

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

**COMPLAINT 94/2000**

BETWEEN	JACQUELINE GRANT GERTRUDE KEENE	COMPLAINANTS
AND	NANCY TULLOCH-DARBY	The ATTORNEY
PANEL	MRS. PAMELA BENKA-COKER QC MISS. BERYL ENNIS MR. ALLAN S. WOOD	

Appearances : PATRICK BAILEY and JILLIAN MULLINGS instructed by JENNIFER MESSADO & CO for the Complainants

The Attorney Nancy Tulloch-Darby not appearing or represented

Dates of Hearing: 10<sup>th</sup> August, 2<sup>nd</sup> and 3<sup>rd</sup> November, 2001; judgment November 29, 2001

The Complaint in this matter was made on 4<sup>th</sup> June, 2001. By reason of the gravity of the charges against the Attorney, the Disciplinary Committee of the General Legal Council directed that the Complaint be heard as a matter of urgency. On the first day of hearing Nancy Tulloch-Darby was called but there was no answer. The Panel referred to the Affidavit of Mervelyn Walker sworn on 2<sup>nd</sup> August, 2001 which confirmed service on 13<sup>th</sup> July, 2001 of notice of hearing upon the Attorney by post and as well as by hand delivery to the Attorney's office. Accordingly the hearing of the complaint commenced in the Attorney's absence on 10<sup>th</sup> August, 2001. Rule 8 of the Fourth Schedule to the Legal Profession Act permits this procedure.

The charges against the Attorney as set out in an Affidavit jointly sworn by the Complainants and dated 7<sup>th</sup> June, 2001, are as follows:

- "1. She has not provided us with all information as to the progress of our business with due expedition, although we have reasonably required her to do so.
2. She has not dealt with our business with all due expedition
3. She has acted with inexcusable or deplorable negligence in the performance of her duties

4. She has not accounted to us for all moneys in her hands for our account or credit, although we have reasonably required her to do so."

Further by Supplemental Affidavit sworn to by Jacqueline Grant on 10<sup>th</sup> August, 2001 amendments were sought to the Complaint, which were granted on 2<sup>nd</sup> November, 2001, in keeping with the Disciplinary Committee's powers of amendment pursuant to the Legal Profession Act, Fourth Schedule r. 17. The additional charges of complaint were as follows:

"5. That Nancy Tulloch-Darby acted dishonourably and dishonestly when she fraudulently converted the sum of SEVENTEEN MILLION FOUR HUNDRED AND SEVENTY-FOUR THOUSAND SEVEN HUNDRED AND SIXTY-TWO DOLLARS (\$17,474,762.00) to her own use and benefit, or to the use and benefit of another, which said sum had been specifically entrusted to Nancy Tulloch-Darby for the specific purpose of acquiring the following properties.:

- a) No. 62 Fairfax Drive
- b) Apartment No. 55, Fisherman's Point
- c) No. 61 Morningside Drive
- d) No. 62 Burbank Avenue

for and on behalf of Jacqueline Grant and Gertrude Keene, as Purchasers hereof.

6. That Nancy Tulloch-Darby uttered a forged document to wit a document described as an Agreement of Sale purportedly signed by Jacqueline Grant and Gertrude Keene, and which signatures were witnessed by the said Nancy Tulloch-Darby, well knowing that the said document was not signed by Jacqueline Grant and Gertrude Keene, or either of them, and further well knowing that the said Jacqueline Grant and Gertrude Keene did not authorize anyone to sign on their behalf."

In his address to the panel, Learned Counsel for the Complainants rightly conceded that the charge that the Attorney had not dealt with her clients' business with all due expedition (Complaint No. 2 above) and that she had acted with inexcusable or deplorable negligence (Complaint No. 3 above) were not material or relevant, as the gravamen of the complaint was that the Attorney had fraudulently converted \$17,474,762.00 which had been entrusted to her by the Complainants, who were her Clients, and that in the course of the scheme to convert the aforesaid sum of money the Attorney had forged her clients signature to the Agreement for Sale and had put forward or uttered that forged document. The Complainants thereby were assuming the burden of establishing

fraud and dishonesty and not the less grave offences of negligence and neglect. In substantiation of the Complaint, evidence was tendered by Jacqueline Grant, Gertrude Keene and Jennifer Messado.

In summary the evidence of Jacqueline Grant was that she was a businesswoman who had resided in the United States for 29 years with her family comprising her mother Gertrude Keene and five brothers. That in the year 2000 she had taken a decision with her mother, Gertrude Keene and her five (5) brothers that the entire family would return to reside in Jamaica and for that purpose she set about acquiring properties in Jamaica.

