

**IN THE INDEPENDENT
LEGAL SERVICES COMMISSION**

NO. 002/2010

BETWEEN: CHIEF REGISTRAR

Applicant

**A N D: VIPUL MISHRA
MEHBOOB RAZA
MUHAMMAD SHAMSUD-DEAN SAHU KHAN
SAHU KHAN & SAHU KHAN**

**1st Respondent
2nd Respondent
3rd Respondent
4th Respondent**

**Applicant : Ms V. Lidise & Mr A. Chand
1st Respondent : In Person
2nd Respondent : Mr M S D Sahu Khan
3rd Respondent : In Person
4th respondent : Dr M S Sahu Khan**

**Dates of Hearing : 19th ,20th ,21st ,24th ,25th , 26th January 2011
Date of Judgment : 3rd March 2011**

JUDGMENT

1. This litany of disaster commenced with what should have been a routine conveyancing transaction. It is difficult to conceive that an innocent member of the community could be treated in the way this complainant was by a brace of senior lawyers.
2. The complainant Sashi Kiran Pratap (the purchaser) negotiated the purchase of Lot 10 BA2301 and Lot 13 BA2298 having an area of 4.3756 hectares being the land in Crown Lease 16375 from Ambika Nand.
3. Ambika Nand had as his lawyer the 1st Respondent. A clerk in the employ of the 1st Respondent, Mohammed Kazim Yasin drafted an agreement for Sale and Purchase and submitted it to the 2nd Respondent who was instructed by the purchaser.

4. The agreement dated 28th July, 2006 [Ex 126] provided for a consideration of \$130,000 and in paragraph 6 stated *"the property is sold free from all mortgages, charges and encumbrances."*
5. In paragraph 4.2 it stated that *"The vendor will hand over a registrable transfer of the said property in favour of the purchaser..."*
6. The vendor initially held the land under CL5375 which was granted on the 1st January 1974 for a term of 10 years. The lease was extended from 1 January 1974 for a period of 20 years.
7. The vendor mortgaged the land to British American Insurance Company Limited by mortgage dated 6th September 1982 which mortgage was registered on 17th May 1983. The mortgage was for an advance in the sum of \$30,000.
8. By transfer of mortgage dated 31st December 1998 the mortgage was transferred to the Reserve Bank of Fiji. The mortgagee was at all times represented by Cromptons, Barristers and Solicitors of Suva.
9. On the 30th May 1988 the Director of Lands registered a caveat on CL5375 with respect to Lot 13 BA2298. The caveat No. 260056 seeks to protect the interest of the Director of Lands *"by virtue of a Sales and Purchase agreement dated 26th September 1986."*
10. Sometime prior to May 2003 the vendor borrowed money from Mohammed Farouk Ali and Air Terminal Services Employees Trust and granted to the lenders a Bill of Sale and Crop Lien.
11. The 1st Respondent commenced to act for the vendor in or about May 2003 when given instructions to appeal a High Court judgment in favour of Mohammed Farouk Ali.
12. The 1st Respondent also acted for the vendor in seeking, in or about April 2006, to evict the caretaker placed on the land by the Reserve Bank. Cromptons by letter dated 11th April 2006 advised the 1st Respondent of the mortgage over the land.
13. By letter dated "2.12.2003" the vendor applied to the Divisional Surveyor Western for a renewal of CL5375 "which expires on 1.01.2004".

14. The Director of Lands issued CL13675 over the land for a term of 30 years from the 1st January 2004. The lease was registered on the 5th April 2006 by the Registrar of Titles and the duplicate lease was returned to the lodging party, the Director of Lands.
15. The duplicate lease when returned bore no endorsements or memorials.
16. CL5375 at the time of its expiry bore mortgage 201344, caveat 260056 and extension of lease 483357.
17. At the time of preparation of the Sale and Purchase agreement with respect to the land the 1st Respondent obtained the duplicate lease from the Director of Lands. The duplicate furnished bore no endorsements or memorials.
18. On the 19th October 2006 Cromptons delivered a letter by hand to the Director of Lands requesting that the mortgage on CL5375 be endorsed on the new lease, CL16375.
19. This letter was forwarded to the Registrar of Titles by the Director of Lands.
20. For reasons not clear the purchaser delivered the settlement monies to the office of the 1st Respondent at Ba on the 23rd October 2006 and settlement was organised to take place in Suva on the 24th October 2006.
21. The purchaser was given a receipt on the 1st Respondent's trust account for the settlement funds and a receipt on the 1st Respondent's office account for the vendor's costs.
22. At 4.30 pm on 23rd October 2006 Cromptons forwarded by facsimile transmission to the 1st Respondent a letter detailing the monies owing under the mortgage by the vendor and advising that the mortgage has not been endorsed on CL16375 as it should have been.
23. On the 24th October 2006 the 1st Respondent proceeded to settle the matter and disbursed the settlement monies to the vendor.
24. On the 25th October 2006 the 2nd Respondent lodged the transfer handed over on settlement and the duplicate copy of CL16375 with the Registrar of Titles.

25. The transfer did not contain any endorsements or limitations.
26. On the 7th May 2007 the documents were uplifted from the Registrar of Titles as registration had being rejected as the transfer did not show that it was subject to a mortgage and caveat then endorsed on the title.
27. The date of endorsement of the encumbrances "B/F from CL5375" is not known but thought to be shortly after the letter of the 19th October 2006 from Cromptons to the Director of Lands was received by the Registrar of Titles. The then deputy Registrar of Titles says she was instructed by the then Registrar to bring forward the encumbrances onto CL16375.
28. The order of the notations on the memorial page on CL16375 would suggest that they were brought forward before transfer 597010 was lodged for registration on "25th October 2006 at 11.15 am".
29. The 3rd Respondent having obtained judgment on behalf of Mohammed Farouk Ali (the judgment creditor) against the vendor sought to register that judgment against the land.
30. On the 31st July 2007 the 3rd Respondent made a declaration stating:-
- "4. I know that the said Ambika Nand (father's name Puran Nand) previously of Varoka, Ba, businessman is the registered proprietor of the said land as I have caused a search of the Title made at the Title's Office.*
- 5. The registered estate and interest of Ambika Nand (father's name Puran Nand) previously of Varoka, Ba, businessman in the said Land is not subject to any liens, leases, mortgages or encumbrances whatsoever so far as I am informed and verily believe, except Caveat No. 260056."*
31. The judgment was registered on the title on 31st July 2007 at 12.30 pm.
32. The title shows mortgage no. 201344 and caveat no. 260056 registered on the title at that time.

