

**IN THE INDEPENDENT LEGAL SERVICES COMMISSION**  
**AT SUVA**

ILSC No. 004 of 2022

**BETWEEN:**                 **ONE HUNDRED SANDS PTE LIMITED**

**APPLICANT**

**AND:**                     **SINGH & SINGH LAWYERS**

**RESPONDENT**

**AND:**                     **THE CHIEF REGISTRAR**

**AMICUS CURIAE**

**Counsel:**                 **Ms. A. Singh for the Applicant**  
                                  **Ms. M. Kirti for the Respondent**  
                                  **Mr. A. Chand for the Amicus Curie**

**Date of Hearing:**         10<sup>th</sup> November 2022  
**Written submissions:** 18<sup>th</sup> December 2022  
**Date of Ruling**             : 5<sup>th</sup> January 2023

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**RULING**

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**Introduction**

1. The Applicant through its Solicitors filed this application dated 28<sup>th</sup> March 2022 seeking reimbursements from the Fidelity fund.
2. The principal partner of the Respondent Singh & Singh Lawyers was Mr. Anand Kumar Singh and upon his demise in December 2020, the Chief Registrar in pursuant to section 59 of the LPA appointed Nilesh Sharma the Principal of Nilesh Sharma Lawyers as Receiver to wind up the practice of the Respondent Law firm Singh & Singh Lawyers.
3. The Receiver filed its response and reply supported by an affidavit. Subsequently, the Applicant responded thereto and also tendered a report from the IT expert, Click IT. To

counter this, the Respondent too submitted an IT report from the IT expert Big Yellow Tree.

4. The matter was taken up for hearing on 10<sup>th</sup> November 2022 and written submissions filed on 13<sup>th</sup> December 2022 and accordingly this ruling is pronounced.

#### **The Fidelity Fund**

5. Fidelity Fund was established by virtue section 22 of the Trust Accounts Act 1996 as amended by Trust Accounts (Amendment) Act 2009. As per section 23 of the said Act the object and purpose of this fund is to reimburse persons who suffer loss of trust funds or loss of any money or other property entrusted to a legal practitioner through stealing or fraudulent misappropriation by such dishonest legal practitioners in private practice or by any clerk or servant of such legal practitioner.

6. Section 23 of the Act provides as follows;

*“ (1) The Fidelity Fund constituted by section 22 shall be applied at the direction of the Commission for the purpose of reimbursing person who suffer loss through the stealing or fraudulent misappropriation by a legal practitioner in private practice on his or her own account or in partnership with others, or by any clerk or servant of such legal practitioner, of any money or other property entrusted to such legal practitioner, clerk or servant in the course of such practice. No reimbursement shall be made under this section however in respect of the loss of any money or other property entrusted to a legal practitioner, clerk or servant for the sole purpose of investment. The word “investment” in this subsection shall have the same meaning as it has in section 6 (2).*

*(2) The total amount which may be applied from the Fidelity Fund in the reimbursement of all persons who suffer loss through stealing or fraudulent misappropriation by the same legal practitioner or servant or clerk of such practitioner shall not exceed the sum of \$50,000.00 in any 12 months period.*

*(3) The Commission may direct, notwithstanding the preceding subsection, after taking into account all liabilities of the fund whether ascertained or contingent, that such amount in excess of the total amount limited by the previous subsection be paid as it thinks fit towards reimbursement of such persons.*

*(4) In considering any claim pursuant to this section, the Commission may in its absolute discretion direct that there be paid to the Applicant out of the Fidelity Fund in addition to the amount to which the Applicant would otherwise be entitled pursuant to this section, interest on such part of the claim for such period and at such rate as the Commission may determine, and such costs and expenses as the Commission may consider have been reasonably incurred by the Applicant in making and proving the Applicant's claim pursuant to this section.*

*(5) The Funds Trustee shall pay from the Fidelity Fund such amount and to such person as the Commission may direct in accordance with its obligations under this section."*

7. An Applicant who seeks reimbursement is thus required to prove that; (a) he had suffered loss; (b) by reason of stealing or fraudulent misappropriation by the Respondent practitioner; (c) of any money or other property entrusted to such legal practitioner; (d) in the course of Respondent practitioner's private practice. Entrustment in element (c) comprises two elements namely: (i) to place in the possession of something, (ii) subject to a trust.