### **62 Fairfax Drive**

Jacqueline Grant's evidence was that during a visit to Jamaica in January, 2001, she saw the premises 62 Fairfax Drive, advertised for sale in the newspaper. Upon calling the advertised telephone number she spoke to a person who identified herself as Nancy Tulloch-Darby and an arrangement was made to meet at the property. She visited the premises as arranged accompanied by her mother and there she met the Attorney who professed that although someone else had already paid a deposit on the property, she might be able to secure the property for the Complainants. At that first meeting the Attorney explained that she was a lawyer and that she was selling the property on behalf of the vendor and that she acted as a real estate agent. The Attorney advised that the vendor was asking for \$6, 000,000.00 but that she could possibly get a lower price.

On the following day the Complainants visited the Attorney at her offices at 65 Barry Street, Kingston and were advised by the Attorney that the Vendor was prepared to sell the property for \$5.8 million. The Complainants on the same day paid to the Attorney a deposit of \$873,000.00 and received a receipt from the Attorney, which was admitted in evidence as exhibit 1A. In a subsequent meeting prior to the witness departing the island, the Attorney advised the witness as to the costs associated with the sale, such as, stamp duty, closing costs and her real estate commission. The witness explained that she felt comfortable with the Attorney and having discussed the matter with her mother and brothers, she retained her not only to purchase 62 Fairfax Drive, but also to act on her behalf in purchasing other properties introduced by the Attorney as hereafter detailed.

Further payments were made to the Attorney by Jacqueline Grant on account of the purchase of 62 Fairfax Drive, namely, \$2,373,000.00 paid on 22<sup>nd</sup> January 2001 and \$2,791,000.00 paid on 5<sup>th</sup> March, 2001, so that the Attorney received on account of the purchase of 62 Fairfax Drive \$6,000,037.00 and these further payments were substantiated by receipts issued by the Attorney admitted in evidence as exhibits 1B and 1C.

Introduced into evidence and marked as Exhibit 2 was an agreement for sale dated March 23, 2001 and bearing a duly notarized signature for the named vendor Vassal Bartley and also bearing the signatures of the Complainants witnessed by the Attorney purporting to act as a Justice of the Peace. This

document was duly stamped and was returned to the Complainants by Miss Norma Linton QC, the attorney who acted for the vendor and who, as stipulated by that agreement, had carriage of the sale of 62 Fairfax Drive. The purpose for returning the document was to enable the Complainants to obtain a refund of the duties and tax paid consequent on the cancellation of that sale by reason of the Complainants' inability to complete the sale as hereafter explained.

The evidence of Jacqueline Grant, however, was that her signature and that of her mother on the document Exhibit 2 were forgeries as neither she nor her mother had signed that document.

Jacqueline Grant went on however to tender into evidence another document purporting to be an agreement for sale in respect of 62 Fairfax Drive. By her account this other document was the agreement prepared in January 2001 by the Attorney for sale for 62 Fairfax Drive which was signed by the witness and her mother and their signatures witnessed by the Attorney. This document was tendered and admitted in evidence as exhibit 3 and was seen to contain a provision that the Attorney should have carriage of sale, which was consistent with the witness's testimony that the Attorney represented that she was selling the property on behalf of the Vendor. However, exhibit 3 was not signed by the named vendor, Vassal Bartley, nor was it dated or stamped.

Exhibit 2, bearing a signature for the vendor and purporting to bear the signatures of the Complainants witnessed by the Attorney as a Justice of the Peace, was not in accordance with Exhibit 3 as it contained a provision that carriage of sale should be with Miss Norma Linton Q.C, of 7 Duke Street, Kingston. Unlike exhibit 3 which had no signature for the vendor, but had the genuine signatures of the Complainants, exhibit 2 bore the notarized signature of the vendor.

It was explained in evidence that subsequent to the termination of the Attorney's retainer, the Attorney's papers and files were obtained by the Complainants' new attorney, Jennifer Messado who found exhibit 3 in the Attorney's files. Jennifer Messado also gave evidence that she received and photo-copied the Attorney's files which were included in a bundle of documents admitted as Exhibit 2A.