33. The transfer to the purchaser not having been registered, as it was uplifted on 7th May 2007, the land was still in the name of the vendor.
34. No caveat was registered on the title to protect the interest of the purchaser notwithstanding that the 2nd Respondent corresponded with the 1st Respondent and the Registrar of Titles prior to registration of the judgment on 31st July 2007.
35. The purchaser visited the Registrar of Titles in March 2007 and ascertained that the transfer was not registered and made contact with the 2nd Respondent.
36. The purchaser was informed that the 3rd Respondent was seeking to sell the land on behalf of the judgment creditor.
37. The purchaser says that she was advised by her daughter-in-law, who was advised by Kazim who suggested that she contact M K Sahu Khan to represent her. This was confirmed by the daughter-in-law in her evidence but denied by Kazim in his evidence.
38. By letter dated 31st January 2008 the purchaser gave authority to the 2nd Respondent to release her file. Some documents, [CL16375, transfer and three letters] were handed over on 1st February 2008. The purchaser then engaged M K Sahu Khan to represent her.
39. The purchaser then became involved in but not a party to proceedings commenced by the 3rd Respondent on behalf of the judgment creditor against the vendor which were on the 12th March 2008 settled with orders being made in accordance with the Terms of Settlement of the 9th May 2008. [ExA101]. The only parties to matter 265 of 2007 (Lautoka) at that time were the judgment creditor as plaintiff and the vendor as defendant.
40. No order was made joining the purchaser to the proceedings at that time but orders were made that she pay the sum of \$120,000.00 to the judgment creditor and that the transfer from the vendor to her with respect to the land be registered but that it be subject to mortgage no. 201344 and caveat no. 260056. The order then reiterated that: -

"3. To remove all doubts the purchaser shall be bound by the said mortgage no 201344 and to pay the amounts due under the said mortgage if it is held that the said mortgage no 201344 has been validly registered on the said lease no CL16375 at the time the said transfer no 597010 was lodged for registration on the 25th day of October 2006 with the Registrar of Titles."

41. The orders went on to provide that the plaintiff (judgment creditor) would indemnify the purchaser if mortgage no. 201344 was held to be validly endorsed on CL16375.
42. The transfer was amended to show the encumbrances and then registered subject to those encumbrances.
43. The Terms of Settlement were executed on 12th March 2008 and on the 13th March 2008 the purchaser, on the advice of her then solicitor, M K Sahu Khan, entered into a "Guarantee and Indemnity by Muhammad Shamsud-Dean Sahu Khan" – the 3rd Respondent. The "Deed of Guarantee and Indemnity" provided as follows:-

"The purchaser shall pay to the judgment creditor the sum of \$120,000 as purchase price again as if the sale was under the said orders;

The Guarantor shall at his own costs in all things whatsoever arrange the loan of \$120,000 to pay the judgment creditor the purchase price referred to in paragraph 1 herein;

- (i) The purchaser shall take action of damages against the Registrar of Titles for not registering the said transfer when it was lodged for registration in 2006'*
- (ii) Whatsoever damages are received or payable to the purchaser shall be payable to the Guarantor absolutely*
- (iii) The purchaser gives his irrevocable authority to Guarantor to take any action for damages against the Registrar of Titles and/or the Attorney General in the name of the purchaser*
- (iv) If the purchaser shall for any reason whatsoever terminate this irrevocable authority to the Guarantor then this Guarantee and Indemnity herein shall be immediately cancelled and shall become null and void.*

In consideration of the matters in paragraph 3 herein the Guarantor hereby given this Guarantee and Indemnity that if no damages are recovered from the Registrar of Titles and/or the Attorney General under the said proposed claim for damages then the Guarantor shall take the full responsibility of paying the lender in respect of the sum of \$120,000 to be borrowed by the purchaser to pay the purchase price of \$120,000 referred to in paragraph 1 herein."

33. The transfer to the purchaser not having been registered, as it was uplifted on 7th May 2007, the land was still in the name of the vendor.
34. No caveat was registered on the title to protect the interest of the purchaser notwithstanding that the 2nd Respondent corresponded with the 1st Respondent and the Registrar of Titles prior to registration of the judgment on 31st July 2007.
35. The purchaser visited the Registrar of Titles in March 2007 and ascertained that the transfer was not registered and made contact with the 2nd Respondent.
36. The purchaser was informed that the 3rd Respondent was seeking to sell the land on behalf of the judgment creditor.
37. The purchaser says that she was advised by her daughter-in-law, who was advised by Kazim who suggested that she contact M K Sahu Khan to represent her. This was confirmed by the daughter-in-law in her evidence but denied by Kazim in his evidence.
38. By letter dated 31st January 2008 the purchaser gave authority to the 2nd Respondent to release her file. Some documents, [CL16375, transfer and three letters] were handed over on 1st February 2008. The purchaser then engaged M K Sahu Khan to represent her.
39. The purchaser then became involved in but not a party to proceedings commenced by the 3rd Respondent on behalf of the judgment creditor against the vendor which were on the 12th March 2008 settled with orders being made in accordance with the Terms of Settlement of the 9th May 2008. [ExA101]. The only parties to matter 265 of 2007 (Lautoka) at that time were the judgment creditor as plaintiff and the vendor as defendant.
40. No order was made joining the purchaser to the proceedings at that time but orders were made that she pay the sum of \$120,000.00 to the judgment creditor and that the transfer from the vendor to her with respect to the land be registered but that it be subject to mortgage no. 201344 and caveat no. 260056. The order then reiterated that: -

"3. To remove all doubts the purchaser shall be bound by the said mortgage no 201344 and to pay the amounts due under the said mortgage if it is held that the said mortgage no 201344 has been validly registered on the said lease no CL16375 at the time the said transfer no 597010 was lodged for registration on the 25th day of October 2006 with the Registrar of Titles."

44. The purchaser was joined in proceedings 265 of 2007 (*Lautoka*) as the “*Second Interested Party*” and filed a Notice of Motion and supporting affidavit sworn 2nd September, 2008. The parties to the proceedings were then:

Plaintiff	Judgment Creditor
First Defendant	Vendor
Second Defendant	Director of Lands
Third Defendant	Registrar of Titles
Fourth Defendant	Attorney General of Fiji
First Interested Party	Reserve Bank of Fiji
Second Interested Party	Purchaser

45. The action is described by Datt J in his judgment at paragraph [9] as follows:

“This matter has a very long and complicated conveyancing history. Initially, the claim was between the plaintiff and the defendant, which was settled by way of terms of settlement. Thereafter the parties commenced the ‘joinder’ actions with different parties and different course of actions. The application before the court had seven parties, four counsels and approximately 20 legal issues without any pleadings. I noted that neither the plaintiff nor any of the defendants were seeking any remedy or relief under the claim before the court.”

