

DECISION OF THE DISCIPLINARY COMMITTEE OF THE
GENERAL LEGAL COUNCIL
COMPLAINT NO. 124/2017

IN THE MATTER OF ELISE WRIGHT-GOFFE

AND

IN THE MATTER OF THE LEGAL
PROFESSION ACT

AND

JENNIFER MESSADO

PANEL. MR. PETER CHAMPAGNIE (CHAIRMAN)
MR. MICHAEL THOMAS
MS. KATHERINE FRANCIS

THE COMPLAINT

The Complainant in this matter is an Attorney-at-Law, Mrs. Elise Wright-Goffe who alleges that the Attorney Jennifer Messado an Attorney-at-Law, breached her Professional Undertaking in respect of dealing with registered Certificates of Titles in a manner that was prejudicial to her interest.

APPLICATION TO ADJOURN THE HEARING

Before the commencement of this hearing, Counsel for the Respondent Mr. Patrick Bailey, made certain objections to the matter proceeding. His first point in the realm of an objection, was that it was bad form for the person against whom a recusal on the basis of bias was sought, to be involved in choosing a successor. The records indicated that before now, this panel constituted Mrs Daniella Gentles-Silvera as its Chairman. Mrs. Gentles-Silvera acceded to an application made by Counsel for the Respondent for a recusal on the basis of apparent bias. The second point, by way of Counsel's objection was on the basis that he did not have sufficient time to consult with the Respondent to ascertain whether there were further instructions for any objection to the panel as presently constituted. The third point raised by Counsel was an assertion that it was well known, that a popular Jamaican entertainer was one of the person's who it is alleged was defrauded by the Respondent and that, it is well known in the public space that Mr. Peter Champagne is the Attorney

for that said entertainer. The inference that was to be drawn from this was that there may exist an apparent bias on the part of Mr. Champagne towards Mrs. Messado. The final element to the Respondent's Attorney's objection was that he had another matter which by virtue of the hour, required his attendance.

Completing his arguments by way of objections, Mr. Bailey made it clear to the panel that he was not in any way relying on the absence of his client as he was well aware of the rules which allowed for the panel to proceed in the Respondent's absence. No explanation for the Respondent's absence was provided by her Counsel.

Before the panel's ruling on the objections of Counsel, Mr. Bailey was advised that the popular entertainer to which he referred, was no longer a client of Mr. Champagne and that Attorney-Client relationship had long ceased to be the case. It was disclosed that the Attorney-Client relationship that existed between the entertainer and Mr. Champagne, was short lived and concerned only a matter in which the entertainer himself was a suspect in a criminal matter and nothing beyond that. Having settled this there remained only three other elements of Mr. Bailey's objection.

In relation to the other elements of Mr. Bailey's objection, the panel after consideration, ruled that Counsel's other objections were without any merit for the reasons that, firstly, the Respondent through her counsel did not advance any reasonable excuse as to her absence. Indeed, the Respondent's attorney indicated that he was not relying on his client's absence for any postponement of the hearing. In these circumstances the Respondent had an obligation to be in attendance to instruct her counsel as to whether she had any further objections to how the panel was now constituted. Secondly, the Chairman choosing her successor was not 'bad form' and a proper basis for the postponement of the hearing of this matter. Indeed, the Respondent's attorney did not furnish any authorities in law to support his point. Finally, the Respondent's counsel having agreed to the hearing of today's date could not rightly submit that the time allotted for these proceedings had passed. There was no evidence to suggest that a specific time had been allotted for the completion of this hearing. The panel therefore moved in the way of commencing the hearing.

On this being declared, Counsel for the Respondent gave notice of Appeal and as a consequence sought to apply for a stay of the proceedings pending the Appeal. His application was considered and denied. Mr. Bailey then elected to withdraw from the proceedings.

Having satisfied itself of the following:

1) that no issue had been taken in respect to proper notice and service of the proceedings in this matter;

2) that Counsel for the Respondent had by way of an email dated September 12, 2018 sent to the secretary of the Committee, requested today's date for hearing,

the panel by virtue of the provisions of **Rules 8 and 10** of the Fourth Schedule of the Legal Profession Act, commenced the hearing. **Rule 8 states that:**

"If either or both of the parties fail to appear at the hearing the Committee may, upon proof of service of the notice of hearing proceed to hear and determine the application in his or their absence." Rule 10 states that "The Committee may, in their discretion, either as to the whole case or as to any particular fact or facts, proceed and act upon evidence given by Affidavit..."

THE EVIDENCE

The Complainant, Mrs. Elise Wright Goffe having been sworn, stated that she was an Attorney-at-Law and the Complainant herein against Mrs. Jennifer Messado. The Complainant testified that she had filed a complaint against the respondent for inter alia breaching a professional undertaking in that she caused Certificate of Titles to be transferred to a third party in a manner prejudicial to her interest and inconsistent with the particulars of her undertaking.

The contents of this complaint were highlighted in **Exhibits 1-4** being forms of Application and Affidavits in support.

