

Judgment on Complaint No 110/97
Mr and Mrs Clarke v Robert Baugh

Panel: Mr Christopher Bovell - Chairman
Mrs Gloria Langrin
Miss Beryl Ennis

Heard: June 25, 1998
October 6, 1998

Present were: Mr Clarke - Complainant
Mr Robert Baugh - Respondent
Mrs Paulette Lindsay - Witness

In attendance Ms Dahlia Davis - Secretary/Stenographer

These proceedings were conducted in response to a complaint by Mr and Mrs Allan Clarke against their Attorney-at-Law, Mr Robert Baugh, pursuant to the Legal Profession Act S 12(1) (a).

The complaint was, that Mr Baugh, had taken his clients money and documents of title, in order to effect a transfer of premises to Mr and Mrs Lindsay and had failed to do so, despite his insistence that he had done so.

The facts

Mr and Mrs Allan Clarke were the owners of premises at 11 Orion Avenue, Harbour View, Kingston 17, Jamaica, which premises are registered at Volume 970 Folio 145 of the Register Book of Titles.

On retirement, Mr and Mrs Clarke agreed to sell their said premises to Mr Clarke's niece and her husband, Mr and Mrs Lindsay for the price of \$990,000.00.

A deposit of \$495,000.00 was paid to the Clarkes by the Lindsays, who were put in possession of the said premises.

In February 1995, the parties visited the office of Mr Robert Baugh, Attorney-at-Law, who would have had Carriage of Sale.

At that first visit an Agreement of Sale was prepared. It was signed by Mr Clarke and the Lindsays and was given to Mr Clarke to take to Miami for his wife's signature.

The Agreement for Sale provided, inter alia, that the deposit of \$495,000.00 would be paid on signing and that the remaining \$495,000.00 plus costs would be paid by the

purchasers on completion, or, that the said remaining balance of \$490,000.00⁵ be carried by a vendors' mortgage, over 3 years at 15% per annum payable monthly.

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The completion date was agreed for October 1995.

At that first visit Mr Clarke was also provided with a bill of costs for the transfer and for the cost of the Lindsays' mortgage.

At a later date Mr Clarke returned to Mr Baugh's office, with the Agreement signed by Mrs Clarke, which he delivered to Mr Baugh, along with the Title for the premises registered at Volume 970 Folio 145 and a cheque for \$128,000.00 in accordance with the said bill of costs.

Apparently there was an arrangement whereby Mr Baugh was to have collected mortgage money from the Lindsays and deposit same in a designated account for Mr Clarke, on a monthly basis. Mr Clarke reported that when he realised that Mr Baugh had not deposited the money as agreed and the Lindsays reported that they had paid it, he Mr Clarke came to Jamaica to see Mr Baugh on the matter.

On his visit to Mr Baugh's office Mr Clarke collected all the money that was due to him from the mortgage payments. He enquired of the progress of the sale and was told by Mr Baugh that the Stamp Duties had been paid on the Agreement and that the matter was progressing. Mr Clarke was shown a copy of the receipt from the Stamp Office.

In the meantime, the Lindsays had applied to the National Housing Trust for a mortgage to complete the transaction. A letter of commitment was issued to them from the National Housing Trust and this letter had been shown to Mr Baugh.

The Lindsays became very frustrated as they repeatedly requested Mr Baugh to forward the land title to the National Housing Trust and he reported that he had forwarded it, but the National Housing Trust denied receiving it. Both the Clarkes and the Lindsays therefore complained to the General Legal Council that Mr Baugh had not provided them with all information as to the progress of their business, although they had reasonably requested him to do so and that Mr Baugh had acted with inexcusable and deplorable negligence in the performance of his duties.

The Hearing

Mr Baugh arrived late for the hearing and requested an adjournment as his Attorney-at-Law Mr Pearson, was unable to attend.

The Panel refused the adjournment based on the fact that the matter had been set from the previous week and the Complainant, Mr Clarke, had come from Miami and was waiting in Jamaica for the matter to be heard.

Mr Baugh obliged The Panel by going for his file with which he returned to the hearing. He also informed The Panel that his Attorney-at-Law had advised him to listen, but not participate in the proceedings.

Mr Clarke's evidence

The Complainant testified that he and his wife had agreed to sell their premises at 11 Orion Avenue, Kingston 17, registered at Volume 970 Folio 145 to Mr and Mrs Lindsay for \$990,000.00. Mr Clark had collected \$495,000.00 and Mr Baugh prepared the Agreement as instructed.

Mr Clarke had taken the Agreement and Transfer for his wife's signature and had seen her sign. He therefore identified both their signatures on the said documents.

On the first visit to Mr Baugh's office Mr Clarke had been given a bill of costs for the Lindsays and for himself and these bills of costs were tendered as exhibits 1 and 2 respectively. The receipt issued by Mr Baugh dated March 17, 1995 was tendered as exhibit 4 and the Agreement for Sale was exhibited as No. 5.