46. In the proceedings the plaintiff was represented by the 3rd Respondent and the purchaser by M K Sahu Khan.

47. At paragraph [18] of the judgment Datt J stated:

“On 4 September 2008, the purchaser’s solicitors filed a notice of motion seeking the following orders:

[i] That the mortgage No 201344 noted on Crown Lease Number 16375 has not been validly registered on the Crown Lease No 16375.

[ii] That the mortgage no 201344 is not binding on the second interested party because inter alia:-

(a) It was not validly registered prior to the transfer being lodged and registered with the Registrar of Titles in October 2006.

(b) It was not registered in Crown Lease Number 16375 before the transfer to the second interested party was lodged with the Registrar of Titles and accepted by him for registration in October 2006.

[iii] *Such further or other relief as to this Honorable court deems fit.*

[iv] *Costs”*

The Notice of Motion seeks declaratory relief in the form of orders.

48. At paragraph [30] his Lordship said:

“The purpose of the consent order was to allow the purchaser to register her transfer while the two encumbrances, the mortgage and the caveat remained endorsed on the leasehold title. The purchaser failed to realize that the basis of her substantive claim was that her transfer was already registered as claimed in her affidavit upon which she was seeking priority and indefeasibility of title over the Bank’s mortgage.”

49. The contorted nature of the proceedings is described by Datt J at paragraph [39]:

“The plaintiff’s claim was neither against the defendant, nor against the first interested party, therefore, he simply failed to demonstrate any connection with the Bank’s mortgage and the basis on which the plaintiff was challenging the Bank’s claim to seek waiving of the mortgage charge created on the new lease which was in the name of AMBIKA NAND. To put it mildly, pleadings in this matter continued to be enlarged by affidavit evidence in substitution of appropriate pleadings when the substantive matter was finalized between the plaintiff and the first defendant.”

50. If the matter was settled between the then parties it is difficult to conceive how it could be continued by the filing of a Notice of Motion by a person not a party to the proceedings when they were settled.

51. On the 6th October 2008 the 3rd Respondent drew a cheque in the sum of \$70,000 on the Trust Account of the 4th Respondent and a further cheque in the sum of \$50,000 on the same account. The cheques were on the 7th October 2008 deposited to the trust account of the 4th Respondent. The cheques were drawn in favour of the purchaser and endorsed in favour of the judgment creditor.

52. On the 6th December 2008 a Bill of Sale in favour of Mehrul Nisha in the sum of \$50,000 and a further Bill of Sale in the sum of \$70,000 were executed.

53. The purchaser does not recall signing any of the documents but does not deny doing so but says nothing was explained to her apart from the Guarantee which she says was in her favour.
54. Action 265 of 2007 (Lautoka) was heard on 4th December 2008 and judgment delivered by Datt J on 9th February 2009 when the Notice of Motion filed by the purchaser and the plaintiff's (judgment creditor) claim were dismissed.
55. It is difficult to reconcile how the plaintiff's claim could be dismissed when terms of settlement were executed on the 12 March, 2008 and orders were made in accordance with those terms of settlement on the 9th May, 2008
56. The 3rd Respondent advised the purchaser to appeal the decision and when she declined to do so he treated her actions as determining the Guarantee in accordance with clause (iii) and (iv).
57. The 3rd Respondent then on 25th May 2009 commenced actions in the Ba Magistrates Court on behalf of the assignees of the promissory notes for recovery of the monies advanced to the purchaser plus interest.

1st RESPONDENT

COUNT 1

Allegation(s) of Professional Misconduct/Unsatisfactory Professional Conduct:

PROFESSIONAL MISCONDUCT: Contrary to section 82(1)(a) of the Legal Practitioners Decree 2009

PARTICULARS

VIPUL MISHRA a legal practitioner, between the period from the 11th day of April 2006 and the 22nd day of October 2006, being the solicitor appointed by one Ambika Nand, the vendor, in the Sale and Purchase Agreement with one Sashi Kiran Pratap, the purchaser, for the sale and purchase of Crown land situated at Nukudrala, Ba, registered under Crown Lease No. 16375, being Lots 10 and 13 on BA2298 and BA2301 leased to Ambika Nand, which land was previously leased to the said Ambika Nand under Crown Lease 5375, having received correspondence from Cromptons on behalf of the Reserve Bank of Fiji concerning Mortgage No. 201344 registered against Crown Lease 5375 held by the said Ambika Nand, failed to properly inquire or cause proper inquiry into the matter of Mortgage No. 201344 and Crown Lease 5375, which mortgage was subsequently brought forward against Crown Lease 16375 and subsequently transferred

to the said Sashi Kiran Pratap, which conduct involved a substantial failure to reach a reasonable standard of competence and diligence.

COUNT 2

Allegation(s) of Professional Misconduct/Unsatisfactory Professional Conduct:

PROFESSIONAL MISCONDUCT: Contrary to section 82(1)(a) of the Legal Practitioners Decree 2009

PARTICULARS

VIPUL MISHRA a legal practitioner, on or about the 23rd day of October 2006, being the solicitor appointed by one Ambika Nand, the vendor, in the Sale and Purchase Agreement with one Sashi Kiran Pratap, the purchaser, for the sale and purchase of Crown land situated at Nukudrala, Ba, registered under Crown Lease No. 16375, being Lots 10 and 13 on BA2298 and BA2301 leased to Ambika Nand, failed to disclose to either Sashi Kiran Pratap or her appointed solicitor, all the material facts concerning the said lease, which the said Vipul Mishra knew or ought to reasonably have known, in particular, that an undischarged mortgage and a caveat had been registered against Crown Lease No. 5375, the initial lease issued to Ambika Nand over the same said land at Nukudrala Ba, which Vipul Mishra knew or ought to reasonably have known, which conduct involved a substantial failure to reach or a reasonable standard of competence and diligence.

COUNT 3

Allegation(s) of Professional Misconduct/Unsatisfactory Professional Conduct:

PROFESSIONAL MISCONDUCT: Contrary to section 82(1)(a) of the Legal Practitioners Decree 2009

PARTICULARS

VIPUL MISHRA a legal practitioner, between the period from the 24th day of March 2006 and the 25th day of October 2006, being the solicitor appointed by one Ambika Nand, the vendor, in the Sale and Purchase Agreement with one Sashi Kiran Pratap, the purchaser, in the transaction for the sale and purchase of Crown land situated at Nukudrala, Ba, registered under Crown Lease No. 16375, being Lots 10 and 13 on BA2298 and BA2301 leased to Ambika Nand, facilitated the preparation, execution and settlement of the said Sale and Purchase Agreement between the said Ambika Nand and Sashi Kiran Pratap which Agreement executed on the 28th of July 2006 clearly stipulated that the land in question was sold free from all mortgages, charges and encumbrances, when in fact the said land was the subject of a mortgage and an encumbrance, which

conduct involved a substantial failure to reach a reasonable standard of competence and diligence.