The sale transaction in respect of 62 Fairfax Drive did proceed on the basis of exhibit 2 and Miss Norma Linton QC, the attorney acting for the vendor and having carriage of sale was paid the sum of \$1 million by the Attorney but no further sum was forthcoming despite the fact that the Attorney had received the full amount sufficient to cover the purchase price and all costs incidental to the sale. The Attorney's failure to pay over the balance led to the sale of 62 Fairfax Drive being cancelled. Under cover of a letter dated June 21, 2001 from Miss Linton to Jennifer Messado (Exhibit 2A page 58) the amount paid to the vendor's attorney was refunded in full when the Complainants could not complete the sale. By that date the Attorney had absconded when she was called on to account for the money paid to her by the Complainants in respect, not only of 62 Fairfax Drive, but also with respect to the purchase of three other

It was the evidence of Jacqueline Grant that, having won her confidence, the Attorney proceeded to act on her behalf and was paid money for the acquisition of those three other properties.

To understand the fraud perpetrated by the Attorney it must be borne in mind that in each case she introduced the Complainants to the respective properties, representing herself to be the sales agent or a representative of the vendor and hence the need in some of the transactions to forge the Complainants signatures while they were abroad or to alter the sales document after it had been signed by them.

### **61 Morningside Drive, also known as Lot 334 Havendale.**

Again with respect to this property, Jacqueline Grant's evidence was that the Attorney adopted the device of having the Complainants sign an agreement which did not have the vendor's signature, whilst forging their signatures to another document bearing the genuine signatures of the Vendor. Jacqueline Grant identified an undated agreement for sale which specified that Taylor, Deacon & James, Attorneys-at-Law, would have carriage of sale of 61 Morningside Drive and naming the vendor as Beryl O'Connor-Crooks. This document was entered into evidence as exhibit 6A and specified the sale price of 61 Morningside Drive as being \$7 million. Exhibit 6A also specified the Attorney as acting for the purchasers. It was evidence of Jacqueline Grant that her purported signature and that purporting to be her mother's to exhibit 6A, which were again witnessed by the Attorney, were forged.

Also, found in the Attorney's files was another Agreement for Sale relating to 61 Morningside Drive which specified the purchase price as being \$6 million and naming the two vendors as being Joseph Alexander Crooks and Beryl O'Connor-Crooks. This document which was not signed by the vendors did have the signatures of the Complainants witnessed by the Attorney. These signatures, Jacqueline Grant identified as being genuine.

It appears by letter from Taylor, Deacon & James to the Attorney dated 13<sup>th</sup> March, 2000, page 87, exhibit 2A that Joseph Alexander Crooks had died and that the sole vendor was indeed Beryl O'Connor-Crooks.

For the purpose of acquiring 61 Morningside Drive the Complainants paid to the Attorney \$6,054,240.00 in two payments as evidenced by receipts issued by the Attorney dated 22<sup>nd</sup> January, 2001 and 9 February, 2001 exhibit 7A and 7C. A further payment of \$1,305,000.00 was also made by the Complainants to the Attorney and evidenced by a receipt issued by the Attorney also dated 9<sup>th</sup> February, 2001, exhibit 7B which represented this sum as being intended as a part payment towards 61 Morningside Drive. However, Jacqueline Grant maintained in her evidence that this was a payment made towards acquisition of another property, 26 Burbank Avenue.

However, it should be remembered that the Agreement for Sale, exhibit 6A, which did not have the genuine signatures of the Complainants specified the

price for 61 Morningside Drive as \$7 million, whereas the Agreement, exhibit 6 which was signed by the Complainants specified the price as \$6,000,000.00.

Having paid the Attorney the full purchase price for 61 Morningside Drive the Attorney only paid to the Vendor's attorney, Taylor, Deacon & James the sum of \$1,050,000.00. Taylor, Deacon & James acting for the vendor eventually refunded \$1,032,750.00 whilst the difference was applied to their costs. The Attorney has not accounted for the balance of the money paid to her by the Complainants.

## **26 Burbank Avenue**

In respect of the property 26 Burbank Avenue, Jacqueline Grant identified her signature and that of her mother Gertrude Keene as appearing on an agreement for the purchase of that property and this document was admitted into evidence as exhibit 10. However, Jacqueline Grant maintained that the purchase price which had been discussed and agreed with the Attorney was \$6,000,000.00, whereas, the price specified in the document was \$6,250,000.00.