Mr Clarke said that he also handed Mr Baugh the Title registered at Volume 970 Folio 145 at the time that he collected the said receipt for the payment of costs.

The Lindsays had been put in possession of the house and Mr Clarke expected to have monthly payments from them lodged to his account by Mr Baugh. However, these payments were not deposited in the bank and Mr Clarke had to come from Miami to collect the money from Mr Baugh.

By that time, two years had passed since the signing of the Agreement. Mr Clarke enquired of the progress of the matter and Mr Baugh told him that he had paid the Stamp Duty on the Agreement. Mr Baugh also acknowledged that he had the Title and actually showed it to Mr Clarke.

Mr Clarke again visited Mr Baugh's office and was shown a copy of the receipt from Stamp Office and the manager's cheque No. 0080966 drawn on Citizens Bank Limited for \$128,000.00 which had been paid by Clarke to Mr Baugh.

At that stage of the proceedings Mr Baugh produced a purported copy of the receipt from Stamp Office from his file. Mr Clarke agreed that, that was the copy which had been shown to him at Mr Baugh's office. The receipt from the Stamp Office was tendered as exhibit 7 and the manager's cheque No. 0080966 was tendered as exhibit 8.

The Panel enquired of Mr Baugh whether he was still restrained by his Attorney's injunction not to cross examine. Mr Baugh replied that he would not really cross examine Mr Clarke, but wished to enquire of him, who it was in his office who had shown Mr Clarke the documents. To this Mr Clarke replied that it was the secretary, who had shown the document to him.

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Mrs Lindsay's Evidence

Mrs Paulette Lindsay, dental assistant testified that she and her husband had agreed to purchase 11 Orion Avenue, from Mr and Mrs Clarke for \$990,000.00. On payment of half the purchase price to the Clarkes she and her husband were put in possession of the premises.

Mrs Lindsay recalled visiting Mr Baugh's office and identified her signature and that of her husband's on the relevant Agreement for Sale.

Mrs Lindsay said that she started paying \$4,125.00 per month to Mr Baugh, but realised that she was getting nowhere with him and therefore continued the payments directly to Mr Clarke.

She told Mr Baugh that she had applied to the National Housing Trust for a mortgage loan to complete the transaction. She later showed Mr Baugh the letter of commitment from the National Housing Trust dated March 14, 1996. This letter was tendered as exhibit 10.

Mrs Lindsay said that she kept going to Mr Baugh's office on a regular basis and he kept telling her that he had sent the title to the National Housing Trust, yet the Trust kept telling her that they were not in receipt of the title.

Mrs Lindsay said that she became very frustrated and spoke to Mr Baugh about the matter. Mr Baugh told her that she should come to his office for something. Her brother went to Mr Baugh's office for her and he collected on her behalf a copy of an undated and unsigned letter, that had been addressed to the National Housing Trust, from Mr Baugh's office, concerning the said title.

Mrs Lindsay said that she had written a letter of complaint against Mr Baugh to the General Legal Council in June 1998 and that letter was read to The Panel by Mrs Lindsay as the letter she had written to the Council. This letter was marked as exhibit 12.

At that point Mr Baugh suggested to Mrs Lindsay that the letter her brother had picked up was on a page of the delivery book and that Mrs Lindsay had asked the National Housing Trust if they recognised the signature and they said they could not recognise it.

Mrs Lindsay agreed that the Trust could not recognise the signature.

In response to a query from The Panel Mr Baugh replied that whether he gave evidence or a submission would have to depend on Mr Pearson and that he Mr Baugh had two witnesses. He stated that the title was lost, but found and that his two witnesses were assigned the work as they were doing the research.

Mr Clarke then asked Mr Baugh what happened to the title he had shown Mr Clarke last year and Mr Baugh replied that, that was the title that went to the Housing Trust.

The matter was adjourned to September 12, 1998.

Mr Baugh did not attend on September 12, 1998 and neither did his lawyer. The matter was therefore set for October 6, 1998. The Panel was advised that notice of the hearing had been faxed to Mr Baugh on September 28, 1998 by the secretariat of the General Legal Council. Mr Baugh did not attend the hearing on October 6, 1998.

Miss Chin's Evidence

On Wednesday, 6th, October 1998, Miss Benita Chin, Legal Officer attached to the National Housing Trust gave sworn evidence to The Panel. Miss Chin said that the Trust had given a letter of undertaking in the matter dated 19th, July 1995 and this letter was read to The Panel. She continued that the title had been requested on July 19, 1995 by the Trust and that an unsigned undated letter had been received from Mr Baugh's office indicating that Mr Baugh had sent the title to the Trust. Letter exhibited as No. 13.

However, the Trust was to date still not in receipt of the said title.