58. The 1st Respondent who acted for the vendor maintains that his duty was to his client and he had no obligation or duty to the purchaser.
59. He further submits that the provisions of the Land Transfer Act result in all parties being bound only by what appears on the register.
60. It is submitted on behalf of the Applicant that the 1st Respondent had under a duty of fairness and candour an obligation to inform the 2nd Respondent of the facts known to him at the time the Sale and Purchase Agreement was submitted and prior to settlement.
61. This submission gains support from the words of Black CJ in *Chamberlain -v- The Law Society of the Australian Capital Territory* 118 ALR 54 at 61 where he said:
- "[Such conduct] would be detrimental to a relationship characterised by courtesy and fairness that ought to exist between members of the legal profession. A relationship of that nature ... has as its justification not merely social and ethical mores; it has an additional justification referable to the public interest, in that courtesy and fairness contribute materially to the effective and expeditious performance of legal work ... Another vice of conduct that induces or fosters a mistake is that it may easily involve, or in practical terms be close to, misrepresentation. In this way such conduct is, of its nature, liable to be in tension with the overriding duty of honesty that practitioners owe to the courts, their clients and to their fellow practitioners."*
62. The 1st Respondent acknowledges that he received the letter of 11th April 2006 from Cromptons [Ex A33] and that he replied on 6th June 2006 [Ex A34] but says that the client disputed that the debt was owed to the mortgagee.
63. Similarly he acknowledges receipt of the letter from Cromptons dated 23rd October 2006 [Ex A46] and says that he saw it on that day or the next day.
64. He says the obligation was on the solicitor for the mortgagee to have the mortgage brought forward to CL16375 and unless or until that occurred he was under no obligation to disclose it to the purchaser or to her solicitor, the 2nd Respondent.

65. *"The dividing line between the legitimate and illegitimate exploitation of an opposing lawyer's mistake depends, according to Chamberlain, on whether the mistake in question has been fostered by the lawyer. This very point is expressed in r 20.2 of the Western Australian Professional Rules and commentary [4] of ch XVI of the Canadian Bar Association's Code of Professional Conduct, respectively, as follows:*

"A practitioner who observes that another practitioner is making or is likely to make a mistake or oversight which may involve the other practitioner's client in unnecessary expense or delay must not do or say anything to induce or foster that mistake or oversight, but must draw the attention of the other practitioner to that mistake or oversight, unless doing so might prejudice the practitioner's own client.

The lawyer should avoid sharp practice and not take advantage of or act without fair warning upon slips, irregularities or mistakes on the part of other lawyers not going to the merits or involving any sacrifice of the client's rights." – Riley Solicitors Manual paragraph 28,020.20

66. Both the clerk Kazim and the 1st Respondent say that a search was performed at the titles office prior to preparation of the Sale and Purchase Agreement. Their evidence however differs as to whether a copy of the lease was obtained from the titles office or not. They both acknowledge that the copy lease in their file is a copy of the duplicate lease and not a copy of the lease held by the Registrar of Titles.
67. There is no evidence from the 1st Respondent that on receipt of the letter on 23rd October 2006 [Ex A46] he made or caused to be made any enquiry with respect to the mortgage.
68. Does the statement in paragraph 6 of the Sale and Purchase Agreement [Ex A39] *"the property is sold free from all mortgages, charges and encumbrances"*, when the 1st Respondent was at least aware of a debt to the mortgagee and that a prior lease existed amount to professional misconduct?
69. Did this clause create an obligation to disclose the letter from Cromptons [Ex A46] to the 2nd Respondent prior to settlement or could the 1st Respondent rely on the fact that the mortgage was not registered on the title to avoid disclosure?
70. The contractual obligation created by clause 6 of the Sale and Purchase Agreement is not limited to registered *"mortgages, charges and encumbrances"*. There must therefore be an obligation on the vendor to meet the contractual obligation to the purchaser. Does this then impose an obligation on the 1st Respondent to disclose [Ex A46]?

71. There is no evidence that the 1st Respondent had instructions from the vendor not to disclose the existence of the mortgage or [Ex A46]. The only evidence is that the vendor disputed the debt and denied that monies were owed.
72. The 1st Respondent would therefore have an obligation to meet the terms of the agreement unless instructed otherwise. This would require disclosure of the letter from Cromptons [Ex A46] and would require the delivery of a transfer in registrable form in accordance with clause 4.2 of the Sale and Purchase Agreement.
73. The drafting of the Sale and Purchase Agreement with clause 4.2 and clause 6 in it negates any necessity for disclosure of the existence of any mortgages, charges and encumbrances at the time the agreement was submitted as there is a contractual obligation to remove them prior to settlement.
74. The mortgage was not discharged on or prior to settlement.

2ND RESPONDENT

COUNT 4

Allegation(s) of Professional Misconduct/Unsatisfactory Professional Conduct:
UNSATISFACTORY PROFESSIONAL CONDUCT: Contrary to section 81 of the Legal Practitioners Decree 2009

PARTICULARS

MEHBOOB RAZA a legal practitioner, between the period from about the 25th of March 2006 and the 30th day of July 2007, being instructed by one Sashi Kiran Pratap, failed to protect the said Sashi Kiran Pratap's interest in the Crown land situated at Nukudrala, Ba, registered under Crown Lease No. 16375, being Lots 10 and 13 on BA2298 and BA2301, wherein a duly executed transfer to the said Sashi Kiran Pratap had been lodged with the Registrar of Titles on the 25th of October 2006 and was awaiting registration, which conduct fell short of the standards of competence and diligence that a member of the public is entitled to expect of a reasonably competent or professional legal practitioner.

75. The 2nd Respondent did not give evidence and submits that it is necessary for the Applicant to prove the purchaser was not given advice to lodge a caveat for the application to succeed.
76. In support of this submission the 2nd Respondent relies upon *Ganga Ram & Others -v- Grahame & Co FLR 158*. This was an action for damages by the Plaintiff against his solicitors where the allegation was that the Defendant failed to advise the Plaintiff to lodge a caveat. The issue before this Commission is the failure of the 2nd Respondent to protect the purchaser's interest, which could have been done by lodging a caveat sometime prior to 31st July 2007, when the judgment in favour of Mohammed Farouk Ali was registered.
77. The 2nd Respondent did nothing to protect the purchaser's interest between the lodgement of the transfer and the uplifting of the unregistered documents on 7th May 2007.
78. Even after being approached by the purchaser in March 2007 and being advised that the transfer had not been registered the 2nd Respondent contacted the 1st Respondent but did not lodge a caveat.
79. The interest of the purchaser was not protected by the inaction of the 2nd Respondent in failing to lodge a caveat.

