act of professional misconduct.*

**COUNT 3**

*Raman Pratap Singh, a legal practitioner, since the 15th of March, 2006 until June 2010 whilst acting for both the vendor and the purchasers, failed to fulfill the instructions received of completing the settlement of a sale and purchase transaction in that he failed to have the property described as Crown Lease No 13340 known as Lakena/Manoca (part of) being Lot 5 on DP No. 2086 transferred to the purchasers and also failed to ensure that the vendor was fully paid the consideration sum of \$16,000, which conduct was contrary to section 82(1)(a) of the Legal Practitioners Decree 2009 and was an act of professional misconduct.*

2. The practitioner sought to defend these allegations and the matter went to hearing.

## **FACTS**

3. All three charges concern a parcel of leasehold land situate at Lakena. It was Agricultural Crown Land, with a protected lease, the leaseholder being a Mr. Hari Ram also known as Harinam.
4. Mr. Ram died on the 3rd of December 1999 in Nausori and by his last will and testament he made his three sons, Ajay Chand, Harish Chand Sen and Jagdish Ram executors of his estate. He left the bulk of his estate (including this parcel of land) to the son Harish Chand Sen.
5. After their father had passed away, two of the brothers, that is Ajay and Jagdish emigrated to U.S.A. and Australia respectively leaving Harish alone in Fiji. He was not using the land and in fact found a prospective purchaser for the land for a consideration of \$16,000. The purchasers were Kamal Deo Singh and Indar Deo Singh. It is unclear in what circumstances but the parties contacted the practitioner to effect the transfer of the lease from Harish, as beneficiary of the estate to these purchasers. [There is some suggestion from Harish in his original complaint to the Registrar that the practitioner is related to the purchasers but this relationship was never pursued by the prosecution].
6. The practitioner then proceeded to act for both parties and drew an agreement for Sale and Purchase, which is dated 15th of March 2006. In that agreement he records the name of the vendor to be "Harish Chand Sen" and the purchasers to be the persons referred to above. The agreement goes on to recite that the vendor is the beneficial owner and as a result that the transfer of the lease will not be effected until the transfer of the land is made into his name.
7. The agreement is also "interesting" in that a date of settlement is specified, being 31st of March 2007 almost a year in advance, yet immediate vacant possession of the property is afforded to the purchasers.
8. Being Crown Land, the lease in question was a protected lease and therefore consent of the Director of Lands was required for **any** dealings with the land. This consent being given was a condition included in the agreement.
9. Although the agreement was signed in March 2006, the practitioner did not apply for Consent from the Director of Lands until 27th of May 2010, over 4 years later.
10. The lease expired on the 30th of June 2010, just 34 days after the application for consent to transfer it. In those circumstances, the Director of Lands refused consent to transfer of the Lease. On expiry of the lease the lease had still not been transferred and the purchasers then in possession had no interest in the land, save an entitlement to apply for a new lease.

## **THE HEARING**

11. The above paragraphs set out indisputable facts which were relied on by the prosecution. Evidence was heard from the original complainant - (the "vendor"), and from a lease Inspector/Senior Lands Officer of the Lands Department.

12. The Lands Department Officer said in evidence, when looking at the Agreement for Sale and Purchase that it was illegal for the lessee to permit a purchaser to take possession of the land because it is a "protected lease". By the terms of section 13 of the Crown (State) Lands Act there can be no dealings with the land whatsoever without first having the consent of the Director of Lands.

13. In his defence the practitioner gave sworn evidence. He said that he had been in general practice as a Solicitor since 1978, mostly dealing with conveyancing matters. He drew up the agreement for Sale and Purchase with Mr. Sen as the "beneficial" owner because the purchasers were keen to bind him to the sale. Both parties came to him - he looked at the Lease and they wanted an agreement immediately. The purchasers were willing to pay \$13,000 in the full knowledge that consent had not been granted and in the knowledge that the vendor would be the eventual beneficiary of the land. The practitioner told the tribunal that he had told the purchasers that consent had to be obtained from the Director of Lands and he explained to them that the vendor was not at the time in a position to transfer the lease.

14. The practitioner subsequently learned that the other two executors were reluctant to transfer the lease. He produced letters from the two executors abroad demonstrating their reluctance and grievance that they had never been consulted on the matter by their brother, the "vendor".