**The standard of proof**

8. The Respondent submitted that the Applicant is required to prove his claim on a standard higher than the civil standard taking into account the gravity of the facts to be proved in support of this argument the Respondent relied on the following dicta of Commissioner John Connors decision in Chief Registrar v Singh [2010] FJILSC 33 (1 February 2010) in which it was held as follows,

“39. The respondent submits that I should determine the matter relying on the criminal standard of proof. I rules-in my judgment in is matter on the 25th October, 2010 that the correct standard of proof is the civil standard modified taking account of the gravity of the facts to be proved.”

and;

in Chief Registrar v Sheik Hussain Shah [ILSC Case No. 004 of 2009 15 June 2010) in which it was held as follows;

“72. 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 lined protecting their members from unjust condemnation.

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

### **Standard of proof**

9. According to the said decisions the standard of proof to establish an allegation of fraud in the course of a disciplinary inquiry against a practitioner is the civil standard varied or modified taking account the gravity of the facts to be proved. This principle is laid down in respect of disciplinary proceedings against Practitioners. The rationale is that fraud

when proved in disciplinary inquires will have serious adverse ramifications on such practitioner/s or person/s.

10. However, I am of the view that the said principle so enunciated cannot be applied in that form in respect of a claim for reimbursement from the fidelity fund. Such a claim is *per se* different and distinct from a disciplinary proceeding against a practitioner. A claim made on the fidelity fund by an Applicant is akin to that of civil claim. There is certainly a requirement to prove *stealing or fraudulent misappropriation*. Thus, it is similar to that of a civil fraud claim as opposed to and distinct from the proof of a disciplinary allegation against a Practitioner. The standard of proof should thus be similar to that of a civil fraud claim.
11. The standard of proof in civil fraud claims is the same as in all other civil claims and it is on a balance of probabilities (vide-**Bank St Petersburg PJSC & Ors v Arkhangelsky & Ors** [2020] EWCA Civ 408). This means, the Applicant has to show that it is more likely than not that the Respondent Practitioner caused the loss by theft or fraudulent misappropriation. Hence to my mind there is no requirement to prove that stealing or fraudulent misappropriation has occurred at any higher standard than a balance of probabilities.
12. Hence what the Applicant needs to prove is that it is more likely than not to have happened. But what does this mean in practice? The Applicant will need evidence of facts or circumstances which, looked at together, suggest stealing or fraudulent misappropriation has occurred. For example, this may include evidence of inconsistent positions, or of suspicious behavior and in simple terms, the evidence for the Applicant and for the Respondent is weighed up there must be enough to make the Applicants' claim more probable.

### **Evaluation**

13. By this application, the Applicant is seeking the reimbursement of a sum of \$204,638.15 and interest thereon. The applicant had engaged the services of the Respondent Solicitors

in respect of a conveyancing matter. The parties have entered into an agreement to purchase or lease out land however, upon the payment of an initial deposit of \$1.2 million the said transaction had not proceeded with. Upon which litigation had commenced to recover the deposit and the Applicant has retained the services of the Respondent Solicitors as aforesaid.