3RD AND 4TH RESPONDENTS

COUNT 5

Allegation(s) of Professional Misconduct/Unsatisfactory Professional Conduct:

PROFESSIONAL MISCONDUCT: Contrary to section 82(1)(a) of the Legal Practitioners Decree 2009

PARTICULARS

Dr. MUHAMMAD SHAMSUD-DEAN SAHU KHAN a legal practitioner, with another, on or about the 12th day of March 2008, executed Terms of Settlement in the matter of Mohammed Farouk Ali v Ambika Nand HBC 265 of 2007L on behalf of his client, the said Mohammed Farouk Ali, which provided that a third party, namely Sashi Kiran Pratap, would be liable to pay the sum of \$120,000 as purchase price for Crown Lease 16375 to the said Mohammed Farouk Ali, when

the said Sashi Kiran Pratap had already paid a consideration price of \$130,000 to one Ambika Nand the registered owner of Crown Lease 16375, which conduct involved a substantial failure to reach a reasonable standard of competence and diligence.

COUNT 6

Allegation(s) of Professional Misconduct/Unsatisfactory Professional Conduct:

PROFESSIONAL MISCONDUCT: Contrary to section 82(1)(a) of the Legal Practitioners Decree 2009

PARTICULARS

SAHU KHAN & SAHU KHAN a law firm, on or about the 12th day of March 2008, executed Terms of Settlement in the matter of Mohammed Farouk Ali v Ambika Nand HBC 265 of 2007L on behalf of its client, the said Mohammed Farouk Ali, which provided that a third party, namely Sashi Kiran Pratap, would be liable to pay a consideration value of \$120,000 as purchase price for Crown Lease 16375 to the said Mohammed Farouk Ali, when the said Sashi Kiran Pratap, had already paid a consideration price of \$130,000 to Ambika Nand the registered owner of Crown Lease 16375, which conduct involved a substantial failure to reach a reasonable standard of competence and diligence.

COUNT 7

Allegation(s) of Professional Misconduct/Unsatisfactory Professional Conduct:

PROFESSIONAL MISCONDUCT: Contrary to section 82(1)(a) of the Legal Practitioners Decree 2009

PARTICULARS

Dr. MUHAMMAD SHAMSUD-DEAN SAHU KHAN a legal practitioner, with another, on or about the 13th day of March 2008, executed a Deed of Guarantee and Indemnity with one Sashi Kiran Pratap, which provided that the said Dr. Muhammad Shamsud-Dean Sahu Khan in his capacity as Guarantor, would provide for the facilitation of a loan of \$120,000 in favour of Sashi Kiran Pratap, to pay one Mohammed Farouk Ali the said Dr. Shamsud-Dean Sahu Khan's client, as purchase price for Crown Lease 16375, when the said Sashi Kiran Pratap had already paid the sum of \$130,000 to one Ambika Nand the registered owner of Crown Lease 16375, which conduct involved a substantial failure to reach a reasonable standard of competence and diligence.

COUNT 8

Allegation(s) of Professional Misconduct/Unsatisfactory Professional Conduct:

PROFESSIONAL MISCONDUCT: Contrary to section 82(1)(b) of the Legal Practitioners Decree 2009

PARTICULARS

Dr. MUHAMMAD SHAMSUD-DEAN SAHU KHAN a legal practitioner, between the 13th day of March 2008 and the 25th day of May 2009, executed a Deed of Indemnity and Guarantee with one Sashi Kiran Pratap, which provided that the said Dr. Muhammad Shamsud-Dean Sahu Khan would arrange at his own costs a loan of \$120,000 for Sashi Kiran Pratap to pay one Mohammed Farouk Ali, who was the said Dr. Muhammad Shamsud-Dean's client, when the said Sashi Kiran Pratap had already paid the sum of \$130,000 to one Ambika Nand the registered owner of Crown Lease 16375, and in exchange the said Sashi Kiran Pratap would provide Dr. Muhammad Shamsud-Dean Sahu Khan with her irrevocable authority to take action for damages against the Registrar of Titles and or the Attorney General and in the event that no damages were recovered from the civil suit, that the said Dr. Muhammad Shaumsud-Dean Sahu Khan would take full responsibility for paying the lenders in respect of the sum of \$120,000, and which Deed the said Dr. Muhammad Shamsud-Dean Sahu Khan subsequently failed to honour when he purportedly on behalf of the lenders, initiated civil proceedings in the Ba Magistrates Court against the said Sashi Kiran Pratap for failing to repay the loan amount and accrued interests to the respective lenders, after the civil suit against the Registrar of Titles and the Attorney General was dismissed, which conduct occurred in connection with the said Dr. Muhammad Shamsud-Dean Sahu Khan's practice of law and would justify a finding that the said Dr. Muhammad Shamsud Sahu Khan is not a fit and proper person to engage in legal practice.

80. On being informed that the property was to be sold pursuant to the judgment registered on the title the purchaser engaged M K Sahu Khan to act on her behalf. An authority was forwarded to the 2nd Respondent on 31st January 2008. From the evidence of the purchaser, Swastika (her daughter-in-law), Pratima Devi (law clerk to M K Sahu Khan) and the 3rd Respondent, M K Sahu Khan remained as the solicitor for the purchaser until at least the execution of the Deed of Guarantee [Ex A102] on 13th March 2008.
81. The Deed of Guarantee and other documents were executed by the purchaser at the office of M K Sahu Khan in the presence of, inter alia, Pratima Devi.

82. The Deed of Guarantee [Ex A102] provided :

(iii) The purchaser gives his irrevocable authority to Guarantor to take any action for damages against the Registrar of Titles and/or the Attorney General in the name of the Purchaser."

83. The Deed is dated 13th March 2008 and the Terms of Settlement in matter 265 of 2007 [Ex A101] are dated 12th March 2008 and were executed by M K Sahu Khan as solicitor for the purchaser. The Terms of Settlements were made by consent an order of the court on 9th May 2008.

