

IN THE INDEPENDENT LEGAL SERVICE COMMISSION

AT SUVA

ILSC CASE NO. 001 OF 2018

BETWEEN : PARVEEN PRAKASH

APPLICANT

AND : GYANESHWAR PRAKASH LALA

RESPONDENT

AND : THE CHIEF REGISTRAR

AMICUS CURIAE

Counsel: Mr V Singh for the Applicant
No appearance by the Respondent
Mr T Kilakila for the Chief Registrar

Date of Hearing: 2 May 2019

Date of Decision: 19 June 2020

DECISION

[1] The Applicant seeks the following orders from the Commission pursuant to section 23 of the Trust Accounts Act 1996 (the Act):

- a. That the Applicant be reimbursed the sum of \$96,900.00 from the Fidelity Fund.
- b. That the Applicant be paid interest on \$96,900.00 at such rate and for such period as the Commission deems just from the Fidelity Fund.

c. That the Applicant be paid costs for such amount as the Commission deems just from the Fidelity Fund.

d. Such further or other order as the Commission deems just.

[2] Since the respondent had left the jurisdiction before the proceeding commenced before the Commission, a notice of the proceeding was advertised in a local newspaper on 8 June 2018. There had been no response to that notice by the respondent.

Facts

[3] The Applicant is a businessman. On 19 April 2011, he entered into a Sale and Purchase Agreement to purchase his interest in a property in Samabula, Suva for \$95,000.00 from one Chandrika Prasad (the vendor).

[4] The Applicant instructed Mr Gyaneshwar Prakash Lala as his solicitor to carry out the transaction. At that time Mr Lala was running a law practice from 94 Waimanu Road, Suva under the name of GP Lala and Associates and operated a trust account at the Bank of Baroda, Suva.

[5] In accordance with the Sale and Purchase agreement, between 18 April and 28 April 2011, the Applicant made the following payments to Mr Lala:

\$5000.00 being the initial deposit - Receipt No 588 dated 18 April 2011.

\$1,900.00 for stamp duty - Receipt No 589 dated 19 April 2011.

\$90,000.00 being the balance sum - Receipt No 590 dated 28 April 2011.

[6] These payments are reflected in Mr Lala's trust account. After the payments were made, the conveyancing transaction did not proceed to settlement due to reasons attributed to the vendor. During this period, Mr Lala did not contact the Applicant. The Applicant tried to contact Mr Lala but he could not get hold of him.

[7] On or about 18 June 2012, the Applicant through another lawyer wrote to Mr Lala to inquire about his conveyancing transaction but Mr Lala did not respond.

- [8] On or about September 2012, the Applicant came to know that Mr Lala's practice had closed down. Another law firm, Singh & Singh Lawyers took over Mr Lala's practice and was operating from the same location. By this time, Mr Lala's trust account was still active with a balance of about \$5000.00. The bank statements for this period show various withdrawals but the nature of the withdrawals cannot be ascertained from the bank statements. Around this period the Applicant contacted the principal of Singh & Singh Lawyers, Mr Anand Singh, but he also was not able to assist him with the matter. According to written correspondences between Mr Anand Singh and Mr Lala in September 2012, Mr Lala had moved to the United States of America and was living there.
- [9] On or about October 2012, the Applicant learnt that his funds had been withdrawn from Mr Lala's trust account without his knowledge or instruction. He instituted a civil action against Mr Lala to recover his money.
- [10] On 30 April 2013, the Applicant obtained a judgment by default against Mr Lala in the sum of \$96,900.00 and costs of \$325.00 (Civil Action no. HAB 305 of 2012).
- [11] After obtaining the judgment, the Applicant made attempts to recover the judgment amount by filing further actions. The actions failed because Mr Lala had left the jurisdiction, leaving behind a trail of debts, but no assets.
- [12] The last audit report of Mr Lala's trust account was submitted for the period ending 30 September 2010. The total balance sum in the trust account in 2010 after the audit was \$395,464.81.
- [13] In 2012, the Chief Registrar made several attempts to get Mr Lala to submit an audit report of his trust account for the period 1 October 2010 and 30 September 2011.
- [14] On 5 October 2012, the Chief Registrar obtained an order from the then Commissioner for Mr Lala or his employees to cease practising law or operating any law firm, to provide a list of his clients and their contact details and to submit an audited trust account

report. The Chief Registrar was also permitted to appoint a Receiver to wind up Mr Lala's practice pursuant to section 57(2) of the Legal Practitioners Act.