14. The Applicant was successful in obtaining the judgment in their favour in the Court of Appeal and the Court of Appeal ordered a sum of \$1, 274, 638.15 to be paid in favour of the Applicant. The Applicant alleges that the sum of \$1,070,000.00 was paid to them by this Solicitors however, a sum of \$204,638.15 remains unpaid up-to-date. This is the sum which the Applicant is claiming from the Fidelity fund.
15. In response to this application, the receiver of the Respondent Solicitor has by their response *inter alia* taken up the position that a sum of \$200,000 was levied and appropriated as fees with the agreement and consent received by emails marked as "SSL3 and SSL4".
16. The Applicant denies so granting consent or authority to appropriate any such sum as fees according to the affidavit filed by the Director of One Hundred Sands Pte Limited (OHSL). He denies the email marked SSL3 on the basis that the said email does not contain the sender's email address and the copy address too is incorrect. Further it is also submitted that the sum of \$200,000 as fees is excessive and unrealistic.
17. The Respondent submitted that email SSL4 was sent immediately after SSL3 by Mr. Timothy Manning contains his email address and that confirms the previous communication agreeing that \$200K be paid out of the sum in the trust account as fees. The said email is reproduced for clarity which is as follows.

**Fw: Payment of OHSL funds**

Inbox

**Anand Singh**

to me

----- Forwarded message -----

From: Timothy Manning <[tim@norwichcorp.co.nz](mailto:tim@norwichcorp.co.nz)>  
To: Anand Singh <[anandsingh@yahoo.com](mailto:anandsingh@yahoo.com)>  
Sent: Friday, 13 February 2010 08:45:29 AM +12  
Subject: RE: Payment of OHSL funds

Hi Anand - flight now confirmed. I land in Suva 9.10am Monday 15<sup>th</sup>. Pls confirm meeting with Hariff at say 2.00pm.

We agreed yesterday pls make sure that your fees of \$200k are paid out the same time as the despatch of the balance.

Regards Tim

On: Manning

Level 1, Grand Street, Takapuna, Auckland, NZ | PO Box 33, 1470, Takapuna, Auckland, NZ

Mobile: +64 274 931 934 | Phone: +64 9 488 2299 | Fax: +64 9 489 2072 | Email: [tim@norwichcorp.co.nz](mailto:tim@norwichcorp.co.nz) | Skype: [timnorwichcorp](https://www.skype.com/user/timnorwichcorp)

From: Timothy Manning  
Sent: Friday, 13 February 2010 8:50 AM  
To: Anand Singh <[anandsingh@yahoo.com](mailto:anandsingh@yahoo.com)>  
Subject: RE: Payment of OHSL funds

How is progress?

18. The sender of email SSL4 is Timothy Manning and his email address appears as tim@norwichprop.co.nz and this has been sent to Mr. Anand Singh (partner) to his email address anandsinghfi@yahoo.com, on Friday the 15<sup>th</sup> of February 2019 at 8.45am. According to which Mr. Timothy Manning has informed that, he would be landing in Suva at 9.10 am of Monday the 18<sup>th</sup> and wanted confirmation of a meeting with Haniff at 2pm. It is further stated that, *“As agreed yesterday pls make sure that your fees of \$200k are paid out of the same time as the dispatch of the balance”*.
19. The contents of this email dated 15<sup>th</sup> February is not directly denied by the Applicant. The Applicant denies the previous email dated 14<sup>th</sup> February 2019 marked as SSL3. The denial is based on Timothy Manning email address not being mentioned and the address of the copy being incorrect. However, the Applicant does not deny not does he make any reference to the contents of the email dated 15<sup>th</sup> February 2019 (SSL4) produced by the Respondent. This email specifically refers to an agreement reached on the previous day and confirms that \$200k be paid out at the same time as the dispatch of the balance \$1million. The Applicant admits receiving \$1million by swift transfer dated 18<sup>th</sup> of February 2019.
20. In this scenario, the Applicant appears to accept SSL4. In the least, the Applicant does not deny the contents of the said email. In its written submissions filed on the 13<sup>th</sup> December 2022, the Applicant maintains a stark silence as regards email SSL4. In the normal course of event, if the Applicant did not send the email SSL4 one would expect such person to immediately deny the said email and its contents thereof. The failure to so deny at least in the written submission filed on the 13<sup>th</sup> of December 2022, makes it more probable that the Applicant tacitly admits the contents of the email SSL4. If that be so, it is admitted therein of a previous agreement reached on the 14<sup>th</sup> in respect of fees in a sum of \$200k. This in my opinion is sufficient to prove on the required civil standard that the Applicant has agreed and consented to the charging of the \$200k as fees in respect of this matter.