84. The Terms of Settlement provided :-“

1. *The Crown Lease No: 16375 ("the Said Lease") be registered in the name of SASHI KIRAN PRATAP (father's name Dhani Ram) ("The Purchaser") in consideration of the Purchaser paying the sum of \$120,000 to the Plaintiff as purchase price under the Orders of the Court made on the 24th day of October 2007 and 17th day of January 2008.*
2. *To avoid additional expenses it is agreed between the plaintiff and the purchaser that the current transfer of the said Lease lodged with the Registrar of Titles for registration from the first defendant to the purchaser shall be deemed to be transfer from the plaintiff to the purchaser in pursuance of the orders of sale made by the court on the 24th day of October 2007 and 17th day of January 2008.*
3. *The Plaintiff shall indemnify the Purchaser in respect of any amount that may be payable to the Mortgagee under Mortgage No: 201344 ("the Said Mortgage") if it is held that the said Mortgage has been validly endorsed by the Registrar of Titles on the Said Lease and the debt under the said Mortgage is payable to the Mortgagee by the Purchaser and subject to the above and liability arising under the said Mortgage by the Purchaser in favour of the Mortgagee that the transfer herein to be registered in the name of the Purchaser shall be subject to the said Mortgage and the Caveat Number 260056 of the Director of Lands.*
4. *The Purchaser shall be at liberty to take any action for damages against any other party that she deems fit except against the Plaintiff herein."*

85. The terms refer to the purchaser as "The Purchaser" but there is no evidence that she was a party to the proceedings at that time.
86. Irrespective of the motive and conduct of the 3rd and 4th Respondents the purchaser was clearly represented by M K Sahu Khan when the Terms of Settlement were executed.
87. Similarly from the evidence the purchaser was represented by M K Sahu Khan when the Deed of Guarantee was executed by her.
88. The purchaser says that the sum of \$7000.00 was initially sought by the 3rd Respondent to conduct the appeal of the judgment of Datt J and that subsequently the sum of \$2000.00 was sought in lieu. The purchaser acknowledges that she did not wish to pay this money or appeal the judgment of Datt J as "*the judge said it was just because of the lawyer's fault and it was no use to appeal*".
89. The 3rd Respondent submits that the purchaser by failing to give instructions to appeal the judgment of Datt J of 9th February 2009 [Ex A129] "withdrew our instructions".

90. This submission is based on clause (iv) of the Deed of Guarantee [Ex A102] :-

"If the purchaser shall for any reason whatsoever terminate this irrevocable authority to the Guarantor then this Guarantee and Indemnity herein shall be immediately cancelled and shall become null and void."

91. It is acknowledged by the purchaser that she did not give instructions to appeal the judgment of Datt J however there is no evidence of "*any actions for damages against the Registrar of Titles and/or the Attorney General in the name of the purchaser*" ever having been commenced.

92. The 3rd Respondent wrote to the purchaser on 27th February 2009 [Ex A121] and said:

"I have made various attempts through the office of Messrs M.K. Sahu Khan and in particular their Clerk Pratima for you to come and see me regarding two matters – firstly regarding your Appeal to the Fiji Court of Appeal against the Judgment of Justice Datt regarding the validity of the Registration of the Mortgage of Reserve Bank of Fiji ("The Said Mortgage") against your Crown Lease Number 16375.

Secondly it was regarding your claims of damages against the Registrar of Titles and the Attorney General. It must be noted that you and your Solicitors

made it very clear to me and you mentioned that when your transfer from Ambika Nand was lodged for registration the Said Mortgage of Reserve Bank was not so endorsed on your Said Lease 16375 and accordingly the Registrar of Titles was bound to register your transfer. It was on that basis that I had agreed and undertook to assist you to raise the loans for payment to the Plaintiff, the Judgment Creditor and to take appropriate action for damages against the Registrar of Titles and the Attorney General on your behalf.

I must inform and advise you that if you do not give instructions to me to appeal against the above Judgment that will seriously affect and jeopardise your proposed claims for damages and action against the Registrar of Titles and the Attorney General. The consequences could be serious for you.

This is particularly important in view of the fact as stated above to the basis on which I had agreed to assist you in the payment of money to the Judgment Creditor and having the property transferred to you and taking actions for damages on your behalf as stated above.

Accordingly, it is very important for you to come and see me in my office tomorrow the 28th day of February, 2009 at 11.00 a.m. or on Monday the 2nd day of March, 2009 at 11.00 a.m. If you do not come to see me then I will regard that you have terminated my authority to take action for you for damages against the Registrar of Titles and/or the Attorney General.

I do trust that you will give this matter the urgent attention that it deserves."

93. The giving of instructions to appeal the judgment of Datt J is not a condition of the Deed of Guarantee and Indemnity, nor is the payment of money to the 3rd Respondent to facilitate that occurring.
94. Pursuant to the Deed on the 6th October 2008 the purchaser executed a promissory note in the sum of \$50,000 in favour of Mehrul Nisha and a further promissory note in favour of Natarajan Pillay in the sum of \$70,000 together with two payment vouchers with respect to those amounts. Cheques in these respective amounts were received by her and she endorsed these cheques to the 3rd Respondents trust account on account of the judgment creditor. Pratima Devi says she and M K Sahu Khan were present when these documents were signed at the office of M K Sahu Khan.
95. On the 25th May 2009 the 3rd Respondent took action against the purchaser to recover the total sum of a \$120,000 plus interest on behalf of the lenders and the assignees of the debt.

96. Notwithstanding that the judgment creditor has apparently been paid, as the purchaser is being sued for the money allegedly used to pay the debt, the 3rd Respondent has not removed the judgment from the title. Similarly the mortgage is still on the title notwithstanding the order that the judgment creditor, the client of the 3rd Respondent, indemnify the purchaser in the event that the mortgage remains registered on the title after the Lautoka High Court proceedings.

THE LAW

97. Unsatisfactory professional conduct is defined in clause 81 of the Legal Practitioners Decree as including "*conduct of a legal practitioner or a law firm or an employee or agent of a legal practitioner or a law firm, occurring in connection with the practice of law that falls short of the standards of competence and diligence that a member of the public is entitled to expect of a reasonably competent or professional legal practitioner or law firm.*"

98. The definition focuses on elements of competence and diligence. Whilst neither of these terms are defined it might be expected that they be given their ordinary meaning. The dictionary defines "diligence" to mean "care and conscientiousness in one's work".

99. "Competence" is defined as "having the necessary skills or knowledge to do something successfully". It is thought that this requires a legal practitioner to be bound not only to complete tasks in a timely and punctual manner, as required by the requirement of diligence but to complete them with the level of skill and precision that a member of the public is entitled to expect from any professional person whom they have trusted to carry out work for them.