Also tendered in evidence by Jacqueline Grant as exhibit 11 was a receipt issued by the Attorney dated 5<sup>th</sup> March, 2001 which confirmed payment by the Complainants to the Attorney of \$2,000,000.00 and which stated that this payment was, "further deposit sale, 26 Burbank Avenue, Kingston 19." This, according to the evidence of Jacqueline Grant, confirmed that she had made an earlier payment of \$1,305,000.00 for purchase of 26 Burbank Avenue, which was the sum represented in exhibit 7B as having been paid on account of 61 Morningside Drive. No payments whatsoever were made by the Attorney to the vendors or the vendors' attorney Keith Jarrett in respect of 26 Burbank Avenue and the Attorney has not accounted for the money paid to her by the Complainants.

## **Apartment 55 - Fisherman's Point**

Jacqueline Grant's evidence with regards this property was that following discussions with the Attorney, an Agreement was signed by herself and her mother, Gertrude Keene, to purchase this property from Paul Engo, whose occupation was stated on the agreement as being a Judge of the International Court of the Sea. Jacqueline Grant's evidence was that the agreement which she signed specified a price of J\$4 million and was not signed by the vendor at the time. The document found in the Attorney's files, however, and which had a signature on behalf of the vendor specified that the sale price was US\$100,000.00 with an initial payment of US\$15,000.00, of which US\$10,000.00 would be the deposit and that the balance of US\$85,000.00 was to be paid within thirty (30) days of signing. The Vendor's Attorney, Miss Carol M. Vassall of C M Vassall & Co was specified as having carriage of sale.

Jacqueline Grant gave evidence that the purchase price of J\$4,000,000.00 for this property was paid in full to the Attorney and receipts issued by the

Attorney were admitted in evidence as exhibits, 4A, 4B and 4C, respectively dated 23<sup>rd</sup> April, 2001, 2<sup>nd</sup> and 9<sup>th</sup> April, 2001 to substantiate payments having been made to the Attorney totaling \$4,000,083.00. The Attorney in turn tendered to the Vendor's Attorney a cheque for \$700,000.00 which was initially returned for insufficient funds, and had to be replaced, see letter from C M Vassall & Co to Nancy Tulloch-Darby dated 14<sup>th</sup> May, 2001, page 72 exhibit 2A. An earlier letter from C M Vassal & Co to the Attorney dated 8<sup>th</sup> May, 2001 (Exhibit 2A p 70) had also made complaint that Jamaican dollars had been tendered when the Agreement specified the price in United States currency. No further sum whatsoever was forthcoming from the Attorney with the result that the vendor purported to forfeit the entire sum of \$700,000.00.

Jacqueline Grant's evidence was that the attempt to forfeit the entire payment of \$700,000.00 made in respect of Apartment 55, Fisherman's Point was being challenged by proceedings in the Supreme Court, and it was noted that among other things the notice making time of the essence signed by the vendor's attorney-at-law C M Vassall & Co, and dated 31<sup>st</sup> July, 2001 (tendered and admitted as exhibit 5), threatened not only the forfeiture of the 10% deposit on account of the purchase price but also forfeiture of a sum on account of costs, expenses and interest at the rate of 30 percent per annum, in circumstances where the agreement for sale, at special condition 4, expressly stipulated for interest accruing at a rate of 18 percent per annum on overdue sums.

We cannot help but interject a remark that the position taken by the vendor of 55 Fisherman's Point, purporting to forfeit the entire sum paid, even in excess of what could be lawfully regarded as a true deposit is to be contrasted with the position taken by the vendor of 62 Fairfax Drive, where having appreciated the plight of the Complainants caused by the fraud of the Attorney, the entire payment of \$1,000,000.00 received in that sale was refunded without any deduction whatsoever. The conduct of Vassal Bartley, the vendor of 62 Fairfax Drive, and of his attorney, Miss Norma Linton who had conduct of that sale, is commendable in what is otherwise a sorry saga, and a poor reflection on the state of the legal profession.

Returning to the evidence dealing with Apartment 55 Fisherman's Point, Jacqueline Grant deposed that having received the assurances of the Attorney that the sale had been completed and the vendor paid in full, she proceeded to expend \$400,000.00 in acquiring fixtures and fittings to refurbish the apartment. Her evidence in that regard was supplemented by that of her mother Gertrude Keene.

Gertrude Keene testified that she was taken to view the apartment by the Attorney, who gained access by requesting the Manager of the complex to open the apartment. The Attorney made arrangements for water and electricity to be transferred into the name of the Complainants and the Attorney gave her a key for the apartment. On the Labour Day holiday in May, 2001, she proceeded to the apartment with her workmen but was unable to open the front door with the key given to her by the Attorney. She gained access to the apartment with the assistance of the manager.