15. When experiencing difficulties in getting the other two executors to agree to transfer the lease, the practitioner, whilst still acting for both parties, even went to the lengths of seeking relief from the High Court (in its Administrative Jurisdiction) to have the two brothers discharged as executors and trustees of the estate of their father and to grant probate to the vendor Harish alone.

16. It appears for reasons unknown that this action never succeeded because there is on file a transfer of the lease properly in the names of all three executors as vendor, which transfer had been sent to the Director of Lands in May 2010 for his consent.

17. Mr. Harish Sen told the Commission in his evidence that he, knowing that the brothers were being reluctant, was told by the practitioner that their signatures were not needed. He later told Sen that he would get the Court to "get them out".

18. The practitioner told the Commission of his utter frustration in not being able to get the requisite signatures on the transfer in order that he might then get the consent of the Director of Lands to the transfer of the leasehold interest.

## **ANALYSIS**

19. The facts and circumstances of this transaction reveal an trail of unprofessional, I and imprudent acts on the part of the practitioner. Problems started immediately when he chose to act for both parties in the transaction without their consent to do so and without advising them that they could go elsewhere for independent legal advice. The result was that throughout this whole transaction the pendulum of prejudice swung equally at different times between the "vendor" and the purchasers and the practitioner became to be embroiled in an enormous web of conflict of interest.

20. By specifying the name of Harish Chand Sen as vendor in the Agreement for Sale and Purchase, the Agreement immediately became null and void. Mr Sen had no capacity to enter into a Sale agreement. The lease had never been transferred into his name. Even though the Practitioner claims that Mr Ram was selling as the eventual beneficiary, which does not help him. A prudent practitioner on noting the name of the lessee to be Mr Hari Ram, would want either him, or in the event of his demise (which was the case here) his executors to be the proper persons to enter into agreement. The purchasers (the practitioner's other clients) did at this stage suffer prejudice because of the incapacity of the vendor to sell to them.

21. The clause in the agreement purportedly giving immediate possession to the purchasers is of course null and void on two counts.

- The "vendor" does not have the capacity to sell.
- Section 13 of the State Lands Act requires prior consent of the director of Lands for any dealing in the land which would include giving possession to third parties.

22. Both parties to the agreement are hereby prejudiced by this agreement.

23. The practitioner obviously and far too late realised that the transfer document to transfer the interest in the land would have to be signed by all three executors to the estate because, rather than seeking their consent to the transfer, he filed an Originating Summons in the High Court seeking to discharge the brothers of the "Vendor" as executors and trustees of the estate of their father and to have new Probate granted to Mr. Harish Sen as sole executor and trustee. That the practitioner should instigate legal proceedings to "legitimise" his attempt to transfer the lease to the purchasers, is an unfortunate departure from good professional practice.

24. After he had filed proceedings in the High Court, the practitioner received a letter from one of the two brothers, Jagdish Ram, who expressed his concern at the High Court proceedings and at the lack of consultation with him or with his brother in the USA. This lack of co-operation from the trustees is a possibility that the practitioner should have considered before giving immediate possession to the purchasers.

25. The delay in getting approval to the transfer from the executors of the Estate obviously led to the delay in being able to have the Director of Lands approve the transfer. The reason for this delay can be placed solely at the feet of the practitioner who drew up and had executed an agreement for sale and purchase which was in itself null and void and without his consideration of the need to have all of the trustees of the estate enter into the contract to sell.

26. In acting for both parties, he was in serious conflict of interest and he should have ensured that one of the parties go elsewhere for independent legal advice. It appears that he was doing all he could to satisfy the interests of the purchasers, to the prejudice of the "vendor". In the end the purchasers were prejudiced because he applied for consent to the transfer so late that the lease expired and the purchasers were left without a legitimate registrable interest in the land they were occupying and occupying by licence of the practitioner through his null and void agreement for sale and Purchase.

27. This case is a perfect example to practitioners of reasons that they should not act for both parties to a conveyancing contract. At various stages of this ill-fated conveyancing transaction both parties were at times prejudiced, the ultimate position being that the "vendor" did not receive the balance of the purchase price still held in the practitioner's trust account, and the purchasers did not

get proper title to their leasehold interest during the life of the lease (although it is believed that they may now have occasion to apply for a new lease in their names as tenants *in situ*.)