100. The Decree provides for two categories of professional misconduct. The first category provides that professional misconduct includes unsatisfactory professional conduct of a legal practitioner, if the conduct involves a substantial or consistent failure to reach or keep a reasonable standard of competence and diligence.

101. The second category provides that professional misconduct shall include conduct of a legal practitioner, whether happening in connection with the practice of law or a happening otherwise than in connection with the practice of law that would, if established, justify a finding that the practitioner is not a fit and proper person to engage in legal practice.

102. The Decree then expands on what factors may be taken into account in determining whether a person is “fit and proper” for the purpose of section 82 by allowing that regard may be had to the suitability matters that would be considered if the practitioner were an applicant for admission to the legal profession under the Decree.

STANDARD OF PROOF

103. The relevant standard of proof to be applied to disciplinary proceedings was considered at length by The Court of Final Appeal of the Hong Kong Special Administrative Region in *A Solicitor and The Law Society of Hong Kong* Final Appeal No. 24 of 2007 (Civil). There the court considered inter alia relevant authorities from the Privy Council, the High Court of Australia and the High Court of New Zealand (whose decision in *Z and Dental Complaints Assessment Committee*, [2007] NZAR 343, was subsequently confirmed by the Supreme Court of New Zealand [2008] NZSC 55).

104. The Privy Council in *Campbell v Hamlet* [2005] UKPC 19 held that the criminal standard of proof was to be applied in all disciplinary proceedings concerning the legal profession.

105. The High Court of Australia in *Rejtek v McElroy* (1965) 112 CLR 517 held that the civil standard of proof applied but said at paragraph 10: “*The “clarity” of the proof required where so serious a matter as fraud is to be found, is an acknowledgment that the degree of satisfaction for which the civil standard of proof calls may vary according to the gravity of the fact to be proved: see Briginshaw v Briginshaw (1938) 60 CLR 336 per Dixon J.*”

106. And at paragraph 11 the court said: “*No matter how grave the fact which is to be found in a civil case, the mind has only to be reasonably satisfied and has not with respect to any matter in issue in such a proceeding to attain that degree of certainty which is indispensable to the support of a conviction upon a criminal charge: see Helton v Allen (1940) 63 CLR 691 per Dixon, Evatt and McTiernan JJ.*”

107. The Supreme Court of New Zealand in *Z v Dental Complaints Assessment Committee* [2008] NZSC 55 in applying the flexible application of the civil standard said at paragraph 116: “*We acknowledge the serious impact that adverse disciplinary decisions can have*

on the right of individuals to work in their occupation and on personal reputations. The flexible application of the civil standard will, however, give all due protection to persons who face such proceedings."

108. In *A Solicitor and The Law Society of Hong Kong* the Chief Justice at paragraph 116 said:
"In my view, the standard of proof for disciplinary proceedings in Honk Kong is a preponderance of probability under the Re H approach. The more serious the act or omission alleged, the more inherently improbable must it be regarded. And the more inherently improbable it is regarded, the more compelling will be the evidence needed to prove it on a preponderance of probability. If that is properly appreciated and applied in a fair-minded manner, it will provide appropriate approach to proof in disciplinary proceedings. Such an approach will be duly conducive to serving the public interest by maintaining standards within the professions and the services while, at the same time, protecting their members from unjust condemnation."

109. I am therefore of the opinion that the appropriate standard of proof to be applied is the civil standard varied according to the gravity of the fact to be proved, that is the approach adopted in amongst other places, Australia, New Zealand and Hong Kong.

THE LAND TITLES OFFICE

110. Evidence was given by the Registrar of Titles and the Deputy Registrar of Titles.

111. The deputy Registrar of Titles endorsed the memorials on CL16375 from CL5375. Whilst the date of endorsement is unknown the fact that the duplicate lease returned to the lodging party, the Director of Lands, was not endorsed it might be concluded that the memorials were not endorsed upon the registration of the new lease as required by section 60 (4) of the Land Transfer Act.

112. The regime set forthwith in section 60 requires the registered proprietor of the encumbrances to which the prior lease was subject to request the Registrar of Titles to enter the memorials on the new lease but the power of the Registrar is limited by section 60 (4) which limits the capacity of the Registrar by the words "*upon the registration of a new lease in any case to which subsection (1) applies,...*"

113. CL16375 meets the criteria set forth in section 60 (1).

114. There is no evidence before me that any request was made to the Registrar of Titles by the mortgagee or the Director of Lands to bring forward the memorials prior to or at the time of registration of CL16375 as is required by section 60.

115. Section 40 of the Land Transfer Act provides:

“40. Except in the case of fraud, no person contracting or dealing with or taking or proposing to take a transfer from the proprietor of any estate or interest in land subject to the provisions of this Act shall be required or in any manner concerned to inquire or ascertain the circumstances in or the consideration for which such proprietor or in any previous proprietor of such estate or interest is or was registered, onto see to the application of the purchase money or any part thereof, or shall be affected by notice, direct or constructive, of any trust or unregistered interest, any rule of law or equity to the contrary notwithstanding, and the knowledge that any such trust or unregistered interest is in existence shall not of itself be imputed as fraud.”

116. The protection afforded by section 40 of the Land Transfer Act cannot be available unless the memorials are brought forward at the time of registration.

LEGAL PRACTITIONERS DECREE

117. The 3rd Respondent submits that the Legal Practitioners Decree 2009 does not enable the bringing of applications before the Commission with respect to conduct that occurred prior to the commencement of the Decree.

118. Section 101 (2) of the Decree provides: -

“(2) a complaint under section 99 may be made, ..., in relation to any alleged professional misconduct or unsatisfactory professional conduct occurring before the commencement of this Decree.”

119. Section 99 enables “any person or entity” to make a complaint “to the Registrar regarding any alleged professional misconduct or unsatisfactory professional conduct by any practitioner of law firm ...”.

120. Division 3 of part 9 of the Decree then details the procedure to be adopted by the Registrar in dealing with complaints.

121. Section 111 of the Decree provides that :-

“the Registrar may commence disciplinary proceedings against a legal practitioner or a law firm by making an application to the Commission in accordance with this Decree”.

122. I find the 3rd Respondents submission to be without merit.

LATE SUBMISSION

123. In the course of the hearing I directed that parties may make written submissions but that such submissions had to be filed in the course of the hearing and addressed by the filing party in the course of their oral submissions.

124. The hearing concluded on the 26th January 2011 and on the 10th February 2011 the 3rd Respondent sought to file further written submissions. These submissions have not been read or considered in view of the direction previously given.