Gertrude Keene's evidence was that she then spoke with the Attorney by telephone. The Attorney was weeping and gave her assurance that the matter would be sorted out; however, Gertrude Keene stated in evidence that by this time her suspicions were aroused and she proceeded to retain Jennifer Messado & Co to take over all her business and to act in the various transactions in which the Attorney had acted on her behalf. The matter was also reported to the police and a warrant issued for the Attorney's arrest.

Jennifer Messado also gave evidence to confirm that she was retained by the Complainants towards the end of May or in early June, 2001 and that her attempts to make contact with the Attorney failed, but she succeeded in making contact with the Attorney's husband Mr. Derrick Darby, who is also an attorney-at-law practicing from the same premises at 65 Barry Street, Kingston, and, through him, she was able to obtain the Attorney's files and documents concerning the transactions in which the Attorney had acted for the Complainants. The relevant documents were copied under her supervision and compiled in the bundle of documents admitted as exhibit 2A.

Turning to consider the complaints made against the Attorney we concur with the submission made by Counsel for the Complainants that the gravamen of the misconduct alleged against the Attorney relates to acts of dishonesty falling into three categories.

- a) failure to account
- b) fraudulent conversion
- c) uttering of a forged document, namely, exhibit 2, the agreement for sale in respect of 62 Fairfax Drive.

Despite the fact that two matters of complaint, namely, fraudulent conversion and the uttering of a forged document could be the basis of criminal charges, these proceedings are not criminal proceedings but rather proceedings brought pursuant to section 12 of the Legal Profession Act and the Canons made thereunder, which confer jurisdiction upon the Disciplinary Committee to hear and determine complaints of professional misconduct made against members of the legal profession.

In determining such complaints, however, particularly where the complaint against an attorney-at-law involves allegations of fraud, dishonesty or moral turpitude, it is well settled by the decided cases that it is requisite that the standard of proof beyond reasonable proof be applied in coming to a determination: see Bhandari v Advocates Committee [1956] 3 ALL ER 742 (PC), Re: a Solicitor [1992] 2 ALL ER 335. This principle has been consistently accepted and applied in previous decisions of this Disciplinary Committee and we so apply that standard in the present case.

### **The Failure to Account**

The Legal Profession (Canons of Professional Ethics) Rules 1978 which were promulgated pursuant to section 12 (1) (a) and (7) of the Legal Profession Act prescribes the general duty of an attorney-at-law to account to the client.



Canon VII (b) (ii) provides as follows:

“An Attorney shall-

... (ii) Account to his client for all moneys in the hands of the attorney for the account or credit of the client, whenever reasonably required to do so and he shall for these purposes keep the said account in conformity with regulations which may from time to time be prescribed by the General Legal Council.”

Further, Canon VII (b) has been supplemented by the Legal Profession (Accounts and Records) Regulations 1999 Rule 4, which requires the Attorney to maintain a clients trust account into which all trust money collected or received by the Attorney must be paid. Rule 2 (1) of the aforesaid 1999 Regulations defines trust money to include:

“money received by an attorney that belongs in whole or in part to a client or that is held on a client’s behalf or to his or another’s direction or order...”

The effect of the aforesaid rules and regulations is that the Attorney in the present case ought to have paid into a trust account all money received from the Complainants, which money was paid to her by the Complainants for the specific purpose of purchasing the four (4) properties previously identified. The obligation of the Attorney to account to the Complainants, who were her clients, meant that the Attorney was not entitled to use the Complainants’ money for any other purpose than that for which it was paid to her and certainly not for her own use and benefit. If the Attorney was not able to comply with the Complainants’ instructions as to how their money should be utilized, that money ought to have been refunded to the Complainants with interest. We therefore find that in breach of the aforesaid rules and regulations the Attorney has not accounted to the Complainants for the money entrusted to her for the purpose of acquiring the four (4) properties, namely, 62 Fairfax Drive, Apartment 55, Fisherman’s Point, 61 Morningside Drive and 62 Burbank Avenue. After giving credit for the amounts paid by the Attorney and refunded in respect to the aborted purchase of 62 Fairfax Dive and 61 Morningside Drive and giving credit also for the sum of \$700,000.00 paid in respect of Apartment 55 Fisherman’s Point, the total sum for which the Attorney has not accounted amounts to \$17,474,762.00

### **Fraudulent Conversion**

It follows from the above findings that there is overwhelming evidence that the Attorney has fraudulently converted the Complainants’ money which was entrusted to her. The total sum converted amounts to \$17,474,762.00, after crediting the sums refunded to the Complainants by the vendors in respect of 62 Fairfax Drive, and 61 Morningside Drive, and also giving credit for the payment of \$700,000.00 made in respect of Apartment 55, Fisherman’s Point and which, on the evidence, is the subject of other legal proceedings between the Complainants and the vendor of that property.

