

**DECISION OF THE DISCIPLINARY COMMITTEE OF THE
GENERAL LEGAL COUNCIL**

COMPLAINT 75/1999

BETWEEN	YANN MARTINET	COMPLAINANT
AND	SHAUN REYNOLDS	RESPONDENT
PANEL	MRS. MARGARETTE MAY MACAULAY MRS. MERLIN BASSIE MR. ALLAN S. WOOD	

Dates of hearing: 24th February 2001, 29th March 2001, 19th May 2001
6th April 2001, and 27th July 2001.

On the 24th day of February, 2001, this panel commenced hearing of the Complaint No.75 of 1999 brought by Yann Martinet against Shaun Reynolds.

Mr. Martinet gave evidence that in 1994 he agreed to purchase from Mr. Charles Wilson the property known as Park Lodge situated at Lorenton Avenue in the parish of Hanover and being land registered at Volume 1164 Folio 244 and being the land formerly registered at Volume 475 Folio 8 of the Register Book of Titles for the sum of \$2.8 million.

It was agreed with the vendor that the purchase price would be paid over a period of two (2) years with a final payment of \$250,000.00 being paid in exchange for the Certificate of Title for the land duly transferred to the purchaser.

On making the agreement the Complainant took possession of the property and according to his evidence he duly paid the purchase price but for the final payment of \$250,000.00, which was to be paid when the title was transferred and registered in the purchaser's name.

Further the Complainant stated that in the month of August 1997 having performed his obligations under the Agreement, the Complainant and the Vendor engaged Mr. Shaun Reynolds to formalize the Agreement for Sale and to effect the transfer. It was the Vendor who proposed that Mr. Reynolds be retained and in his evidence Mr. Reynolds confirmed that he had done legal work for the Vendor on previous occasions.

According to the Complainant, at the time of his engagement, Mr. Reynolds was paid all sums necessary to effect the transfer including his legal fees and the Complainant tendered in evidence a copy of a receipt dated the 25th day of August, 1997 for the sum of \$74,000.00 issued in the name of his company. Also tendered in evidence was a copy of a receipt dated the 23rd day of June, 1997 issued in the name of Mr. Charles Wilson for \$205,800.00, stated to represent transfer tax, fees and costs for transfer of house and land, Wilson to Martinet, Volume 475 Folio 8.

Both receipts were signed by a Miss Scarlett who the Complainant stated was the secretary of Mr. Reynolds.

In addition to the receipts, the Complainant also tendered a copy of an Agreement for Sale which recited that it was made in 1994, but it was otherwise undated and unstamped, and bearing the signatures of the Complainant and the Vendor, Charles Wilson. The Complainant's evidence was that the Agreement for Sale was prepared by Mr. Reynolds and this fact was admitted by Mr. Reynolds.

Critical to the determination of the issues was the Complainant's evidence that in August 1997 at the time of his engagement, Mr. Reynolds advised that the transaction involved a simple transfer, something that would take two (2) weeks to do. Since that time Mr. Shaun Reynolds has not completed the transaction despite numerous follow up visits and calls by the Complainant who also retained two other Attorneys to follow up Mr. Reynolds without success. The Complainant also tendered in evidence copies of letters from the vendor Mr. Charles Wilson to Mr. Shaun Reynolds which complained of the delay in completing the transaction, which are dated the 26th day of June, 1988 and 7th January, 1999 respectively. It was the Complainant's evidence that having exhausted all efforts to have Mr. Shaun Reynolds effect the transfer, this complaint was made by him to the Disciplinary Committee of the General Legal Counsel.

Mr. Shaun Reynolds gave evidence on the 29th day of March, 2001 and attributed the principal cause for the delay to Mr. Martinet's inability to pay the remaining balance due under the agreement for sale of \$250,000.00. Additionally the Certificate of Title had to be surrendered as no further entries could be made on it, a matter which Mr. Reynolds also cited as a cause of delay. He further stated that as a result of the impasse which had occurred between the Vendor and the Complainant over the non-payment of the balance of \$250,000.00.

Further in answer to questions posed by the Panel, Mr. Shaun Reynolds stated that he had received instructions to draw up the Agreement for Sale in 1997 but that he had mistakenly dated the Agreement 1994, and that he had not stamped the Agreement or paid transfer tax on the transaction up to the time when the papers were handed over to Mr. Trevor Ruddock. The handing over of the papers to Mr. Ruddock had occurred, according to Mr. Shaun Reynolds, on the 16th day of January, 2001. Mr. Reynolds also gave evidence that at the time of handing over the papers to Mr. Ruddock in order to have the transaction completed, he also paid over to Mr. Ruddock a sum of \$316,000.00 in order to enable Mr. Ruddock to have the Agreement duly stamped and to cover the costs of the transfer.

Mr. Reynolds appeared to be totally oblivious to the fact that having drawn up the Agreement for Sale in 1997 back dated to 1994, the parties would be liable for penalties with respect to Stamp Duty and Transfer Tax which ought to have been paid on the Agreement within thirty (30) days of execution of the agreement in writing by the parties.

At the conclusion of his evidence on the 29th day of March, 2001, Mr. Reynolds requested an adjournment so that he could call Mr. Ruddock as a witness to confirm the receipt of the documents and the sum of \$316,000.00. The Panel granted this

request for an adjournment to the 6th day of April, 2001. On resumption on that date the Panel was presented with a faxed copy of a medical certificate stating that Mr. Reynolds was unwell and unable to attend the hearing. Mr. Trevor Ruddock was not in attendance.