CONCLUSION

125. The fact that a member of the public who engaged a solicitor to carry out a simple conveyancing transaction should pay the purchase price and then have on her title a mortgage to the Reserve Bank and a judgment debt and having been encouraged to borrow funds to meet that debt is now being sued to recover those monies is an indictment on the legal profession in Fiji.

126. The situation is exacerbated when the evidence shows that the title still has both the mortgage and judgment debt registered on it notwithstanding that the judgment debt has been paid and the judgment creditor was obliged by court order to meet the mortgage debt and has not done so.

127. The solicitor for the judgment creditor, the 3rd Respondent has now commenced action against the purchaser to recover the monies he facilitated to be advanced to her to meet the judgment debt.

1st Respondent

128. The 1st Respondent on receipt of advice from Cromptons the solicitors for the mortgagee made no enquiries as to the present position with respect to the mortgage but took the stance that as the mortgage was not on the current lease document the vendor had no duty or obligation to disclose it. This position was taken notwithstanding that the 1st Respondent was aware that the vendor had mortgaged the subject land and that the vendor disputed the debt.

129. To not withhold settlement or retain the settlement monies whilst the matter was clarified and not to inform the solicitor for the purchaser of the mortgagee's claim prior to settlement, or at any time, is conduct that breaches *the overriding duty of honesty that practitioners owe to the courts, their clients and to their fellow practitioners.*

130. It is conduct that would justify a finding that the practitioner is not a fit and proper person to engage in legal practice.

131. Counts 1 and 2 are therefore found proved.

132. The terms of the contract provided by the 1st Respondent on behalf of the vendor obliged the vendor to give a clear title on settlement. There was nothing or improper in the way the contract was drafted as the encumbrances could have been discharged prior to settlement.

133. Count 3 is therefore not proved.

2nd Respondent

134. Following settlement on 24th October 2006 the 2nd Respondent did nothing to protect the purchaser's interest. The purchaser made her own enquiry at the titles office in March 2007 and informed the 2nd Respondent that the transfer had not been registered and he still took no effective action to protect her interest.

135. The transfer was ultimately uplifted in May 2007.

136. Had a caveat been lodged at any time between 24th October 2007 and 31st July 2007, when the judgment was registered by the 3rd Respondent at least that might have been avoided. Clearly the 2nd Respondent failed to protect the interest of the purchaser and in so failing is guilty of unsatisfactory professional conduct.

137. The work was not performed with the level of competence and diligence that the members of the public are entitled to expect.

3rd & 4th Respondents

138. The purchaser in her dealings with the 3rd and 4th Respondents was "*represented*" at all times by M K Sahu Khan the brother of the 3rd Respondent. The actual level of representation appears to have varied from time to time.

139. It was the 3rd Respondent who, acting for the judgment creditor, suggested that he would arrange finance to pay out the judgment creditor and would conduct on behalf of the purchaser litigation against the Registrar of Titles and the Attorney General to recover damages on behalf of the purchaser.

140. The Terms of Settlement in matter 265 of 2007L were executed on behalf of the purchaser by M K Sahu Khan and the Deed of Guarantee and Indemnity was executed by the purchaser in the presence of M K Sahu Khan.

141. Unfortunately M K Sahu Khan has passed away and no evidence was available from him.

142. Critically at the meeting between the purchaser and the 3rd Respondent in the office of the 4th Respondent the only "*representation*" on behalf of the purchaser was a clerk in the employ of M K Sahu Khan.

143. It was at this meeting that the 3rd Respondent says he advised the purchaser that she should appeal the decision of Datt J and that she had very good prospects of success.

144. When the purchaser failed to take the advice of the 3rd Respondent, given when her only representation was a clerk, the 3rd Respondent, by his letter of 27th February 2009 [Ex A121], treated the lack of instructions as termination of the Guarantee and Indemnity. He subsequently commenced action against the purchaser to recover the monies advanced to

meet the judgment registered on the title, despite not having removed the judgment from the title.

145. The purchaser had no independent advice that the failure to instruct the 3rd Respondent to appeal the decision of Datt J, and pay the moneys then requested by the 3rd Respondent, would result in the 3rd Respondent refusing to take action for damages against the Registrar of Titles and the Attorney General and would leave her exposed to actions for recovery of the monies advanced to satisfy the judgment debt.

146. Action 265 of 2007 (Lautoka) is not referred to in the Deed of Guarantee and Indemnity [Ex A102] yet the 3rd Respondent treats the purchaser's failure to instruct him to appeal the decision in that matter (including the payment of the requested costs) as termination of his authority to take action for damages against the Registrar of Titles and/or the Attorney General.

147. This behavior is made even worse when the 3rd Respondent commences actions in the Ba Magistrates Court to recover the moneys he caused to be advanced to the purchaser to meet the judgment registered on the title in favour of his client the judgment creditor, which judgment has not been removed from the title despite the debt having been paid.

148. The 3rd Respondent's client, the judgment creditor, has not met his obligation pursuant to the terms of settlement in matter 265 of 2007 in that he has not discharged the mortgage to the Reserve Bank as that mortgage is still on the purchaser's title. There is no evidence before the commission that the 3rd Respondent has made any attempt to cause this to happen.

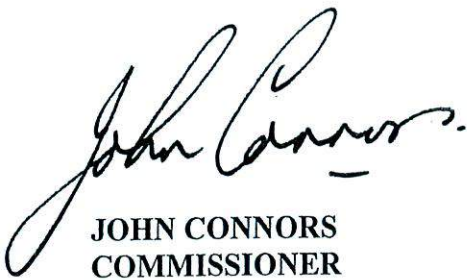
149. The conduct of the 3rd Respondent is disgraceful and dishonorable and is conduct that justifies a finding that the practitioner is not a fit and proper person to engage in legal practice.

150. Count 8 is established.

151. The conduct of the 3rd and 4th Respondents respectively with respect to counts 5, 6 and 7 whilst being far less than one would expect from a senior practitioner does not amount to professional misconduct on the evidence and allegations before the Commission. I cannot be satisfied that the purchaser was not independently represented at all relevant times with respect to these allegations.

ORDERS

1. Count 1 - The complaint is established and the 1st Respondent is found guilty of professional misconduct
2. Count 2 - The complaint is established and the 1st Respondent is found guilty of professional misconduct.
3. Count 3 - The complaint is dismissed.
4. Count 4 - The complaint is established and the 2nd Respondent is found guilty of unsatisfactory professional conduct.
5. Count 5 - The complaint is dismissed.
6. Count 6 - The complaint is dismissed.
7. Count 7 - The complaint is dismissed.
8. Count 8 - The complaint is established and the 3rd Respondent is found guilty of professional misconduct


JOHN CONNORS
COMMISSIONER



3 MARCH 2011