Although it is hardly necessary, we nonetheless refer to the relevant provisions of the Larceny Act which set out the ingredients of the offence of fraudulent conversion. Section 24 (1) (iii) (b) provides that:

“Every person who -

(a) having either solely or jointly with any other person received any property for or on account of any other person, fraudulently converts to his own use or benefit, or the use or benefit of any other person, the property or any part thereof or any proceeds thereof, shall be guilty of a misdemeanor ...”

Section 24 is to be read with section 64 (2) of the Larceny Act which provides :

“On the trial of any indictment for the fraudulent conversion of any property, or the proceeds thereof, it shall be prima facie evidence of such conversion if it is established by evidence that the person to whom the property was entrusted-

- a) absconded without accounting; or
- b) kept out of the way in order not to account; or
- c) having been duly called upon to account failed to give any satisfactory account of such property or the proceeds thereof.”

The provisions of the Larceny Act were recently applied by the Jamaican Court of Appeal in a case involving another attorney-at-law: see Sonia Jones v. R. RMCA 8/2000 unreported judgment 25<sup>th</sup> April, 2001. The effect of these provisions is that once it has been established, as in the present case, that the Attorney had received money for the account of her clients and as in the present case the Attorney has absconded or has failed to give an account when called on to do so, then prima facie, a case of fraudulent conversion is made out, and the onus would then be on the Attorney to give an adequate explanation. As already found the Attorney has failed to account for the sum of \$17,474,762.00 and the only reasonable inference which can be drawn in the circumstances is that she has fraudulently converted that sum.

### **Uttering a Forged Document**

The evidence is that the Complainants did not sign Exhibit 2, which is the agreement for sale for 62 Fairfax Drive, dated 23<sup>rd</sup> March, 2001 and which was signed by the vendor Vassal Bartley and duly stamped as the agreement governing the sale of that property. The evidence is that the Complainants' signatures to that document, which were witnessed by the Attorney, purporting to represent herself to be a Justice of the Peace, were forged and the only reasonable inference which can be drawn is that the Attorney was a party to the forgery and that the forged document emanated from her. This inference is also

substantiated by evidence that other documents found in the Attorney's files and papers handed over to the Complainants' new Attorney, Jennifer Messado, were also found to have been altered and in the case of the purchase of 61 Morningside Drive there were two (2) agreements for sale, one with forged signatures of the Complainants.

It is also necessary to refer to the provisions of the Forgery Act to identify the ingredients which must be established to make out the complaint of uttering a forged document. Section 3 (1) and (2) (a) provides as follows:

3 (1) "For the purposes of this Act, 'forgery' is the making of a false document in order that it may be used as genuine, and, in the case of the seals and dies mentioned in this Act, the counterfeiting of a seal or die; and forgery with intent to defraud or deceive, as the case may be, is punishable as in this Act provided.

3 (2) A document is false within the meaning of this Act if the whole or any material part thereof purports to be made by, or on behalf or on account of a person who did not make it nor authorize its making; or if, although made by, or on behalf or on account of, the person by whom or by whose authority it purports to have been made, the time or place of making, where either is material, or, in the case of a document identified by number or mark, the number or any distinguishing mark identifying the document is falsely stated therein; and in particular a document is false-

(a) if any material alteration, whether by addition, insertion, obliteration, erasure, removal, or otherwise, has been made therein..."

Uttering is defined in section 9 (1) and (2) of the Act as follows:

"9 (1) Every person who utters any forged document, seal, or die, shall be guilty of an offence of the like degree (whether felony or misdemeanor), and on conviction thereof shall be liable to the same punishment, as if he himself had forged the document, seal, or die.

(2) A person utters a forged document, seal, or die, who, knowing it to be forged, and with either of the intents necessary to constitute the offence of forging the document, seal, or die, uses, offers, publishes, delivers, disposes of tenders in payment or in exchange, exposes for sale or exchange, exchanges, tenders in evidence, or puts off such forged document, seal, or die."