The Panel adjourned the matter to the 19th day of May, 2001 and at the request of the Complainant the Panel directed that a subpoena be issued for service on Mr. Ruddock to ensure his attendance at the resumption of the hearing. The hearing reconvened on the 19th day of May, 2001 at which time neither Mr. Shaun Reynolds nor Mr. Trevor Ruddock were in attendance. An Affidavit sworn to by Mr. Daniel Robinson, Bailiff for the parish of Hanover confirmed that Mr. Trevor Ruddock had been duly served with the subpoena to compel his attendance on the 19th day of May, 2001 and an Affidavit of Eulalee Steele sworn to on the 18th day of May, 2001 confirmed service by post on the 10th day of April, 2001 upon Mr. Reynolds of the Notice of Hearing for the 19th day of May, 2001. No explanation was received for the absence of Mr. Shaun Reynolds and Mr. Trevor Ruddock on the 19th day of May, 2001.

In keeping with the provisions of the Legal Profession Act we find as follows:-

- (1) The Attorney was employed by the Complainant to act as his Attorney-at-Law in the sale of the property which was being purchased by the Complainant from Charles Wilson being the land registered at Volume 1164 Folio 244 and formerly registered at Volume 475 Folio 8 of the Register Book of Titles.
- (2) The Attorney acted for both the purchaser and the vendor in the sale.
- (3) At the time of his retainer to act the Attorney was paid \$205,000.00 by the Vendor and \$74,000.00 by the Complainant for the costs to effect the sale and to pay Stamp Duty and Transfer Tax thereon.
- (4) The Attorney failed to stamp the Agreement for Sale and to take the other steps necessary to complete the sale.
- (5) The Attorney has also failed to account for the sums paid to him for the payment of Stamp Duty, Transfer Tax, fees, and costs for effecting the sale.

We find that the Attorney had no reasonable or justifiable cause for not effecting the sale and completing the transfer and we reject the Attorney's evidence that the Complainant was unable to pay the balance of \$250,000.00. In any event non-payment was not a good ground for failing to complete the sale as the Agreement for Sale specifically provided that the said sum of \$250,000.00 was to be paid upon delivery of the title registered in the name of the Complainant.

The Attorney, in our view, is guilty of all the charges set out in the Complaint that is to say breaches of :-

- (a) Canon VII (a) and (b) of the Legal Profession (Canons of Professional Ethics) Rules as the Attorney has failed to account for all monies in his hand for the account or credit of the Complainant although he has been reasonably required to do so.
- (b) Canon IV (r) of the Legal Profession (Canons of Professional Ethics) Rules as the Attorney has not dealt with the Complainant's business with all due expedition.
- (c) Canon IV (r) of the Legal Profession (Canons of Professional Ethics) Rules as the Attorney has not provided the Complainant with all information as to the progress of his business with due expedition although the Complainant has reasonably required him to do so.
- (d) Canon IV (s) of the Legal Profession (Canons of Professional Ethics) Rules as the Attorney has acted with inexcusable and deplorable negligence in the performance of his duties.

It is ordered that :-

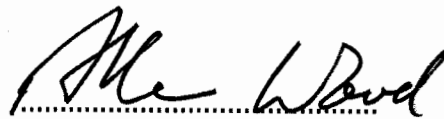
1. Pursuant to section 12 (4) (a) of the Legal Profession Act the Attorney-at-law, Shaun Reynolds is suspended from practice as an attorney-at-law for a period of two years commencing from the 27th July 2001 on the conditions set out in paragraph 2 hereof.
2. That the period of suspension which is stipulated in paragraph 1 of this Order shall be reduced to a period of six months from 27th July 2001 provided that the Attorney-at-law Shaun Reynolds complies with the all the terms hereinafter set out by delivering the following to the General Legal Council on or before the 14th day of September, 2001 namely:
 - (i) Duplicate Certificate of Title for all that parcel of land part of Lucea known as Park Lodge situate at Lorenton Avenue in the parish of Hanover registered at Volume 1164 Folio 244 of the Register Book of Titles.
 - (ii) The original agreement for sale made between the Complainant Yann Martinet and Charles Wilson for the sale of the aforesaid property registered at Volume 1164 Folio 244 of the Register Book of Titles.
 - (iii) A receipt or other documents from the office of the Stamp Commissioner evidencing the payment of transfer tax, stamp duty and penalties on the aforesaid agreement for sale made between Charles Wilson and Yann Martinet or failing which the Attorney, Shaun Reynolds is ordered to pay to the General Legal Council on or before the 14th day of September, 2001 the sum of \$750,000.00 which is to be applied and paid over to the Complainant Yann Martinet towards defraying the statutory duties and costs of completing the sale.

- (2) It is further recommended that the General Legal Council do cause an investigation to be made of the books, records, files, accounts and other documents of the Attorney, Shaun Reynolds pursuant to the provisions of the Legal Profession (Accounts and Records) Regulations 1999 and that the cost of such investigation is to be borne by the Attorney, Shaun Reynolds.
- (3) Costs are awarded to the Complainant in the sum of \$30,000.00 and \$20,000.00 to the General Legal Council to be paid by the Attorney Shaun Reynolds.

Dated the 27th day of July, 2001


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Mrs. Margarett May Macaulay


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Mrs. Merlin Bassie


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Mr. Allan S. Wood