- [15] On 28 May 2013, the Chief Registrar appointed a Receiver to wind up Mr Lala's practice. In his report dated 12 August 2013 to the Chief Registrar, the Receiver noted that the Applicant's complaint regarding his missing trust funds remained unresolved.
- [16] Subsequently, the Receiver after consulting the Chief Registrar appointed an independent auditor to carry out an audit of Mr Lala's trust account. The audit was carried out by Parker Business Solutions (Fiji). In a report dated 14 April 2016, the auditor found Mr Lala had not kept proper accounting and other records of his trust account after 2010 to determine if there had been breaches of his obligations as the trustee under the Act in respect to his trust account.
- [17] The Applicant after exhausting all legal avenues for recovery filed this application to recover his loss from the Fidelity Fund.

Fidelity Fund

- [18] Fidelity Fund was established through an amendment to the Trust Accounts Act (Trust Accounts (Amendment) Act 2009). The purpose of this fund is to compensate for the loss of trust funds of the clients at the hands of dishonest legal practitioners or their employees. The Fund is sourced from the Contribution Fund established under the Act at a rate of 5% and managed by the Funds Trustee, pursuant to sections 19-21 as follows:

Contribution Fund

19 (1) There will be established a fund which shall be known as the Contribution Fund;

(2) This fund shall be applied for the purposes set out in this Act.

Moneys payable to the Contribution Fund

20 The Contribution Fund shall consist of

- (a) All moneys paid or payable to the Funds Trustee pursuant to section 18;
- (b) Interest which may from time to time accrue on moneys held in or forming part of the Contribution Fund; and

- (c) All other moneys which may lawfully be paid to the Contribution Fund.

Management of Contribution Fund

- 21 (1) The Attorney-General shall appoint a Funds Trustee to manage the Contribution Fund and the other funds established by this and the following section on such terms and conditions as may be prescribed by regulations.
- (2) The Funds Trustee shall be 3 persons, or a corporation or body including natural persons who shall have such qualifications and experience as the Attorney- General considers appropriate for the management and distribution of such funds.
- (3) The Funds Trustee may give effective receipts for all moneys received into the Contribution Fund.
- (4) The Funds Trustee may invest moneys in the Contribution Fund that are not immediately required for the purposes thereof-
- (a) in securities of or guaranteed by the Government of the Republic of Fiji;
- (b) with or on deposit with a bank or in securities of, guaranteed or accepted by a bank lawfully carrying on business in Fiji;
- (c) in such other manner which the Attorney-General may approve from time to time.
- (5) The Funds Trustee shall in respect of each financial period cause a statement to be prepared of the income and expenditure during that period of the funds referred to in this section, and a statement of the assets of those funds at the end of the financial period. The Funds Trustee shall cause these funds to be audited by an auditor being the current holder of a certificate of public practice issued by the Fiji Institute of Accountants, and a copy of the statements and the auditor's report shall be delivered by the Funds Trustee to the Attorney General within 14 days of receipt by the Funds Trustee of the auditor's report.

Distributions from Contribution Fund

- 22 (1) The Funds Trustee may periodically but shall no later than 21 days after the last day of each quarter distribute from the Contribution Fund the available moneys in respect of that quarter –
- (a) to the Funds Trustee so much thereof as is necessary to meet the costs fees and expenses of the Funds Trustee in the administration of the Contribution Fund and the other funds referred to in this section;
- (b) the balance as follows-
- (i) 65% to a fund to be known as the Legal Aid Fund to meet the costs and expenses of the Legal Aid Commission established by the Legal Aid Act 1996;
- (ii) 10% to a fund to be known as the Judiciary Fund to meet the costs and expenses for improving court premises, purchasing equipment for various courts in all the divisions, including acquisition of equipment for the Judiciary, implementing electronic recording of court proceedings, and for such other purpose as the Chief Justice may direct;