28. The Commission finds that all three allegations against the practitioner are made out, but finds them to be offences of unsatisfactory professional conduct rather than professional misconduct. There is no doubt that he was unreasonably late in applying for consent from the Director of Lands; he imprudently and illegally gave immediate possession of the land to the purchasers; and he failed to complete the transaction before the lease expired.

## **SANCTIONS**

29. In the words of the Legal Practitioner's Decree, the conduct of the practitioner in this transaction "involves a substantial failure to reach or maintain a reasonable standard of competence and diligence".

30. One of the roles of this Commission, often stated is to protect the Consumer Public from substandard professional conduct of licensed practitioners in this Jurisdiction. To give effect to that function the Commission has a catalogue of sanctions listed in section 121(1) of the Decree, although that list is not exhaustive.

31. Fining a practitioner is normally condign punishment for a one-off "fall from grace". An exception to that must be a breach of the legislative requirement to respond to the Chief Registrar pursuant to a section 108 notice; for the very reason that to ignore the regulatory head of the Profession without reasonable excuse, apart from being arrogant, could lead to professional anarchy and disorganisation.

32. Misconduct in practice seriously impinging on the rights of the general public is best visited with terms of suspension, or in very serious cases (or where that conduct involves trust account defalcation) removal from the roll of Practitioners.

33. The practitioner says in mitigation that he had no intention to delay making application to the Director of Lands for consent to the transfer. He says that the trustees had agreed to sell the land and that upon that information he had drawn up the agreement with Mr. Sen as beneficial owner. He says (and in fact it is a clause in the agreement) that the purchasers were aware of the vendor's status. The practitioner was then frustrated in his attempts to get the executors' signatures to the transfer. This co-operation was however short-lived. The practitioner submits that when the Inspectors from the Lands Department reviewed the application for transfer, one of the executors told them he did not want to sell. The consent was then delayed until finally it was withheld because the lease had expired.

34. There is no doubt that the practitioner did all he could to give effect to this transaction, despite the fact that it was doomed from the beginning. It was most unfortunate that he seemed to be eager to act for both parties, which is all very well until unforeseen circumstances intervene, and which they did in this transaction. It was also unfortunate that he did not make diligent enquiry to determine who in fact was the legal lessee and therefore the appropriate party to be the vendor, or the transferor.

35. The practitioner has demonstrated his remorse before this tribunal by asking on at least two occasions for his hearing to be deferred in order that he might approach the Chief Registrar with a view to entering into mediation of the matter, so that at least he could complete payment of the consideration to the "vendor" (he still having \$3,000 in his trust account.

36. In the very recent Queensland lawyers discipline case of **Legal Services Commissioner v Coburn** [2013QCAT 435, in dealing with a practitioner who had been found guilty of failing to maintain a standard of competence expected of a practitioner, the Tribunal said:

*"This is a solitary instance which means it comes readily within the definition of unsatisfactory professional conduct. The Solicitor had never been the subject of disciplinary proceedings and there is no allegation of dishonesty. He demonstrated an appropriate degree of remorse by taking steps, t his own expense, to remedy the problems caused".*

37. The Solicitor in that case was publicly reprimanded, fined A\$1,000 and ordered to pay costs to the Commission.

38. The words of the tribunal in **Coburn** are entirely apposite to the immediate case. The practitioner has never come to the notice of the Commission before, he has shown himself to be remorseful, there is no element of dishonesty in the entire transaction.

39. While the transaction demonstrates the perils of acting for both parties, and that the conduct of the practitioner did not live up to conduct expected of a senior practitioner, this Commission regards the unsatisfactory conduct to be of medium seriousness.

## **ORDERS**

1. The practitioner is publicly reprimanded.
2. The practitioner is fined the sum of \$3,000 on each of the three offences. These fines are imposed concurrently resulting in a total fine of \$3,000.
3. The practitioner is to pay costs to the Commission of \$2,000.
4. The Practitioner is to pay to the vendor Harish Chand Sen the \$3,000 that he is holding in his trust account.
5. The fine and costs are to be paid by the 13th of December 2013, failing which the practitioner's practising certificate is to be suspended until such time as the financial penalties are paid.

**JUSTICE PAUL MADIGAN 19 NOVEMBER 2013  
COMMISSIONER**