On the evidence we find that the Attorney was party to the forging of the signatures of the Complainants to the agreement dated 23<sup>rd</sup> March, 2001 in respect of the purchase of 62 Fairfax Drive, which document was put forward by her and used as genuine by delivering same to the vendor's attorney and utilized as genuine for the purpose of the payment of stamp duty and transfer tax.

Further any material alteration to a document without the authority of the maker would constitute the commission of a forgery and indeed where a solicitor altered the date of a document which was relevant for the determination of stamp duty, it was held that the solicitor had committed an act of forgery within the meaning of the equivalent provisions of the Forgery Act 1913 (U.K.): see R v WELLS [1939] 2 ALL ER 169 (CCA). There is no reasonable doubt that the attorney knew that the document exhibit 2 contained the forged signatures of the Complainants and that the Attorney with such knowledge used or allowed that document to be used as a genuine document. We find that the Attorney did on the totality of the evidence utter a forged document.

The commission of acts amounting to fraudulent conversion and the uttering of a forged document amounts to professional misconduct and a breach of Canon III (k) (ii) of the Canons of the Legal Profession which provides:

(k) "Where an Attorney commits any criminal offence which in the opinion of the Disciplinary Committee is of a nature likely to bring the profession into disrepute, such commission of the offence shall constitute misconduct in a professional respect if-

(ii) Although he had not been prosecuted the Committee is satisfied of the facts constituting such criminal offence..."

In the present case the Panel is satisfied on the evidence that criminal offences have been committed by the Attorney which have brought the legal profession into serious disrepute. Indeed the magnitude of the Attorney's defalcations and other acts of misconduct, committed in such a small society must inevitably contribute to the low public esteem in which the legal profession is held. In summary we find as follows:

- 1) The Attorney was retained by the Complainants to act on their behalf in purchasing the properties, 62 Fairfax Drive, Apartment No. 55 Fisherman's Point, 61 Morningside Drive, and 26 Burbank Avenue.
- 2) The Attorney has failed to account to the Complainants for the sum \$17,474,762.00 which was paid and entrusted to her by the Complainants for the purpose of acquiring the aforesaid properties on behalf of the Complainants.

- 3) That the Attorney has fraudulently converted the said sum of \$17,474,762.00.
- 4) That the Attorney uttered a document, dated 23<sup>rd</sup> March, 2001, purporting to be the agreement for sale in respect of 62 Fairfax Drive, bearing the forged signatures of the Complainants, and which was in turn signed by the vendor and impressed for the payment of stamp duty and transfer tax.
- 5) As a consequence of the Attorney's acts of conversion the Complainants were not able to complete the acquisition of the said properties.
- 6) In addition to the sum of \$17,474.762.00, for which the attorney has not accounted, by reason of the Attorney's aforesaid acts of misconduct the Complainants were put to wasted expenditure amounting to \$400,000.00 in acquiring furniture and fixtures for Apartment 55 Fisherman's Point, as well as expenditure in traveling to Jamaica amounting to US\$3,000 (equivalent to JS141,000.00). By reason of the Attorney's aforesaid acts of misconduct the Complainants have therefore lost \$18,015,762.00.

In all the circumstances it is our finding and conclusion that the Attorney has been guilty of acts of dishonesty and conversion of her clients money, which has brought the Legal Profession into disrepute and which have contravened the relevant Canons and Rules of Ethics which govern the Legal Profession . The grounds of complaint have been established in our view and the Attorney has committed the following breaches:

- i) In breach of Canon VII (b) (ii) of the Legal Profession Profession (Canons of Professional Ethics) Rules, the Attorney, Nancy Tulloch-Darby has failed to account to the Complainants for all moneys in her hands for their account or credit, although they have reasonably required her to do so.
- ii Further, in breach of Canon III (k)(ii) of the Legal Profession (Canons of Professional Ethics) Rules, the Attorney Nancy Tulloch-Darby has acted dishonourably and dishonestly, in that she has fraudulently converted the sum of \$17,474,762.00 to her own use and benefit, which sum was specifically entrusted to her for the specific purpose of acquiring the properties: 62 Fairfax Drive, Apartment No. 55 Fisherman's Point, 61 Morningside Drive, and 26 Burbank Avenue.

iii. Also, in breach of Canon III (k) (ii) of the Legal Profession (Canons of Professional Ethics) Rules, the Attorney, Nancy Tulloch-Darby uttered a forged document to wit a document described as an agreement for sale of 62 Fairfax Drive, purportedly signed by the Complainants and which signatures were witnessed by the said Nancy Tulloch-Darby well knowing that the said documents had not been signed by the Complainants and well knowing that the Complainants had not authorized anyone to sign on their behalf.