- (iii) 10% a fund to be known as the Independent Legal Services Commission Fund to meet the costs and expenses of the Commission, established by the Legal Practitioners Act 2009;
 - (iv) 10% to a fund to be known as the Legal Practitioners Unit Fund to meet the costs and expenses of the Legal Practitioners Unit in the office of the Chief Registrar in the performance of the functions and duties of the Chief Registrar under the Legal Practitioners Act 2009 and for such other related purpose as the Chief Registrar may direct;
 - (v) 5% to a fund to be known as the Fidelity Fund to make the payments from such fund which may be lawfully required by the Commission to be paid. Where the amount of the Fidelity Fund, including any interest earned by the Fidelity Fund, exceeds \$1 million at the end of any quarter, such excess shall be applied proportionally between the other funds established by this subsection.
- (2) The powers of the Funds Trustee in relation to the investment of the Contribution Fund shall likewise apply to the funds constituted by the preceding subsection.
 - (3) The Funds Trustee may at its discretion apply from the Legal Aid Fund, the Independent Legal Services Commission Fund, the Judiciary Fund and the Legal Practitioners Unit Fund moneys to the Legal Aid Commission or the Commission or the Judicial Department or the Chief Registrar respectively on receipt of such assurances as it may think fit that those moneys will be applied for the purposes designated for those funds in subsection (1) (b).
 - (4) Nothing in this Act shall prevent the Funds Trustee from receiving and paying into any or more of the funds referred to in subsection (1) (b) moneys paid to the Fund Trustee for the purposes of such fund or funds.

[19] Section 23 of the Act governs the Commission's powers in relation to the disbursements from the Fidelity Fund 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.

Theft of trust funds

- [20] The first issue is whether the Applicant had lost money entrusted to a legal practitioner in private practice through theft or fraudulent misappropriation by the legal practitioner or his employee.
- [21] Mr Lala was a private legal practitioner. As a practitioner, he operated a trust account as required by law. \$96,900.00 was paid into Mr Lala's trust account by the Applicant for a conveyancing transaction and not for a purpose of investment. Mr Lala was the trustee of the funds as the Applicant's solicitor. The money was later withdrawn from the trust account, without the knowledge of the Applicant. The withdrawals occurred at a time when Mr Lala or his employees were in control of the trust account. Mr Lala did not give an account of his trust account in breach of his statutory duty as a legal practitioner to the Chief Registrar in the year the money was withdrawn (section 12 of the Act). From these undisputed facts, the only logical inference is to be drawn is that Mr Lala or his employee dishonestly withdrew the Applicant's trust money, without the Applicant's consent and with the intention to permanently deprive him of it.
- [22] The Commission is satisfied that the Applicant had suffered loss through theft or fraudulent misappropriation of money entrusted to a legal practitioner in private practice.

Reimbursement amount/interest/costs

- [23] The next issue is whether the Applicant should be reimbursed the full sum of \$96,900.00 or the statutory ceiling amount of \$50,000.00, with or without interest and costs. The Commission has discretion to order reimbursement of an amount in excess of \$50,000 payable to all persons who suffer loss through theft by the same legal practitioner in any

12 months period, after taking into account all liabilities of the fund whether ascertained or contingent.

[24] The Applicant is the only former client of Mr Lala who is seeking a full reimbursement of his stolen trust money after exhausting other legal remedies for recovery. Further, this is the first ever application made for reimbursement of stolen trust money by a legal practitioner or his employee from the Fidelity Fund. No payments are currently due from the Fidelity Fund. There is no evidence to suggest that reimbursement of the actual loss from the Fidelity Fund is not financially feasible.

[25] The final issue is the award of interest and costs. The Applicant is not entitled to any interest from the trust funds. There was no award of interest on the default judgment. However, the applicant has succeeded with his application for a reimbursement of money from the Fidelity Fund. I award him special interest at the rate of 3% per annum from the date the application was filed (10 May 2018) until the payment is made from the Fidelity Fund, but not any costs for this application.

Orders of the Commission are:

[26] The application is allowed.

[27] The Funds Trustee shall pay the Applicant a sum of \$96,900.00 with interest at the rate of 3% per annum from the date the application was filed (10 May 2018) until the payment is made from the Fidelity Fund.

[28] The Applicant is to bear his own costs for this application.


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Justice Daniel Goundar
COMMISSIONER



The seal is circular with a purple border. The outer ring contains the text 'INDEPENDENT LEGAL SERVICES COMMISSION' at the top and 'NOISSISSON' at the bottom, separated by a star. The center of the seal contains the word 'SEAL' in bold capital letters.