Collectively, the assertions of the Complainant against the Respondent were that:

- 1) The Respondent breached **Canon VI (d)** in that she gave a Professional Undertaking which she could not fulfill and/or which she failed to fulfill;
- 2) That she was sent Certificate of Titles on her undertaking to refrain from parting with possession of them unless the Complainant was paid certain monies and is therefore in breach of **Canon VI (e)**. It is further alleged that the Respondent failed to return those Titles to the Complainant, although at the time of receiving them she knew that the performance of her undertaking would be impossible;
- 3) That the Respondent is in breach of **Canon I (b)** which states that an Attorney shall at all times maintain the honour and dignity of the profession and shall abstain from behaviour which may tend to discredit the profession of which she is a member.
- 4) That the Respondent acted with inexcusable or deplorable negligence in the performance of her duties contrary to **Canon IV (s)**.

In seeking to bolster her testimony, the Complainant made reference to an Affidavit that she had filed in respect of this matter against the Respondent. This Affidavit dated January 18, 2018, was tendered into evidence as **Exhibit 5** and detail inter alia the respective volume and folio numbers of Titles in question and also the acceptance of the Professional Undertaking that was given by the Respondent Attorney. The Complainant in this Affidavit asserted that the Respondent breached her Professional Undertaking, when she permitted the Titles to be used by Mr. Mark Jones, GAM Limited and causing them to be the subject of a mortgage by First Global Bank Limited. This facilitation by the Respondent, the Complainant asserts, was to her detriment and also inconsistent with the Undertaking given to her by the Respondent.

The particulars of the Undertaking by the Complainant was tendered into evidence as **Exhibit 6**. This was presented in the form of a letter from Jennifer Messado and Company and purporting to be signed by the Respondent, dated February 17, 2014. The contents of **Exhibit 6** by virtue of the Third Paragraph noted the following:

“We hereby give our irrevocable professional undertaking not to part or deal in any matter prejudicial to your interest with any Duplicate Certificate of Title for Strata Lots 1-5, 7-8, 11-17 and 19 which are registered at Volume 1439 Folios 169-173, 175-176,

179, 180-185 and 187 respectively of the Register Book of Titles without first letting you have the sum of Six Million Four Hundred and Eighty Four Thousand Jamaican Dollars (J\$6,484,000.00); Nineteen Million Jamaican Dollars (J\$19,000,000.00) and Twenty Six Thousand Eight Hundred and Seventy Six United States Dollars (US\$26,876.00) which are due and owing in respect of Attorneys costs or legal fees; expenses incurred and loans given to Leymon Strachan during the development of Lot 3, Reading Pen, St. James and now known as Reading Manor Suites being land formally registered at Volume 1267 Folio 123 of the Register Book of Titles."

In attempting to prove the Respondent's breach of her Undertaking, the Complainant made reference to a Title Report in respect of Volume 1439 Folio 169 which by virtue of the endorsements thereon indicated that the said Title was Mortgaged to Mr. Mark Jones on March 10, 2014 and subsequent transfers and mortgages. This Title report referred to, was tendered into evidence as **Exhibit 7.**

The Complainant testified that she received an Affidavit from the Respondent dated June 27 2018 in response to her complaint. This was tendered into evidence as **Exhibit 8.** In that Affidavit, the Respondent at Paragraph 6 stated; **"That at no time was it my intention to breach the undertaking given to ELSIE WRIGHT-GOFFE."** Respondent went on in Paragraph 7 of the Affidavit to state **"That when I received the Certificate of Title mentioned in my Letter of Undertaking dated February 17, 2014 the said Titles were delivered to my client, Mr. Mark Jones on the basis that the said Mark Jones would raise mortgage financing to enable construction of units on the land comprised in the said Certificate of Titles and also to enable me to discharge my obligations under the Letter of Undertaking."**

In respect of her undertaking, the Respondent stated at Paragraph 8 the following; **"In parting with the said titles I genuinely believed, and expected that my client Mark Jones would easily raise the financing to make the payments referred to in my aforesaid Letter of Undertaking."**

In concluding her evidence the Complainant indicated to the panel that up to the date of the hearing of this matter, she was neither in receipt of any of the Titles or monies that she asserts were due and owing to her. This was the sum total of the Complainant's evidence which by virtue of the application of **Rules 8 and 10** of the Fourth Schedule of the Legal Profession Act was marshaled. This was against the background of Counsel for the Respondent posture in electing to withdraw from the proceedings after the panel found no merit in its application for a stay of proceedings pending appeal.

ISSUES TO BE DETERMINED

The central issue to be determined is a question of fact. Did the Respondent in her capacity as an Attorney-at-Law issue an Undertaking to the Complainant that was breached? In settling this question, regard must also be had as to whether the Complainant's evidence was credible and whether the evidence as a whole was sufficient to meet the Standard of Proof in hearings such as these. In respect of this latter consideration, the panel bears in mind that the Standard of Proof is beyond a reasonable doubt as obtained in the Criminal Law.