iv. In breach of Canon I (b) of the Legal Profession (Canons of Professional Ethics) Rules, the Attorney Nancy Tulloch-Darby has behaved dishonourably and her behaviour has discredited the profession of which she is a member

We turn to consider the sanction which ought to be imposed, and in so doing, we remind ourselves of the principles upon which the Disciplinary Committee ought to act when considering the appropriateness of the penalty when an attorney has acted dishonestly. These principles were stated by Sir Thomas Bingham M.R. in Bolton v The Law Society [1994] 2 ALL ER 486 at 492 b:

“It is important that there should be full understanding of the reasons why the tribunal makes orders which might otherwise seem harsh. There is, in some of these orders, a punitive element: a penalty may be visited on a solicitor who has fallen below the standards required of his profession in order to punish him for what he has done and to deter any other solicitor tempted to behave in the same way. Those are traditional objects of punishment. But often the order is not punitive in intention. Particularly is this so where a criminal penalty has been imposed and satisfied. The solicitor has paid his debt to society. There is no need, and it would be unjust, to punish him again. In most cases the order of the tribunal will be primarily directed to one or other or both of two other purposes. One is to be sure that the offender does not have the opportunity to repeat the offence. This purpose is achieved for a limited period by an order of suspension; plainly it is hoped that the experience of suspension will make the offender meticulous in his future compliance with the required standards. The purpose is achieved for a longer period, and quite possibly indefinitely, by an order of striking off. The second purpose is the most fundamental of all: to maintain the reputation of the

solicitor's profession as one in which every member, of whatever standing, may be trusted to the ends of the earth. To maintain this reputation and sustain public confidence in the integrity of the profession it is often necessary that those guilty of serious lapses are not only expelled but denied re-admission. If a member of the public sells his house, very often his largest asset, and entrusts the proceeds to his solicitor, pending re-investment in another house, he is ordinarily entitled to expect that the solicitor will be a person whose trustworthiness is not, and never has been, seriously questioned. Otherwise, the whole profession, and the public as a whole, is injured. A profession's most valuable asset is its collective reputation and the confidence which that inspires."

It is implicit from the foregoing and from the very provisions of the Legal Profession Act, that the Disciplinary Committee, and its parent body, the General Legal Council have been entrusted with their powers to act in the interests of the public, and, that it is by so acting that the best interests of the legal profession will in turn also be served, for thereby public confidence in the integrity of the profession is maintained. We are satisfied that public confidence in the integrity of the members of the legal profession will not be maintained without the assurance that there will be no possibility of the repetition of the misconduct and the injury perpetrated by this Attorney.

Parliament, by promulgating the Legal Profession Act, thereby delegated the jurisdiction to discipline members of the profession who are found guilty of acts of professional misconduct to persons who are also members of the same profession. This is an expression of utmost trust and confidence that there are persons within the legal profession who are prepared to act faithfully in the protection of innocent members of the public. It is clear to the Panel that the Complainants have accumulated their money while abroad through industry and sacrifice and we deeply regret that their savings have been defrauded by a member of the legal profession, who had won their confidence and who, as a member of the legal profession, ought to have been a person deserving of their utmost trust and confidence. We can hardly think of a graver act of professional misconduct and breach of trust.

Having regard to the foregoing, it is hereby ordered:

1. Pursuant to section 12 (4)(a) of the Legal Profession Act, the name of Nancy Tulloch-Darby is struck off the Roll of Attorneys-At-Law entitled to practice in the several Courts of the Island of Jamaica.
2. Pursuant to section 12 (4)(c) of the Legal Profession Act, Nancy Tulloch-Darby is to pay to

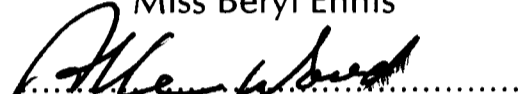
the Complainants by way of restitution the sum of \$18,015,762.00, with interest thereon at the rate of 12% per annum from the 4<sup>th</sup> June, 2001.

3. Costs in the sum of \$200,000.00 are to be paid to the Complainants by Nancy Tulloch-Darby.

Dated the <sup>27<sup>th</sup></sup> day of ~~November~~ 2001

  
.....  
Mrs. Pamela Benka-Coker QC

  
.....  
Miss Beryl Ennis

  
.....  
Mr. Allan S. Wood