Miss Humphrey's Evidence

Finally The Panel heard the evidence of Miss Marlene Humphrey, Deputy Stamp Commissioner, as follows:

Panel: What is your full name?

Humphrey: Marlene Humphrey

Panel: What is your address?

Humphrey: For the purposes of these proceedings it is 111 Harbour Street, Stamp Duty & Transfer Tax Department, Kingston.

Panel: What is your occupation?

Humphrey: Civil Servant. Deputy Commissioner.

Panel: Exhibit 12 shown to Mrs Humphrey. You wrote that letter to us?

Humphrey: Yes.

Panel: You made a search in your records and compared the transfer tax receipt which we sent to ^{you} ~~us~~ and you said you could not locate that record.

Humphrey: I could not find anything that looks like that, reason being that lots of things were left out, dates not legible, certain things have been left out or erased. We would not just refer to Clarke & Lindsay because there would have been many Clarkes & Lindsays. I can't make out the figures. Certain things we usually write out, example money, would be written out in words and figures. "Consideration of" is left out. We usually do receipts in triplicates, the original being white, the duplicate in aqua and the triplicate copy is pink. The first two is given to the person whose transaction it is, and we keep the third copy. We could not make out the year. The number is illegible. The "seven" looks like ours but it looks like somebody re-wrote the figure.

Panel: You said you wrote out the consideration in full?

Humphrey: Yes. Seven and a half percent of the consideration, then we have the full name from "So and So, to So and so". Then address and Volume and Folio number, which also gives you the date on which it was done.

Panel: That transfer tax receipt has none of these characteristics?

Humphrey: No. If we make a mistake we usually cancel the whole ^{receipt} ~~book~~. We do not write over things on our receipt. The instruments on which I must rely on to confirm the payment of transfer tax are:

- (1) The stamped contract of sale duly denoted by this Department with the payment made; and
- (2) The original and duplicate Transfer Tax Certificate which would have been issued together with Stamped Document.

Mr Baugh said that he submitted it to our office but if he did pay he would have gotten back a receipt.

Panel: If he sent an agreement it would have been entered in your book?

Humphrey: Yes, in this book. (Book shown to Panel) when we write it, or it would say which law firm it came from. If it was authentic we would have found it in our office. I spent a whole day looking through 1995, 1996 & 1997 and we could not find anything.

Panel: Did you find anything that would say that it is for somebody else?

Humphrey: We could not find that series. In 87 we came across something but it was done on a Saturday. We do not work on a Saturday. If you would like to look at the "8". It has a fat side and a thin side. The "7" looks slightly ok but the 8 is different. The top of the seven is thick and that one is not thick at all. Where they wrote a figure in that space letters are usually written there.

Panel: To Miss Lindsay. The transaction was what year?

Lindsay: 1995?

Humphrey: We looked through 95, 96 and 97.

Panel: Thank you, Mrs Humphrey, in doing these research and for being so conscientious in your research. We do not want to leave any stones unturned.

The Findings

The Panel found as a fact that Mr and Mrs Allan Clarke had agreed to sell their premises at 11 Orion Avenue, Kingston 11, registered at Volume 970 Folio 145 to Mr and Mrs Lindsay and that Mr Robert Baugh had the Carriage of Sale.

For that purpose the signed Agreement for Sale and a manager's cheque for the costs of stamping the Agreement has been delivered to Mr Baugh, together with the Title registered at Volume 970 Folio 145. After nearly three years of having the documents and money Mr Baugh failed to take the necessary steps to have the transaction completed and deliberately misrepresented to his clients that he had done so.

The Panel found that Mr Baugh had not submitted the Agreement for stamping in accordance with the law and had produced a false document purporting that he had so complied.

The Panel accepted the evidence of the Deputy Stamp Commissioner that the receipt produced by Mr Baugh did not emanate from her office, neither did she find any record of any payment made by Mr Baugh in relation to the aforesaid property.

The Panel also accepted the evidence of Miss Chin from the National Housing Trust that the Title registered at Volume 970 Folio 145 had not ~~being~~^{been} delivered to her office, despite the Trust's requests for the Title and Mr Baugh alleging that he had sent it.

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Accordingly, The Panel finds that Mr Robert Baugh is guilty of professional misconduct as indicated in the Affidavit of Complaint. His behaviour in this matter is such that feeds the negative opinion which our profession now suffers from the public. The Panel therefore recommends to the General Legal Council that Mr Robert Baugh be struck off the roll of Attorneys-at-Law entitled to practice in Jamaica and so Orders under Section 12(4) of the Legal Profession Act.

DATED THE 5th DAY OF December 1998

Handwritten signature: C. Bovell

MR CHRISTOPHER BOVELL

Handwritten signature: Gloria Langrin

MRS GLORIA LANGRIN

Handwritten signature: Beryl Ennis

MISS BERYL ENNIS