FINDINGS OF FACT

Based on the evidence adduced, the panel makes the following findings of fact:

- 1) That the Complainant was a witness of truth;
- 2) That the Respondent in her capacity as an Attorney-at-Law, did give her Professional Undertaking to the Complainant in the said form in **Exhibit 6** by virtue of the Third Paragraph;
- 3) That the Respondent by virtue of the contents of **Exhibit 7** and the evidence of the Complainant set out in **Exhibit 5**, breached her Professional Undertaking to the Complainant;
- 4) That the Respondent's response set out in **Exhibit 8**, is tantamount to an admission of her breach of the Professional Undertaking given to the Complainant.

In this respect, specific reference is made to Paragraph 6 in which she stated that at no time was it her intention to breach the undertaking and Paragraph 8 in which she said that in parting with the Titles, she genuinely believed and expected that her client Mr. Mark Jones would easily have been able to raise the financing to make payment referred to in her letter of undertaking.

A lack of intention to breach a Professional Undertaking and holding a genuine belief that one's client or circumstances would materialize to fulfill a Professional Undertaking is not a defense in these circumstances.

5) That the Respondent in breaching her Professional Undertaking has done violence to Canon VI (d) of the Legal Profession (Canons of Professional Ethics) Rules which states:

“An Attorney shall not give a professional undertaking which he cannot fulfil and shall fulfil every such undertaking which he gives.”

6) The panel also finds that the Respondent Attorney has breach Canon VI(e) which states that:

“Where an Attorney has been sent money, documents or other things by another Attorney which (at the time of sending) are expressed to be sent only on the basis that the Attorney to whom they are sent will receive them on his undertaking to do or refrain from doing some act the receiving Attorney shall forthwith return such things if he is unable to accept them on such undertaking, but otherwise must comply with such undertaking.”

7) As a consequence of the findings that the Respondent **Canons VI (d) and VI(e)** pursuant to the provisions of **Canon VIII (d)** of the Legal Professions (Canons of Professional Ethics) Rules the panel finds the Respondent Attorney guilty of professional misconduct. **Canon VIII (d)** succinctly put labels a breach of either **Canon VI (d) or VI (e)** tantamount to professional misconduct.

8) In view of the foregoing the panel finds the Respondent in breach of Canon I(b) which states that an attorney shall at all times maintain the honour and dignity of the profession and shall abstain from behavior which may tend to discredit the profession of which she is a member.

9) the panel finds in all the circumstances based on the evidence that the Respondent acted with deplorable negligence in the performance of her duties contrary to Cannon IV (s). By virtue of her failing to honour her professional undertaking the Respondent reasons in her affidavit for the breach of the said undertaking is rooted in negligence. This panel finds that at the time of giving the professional undertaking the Respondent was not in a position to fulfil same and therefore was negligent or reckless in seeing to a situation where her undertaking capable of being fulfilled.

not
B.A.

LAW

Beller v. The Law Society, [2009] EWHC delivered on July 2009 in the Queen's Bench Division is an appropriate case to note in this regard. In Beller's case, there was an admission by the Solicitor that he had breached his Professional Undertaking. In the course of the proceedings, the Solicitor expressed that he had held the genuine belief that his client would have put himself in a position to fulfill the Undertaking given and there was the belief that his client was trustworthy.

Lord Justice Thomas in delivering the Judgement of the Court noted the following at Paragraph 16:

“But a Solicitor who gives to other people an undertaking must always act on the assumption that the person to whom he gives an undertaking must be protected, and that he cannot rely upon the apparrant trustworthiness of his client to see him right. He has to stand behind his undertaking himself and any attempt to say, “Well I trusted my client, and therefore I could do what he asked me to do”, totally undermine, in a grave manner, the high -standing in which the Solicitor’s profession is held.”

As was stated in *Sylvester Morris v General Legal Council ex parte Alpart Credit Union 22 JLR* 1 at page 2 paragraph E. Quite apart from the present statutory provisions for breach of an undertaking being professional misconduct, professional misconduct of this nature is also grounded in the common law. The common law principle is also recognized in the literature *Shazeera Ali, The Ethical Lawyer: A Caribbean Perspective, at Chapter 8 (My Word of Honour; Professional Undertakings, by Audrey Welds)* at page 139 paragraph 8-020 published September 2, 2015. It is noted here in this text that failure to fulfil an undertaking almost invariable amounts to professional

misconduct and that such conduct could destroy the trust that is necessary to the proper functioning of the system of conveyancing in Jamaica; it taints the entire legal profession.

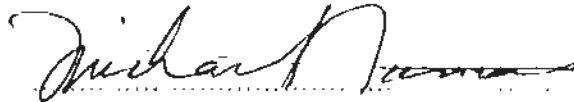
CONCLUSION

The panel therefore finds the Respondent attorney guilty of professional misconduct and in breach of **Canons I(b), IV(s), VI(d), VI(e)**. Having arrived at these finding in keeping with the decision of *Owen Clunie v The General Legal Council [2014] JMCA Civ 31* the panel now reserves its decision in relation to the appropriate sanction to be applied so as to afford the Respondent to appear either on her own or with the aid of Counsel and address in respect of mitigation.

DATED 15th SEPTEMBER, 2018



MR. PETER CHAMPAGNIE (CHAIRMAN)



MR. MICHAEL THOMAS



MS. KATHERINE FRANCIS