21. Corresponding to this, the Receiver has tendered to this Commission an invoice for \$200k dated 19<sup>th</sup> February 2019 according to which the said sum had been paid by cheque Number 1314505.
22. It is also relevant to note that the Applicant company admits receiving the initial refund of \$1million on 18<sup>th</sup> February 2019. The Applicant also admits receiving a further sum via swift transfer of \$70k in April 2019. The request was made by email SSL8 and the Applicant is also requesting for a tax invoice for this sum as well as for the \$200k. This is clear evidence of the fact that the Applicant was aware and has agreed to a sum of \$200k to be paid as legal fees.
23. That being so, the Applicant makes this application in March 2022. According to the Applicant, it had made enquiries in respect of this sum on the 16<sup>th</sup> of February 2022. (Document D annexure to the application). By this letter, the Applicant admits the receipt of \$1million and is seeking the balance of \$274,638.15 to be paid. However, the Applicant subsequently admits receiving a total of \$1,070,000.00 and is now limiting his claim to a sum of \$204,638.15. By paragraph 21 of the Applicant's original affidavit, it admits receiving a sum of \$70k on the 18<sup>th</sup> of April 2019.
24. On the evaluation of the totality of the material, the Applicant has not directly denied the contents of email SSL4. This email contains the correct address of Timothy Manning the Director of the company. Therefore, the only reasonable conclusion this Commission can arrive at is, that Timothy Manning acting as the Director of OHSL has specifically consented and agreed to a sum of \$200k to be paid and appropriated as legal fees.
25. As for the IT reports, the Applicant has submitted a report from the IT expert, Click IT. To counter this, the Respondent too submitted an IT report from the IT expert Big Yellow Tree. Upon considering the Click IT report I observe that it is no more than a report confirming that the said email is not in the *Sent folder* of the Mr. Timothy Manning's email. The Big Yellow report confirms that a *Sent folder* can be altered by deleting an item and unless further investigation is done on the main server it would not be

possible to come to a conclusive opinion as to the existence or non-existence of the alleged email or email/s. In these circumstances, the IT report of the Applicant does not serve any purpose or confirm any assertion of the Applicant. As such the said IT report is of no assistance in determining this matter.

**Conclusion**

26. By February 2019 the Applicant and its Director Timothy were aware of the transfer of \$1million and by April, of the transfer of \$70k. The receipt of which is admitted and not denied. That being so, can the assertion that the Applicant and its Director were unaware of the judgement of the Court of Appeal and the details of the amount and remain without making immediate inquiries be realistic and possible? To my mind, by any stretch of imagination that cannot be so. The Principal of Singh & Singh Lawyers, Mr Singh dies in December 2020. However, for reasons unexplained and best known to the Applicant, it has waited until 2022 to make inquiries and to make this application. It is highly improbable that the Applicant was unaware of the judgement of the Court of Appeal and the details of the amount. It is also not probable for the Applicant to have waited without inquiring as to what these remittances were in 2019. This considered in the light of the aforesaid circumstances certainly renders the Applicant's assertion of not agreeing to a fee of \$200k highly improbable and it is so improbable that it appears to be frivolous.
27. In the above circumstances, I hold that the Applicant has failed to satisfy this Commission of its entitlement for reimbursement on the required standard. Accordingly, I hereby refuse and reject this application.
28. I make no order as to costs and the parties to bear their own costs.

Dated the 5<sup>th</sup> day of January, 2023.

  
**Justice Gihan Kulatunga**  
Commissioner

