

original

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

COMPLAINT NO. 251 OF 95

GRETA & VALENTINE BLAKE

COMPLAINANTS

AND

A. FREDDIE BROWN

RESPONDENT

Panel: Miss Hilary Phillips, Q.C. - Chairman
Mr. Bert Samuels
Ms. Beryl Ennis

Greta & Valentine Blake appearing in person and on one occasion represented by LO'B Williams.

The Respondent not appearing nor being represented.

The matter has had a long drawn out history. At first the Complainants wished to have representation, then proceeded without, and Mr. Brown through his own difficulties was unable to be present, and some accommodation was made in an effort to obtain his attendance. The hearings took place on the 7th November 1998, 21st May 1999 and 15th April 2000. On the 15th April, 2000 further evidence was taken from the Complainants. As the Respondent was again not present, the Panel ruled that the Notes of Evidence should be sent to him in order for him to attend the next hearing to cross-examine the Complainants and their witnesses if he so wished. If, however, he did not attend on that occasion, then the matter could be adjourned for judgement to be delivered. In spite of repeated requests from the Panel and through what can only be described as administrative bungling the matter was not called up again until the 5th October, 2002. The Respondent was served, was provided with the Notes of Evidence. He did not attend however.

We sincerely apologize for this unacceptable delay and hope that this sort of delay will not recur.

THE PROCEEDINGS

The form of application was duly filed on the 22nd day of July 1998. The Application was stated to be on the ground that the matters of fact stated in the Affidavit of the Complainants constituted "conduct unbecoming his profession on the part of the said "Freddie Brown" in his capacity as an attorney-at-law. The Affidavit in support of the Application was sworn to on the 22nd day of July 1998 and in the Affidavit, the Complainants deponed that on the 23rd September 1991 they had purchased land in the sum of Four Hundred Thousand Dollars (\$400,000.00) in cash from the law firm of Mel Brown, Freddie Brown & Co located at 60 Laws Street, Kingston. They swore an Affidavit that some of the receipts were made out from Freddie Brown and some from Elise A. Taylor, Attorney-at-Law who made out some of the receipts. They further complained that up to the time of filing the complaint, they had not received Certificate of Title for the land and therefore had been unable to enter upon the land and to carry out any form of construction which had been their original intention. They had been told that the Title for the lot could have been ready in 90 days, but this had not occurred. Their grounds of complaint were

- (i) that the attorney had not dealt with their business with all due expedition;
- (ii) he had acted with inexcusable or deplorable negligence in the performance of his duties.

The attorney is therefore charged with breaches of Canons IV(r) and (s) of the Legal Profession (Canons of Professional Ethics) Rules.

ORAL EVIDENCE OF THE COMPLAINANTS

The oral evidence in this matter was first tendered by Mrs. Greta Blake on the 7th November 1998. She gave her address as 6 Diane Crescent, Kingston 3, and her occupation as an housekeeper who used to reside in Florida. She stated that the other

Complainant was Mr. Valentine Blake, her husband. She indicated that she knew Mr. Brown, the Respondent, as he was both the vendor of the property, the subject of the complaint and the attorney acting in the matter.

She stated her case as follows:

She had been residing in Florida with her husband, and so too her sister with her husband, Mr. Franklyn Johnson. Mr. Blake was interested in purchasing property in Jamaica and Mr. Johnson recommended Mr. Freddie Brown to the Blakes' as someone who had property to sell.

Mrs. Blake, her sister and Mr. Johnson attended on Mr. Brown's offices. She was unable to remember the exact location of his office address, but she did recall going to his offices. Mrs. Blake further recalled being shown several lots and choosing a lot, Lot 10 Belgrade Manor, Kingston 19. She had difficulty remembering but eventually said, it was about 23rd September 1991. She stated quite clearly that Mr. Brown was paid money for the lot in Jamaican and United States Currency. She said it was about \$500,000.00.

She said she went to Mr. Brown's Laws Street office and obtained receipts for the moneys paid. She maintained that all the money was paid in 1991. She did not recall signing any documents. Mrs. Blake said after paying the original funds Mr. Brown wrote requesting more money in United States Currency. Then he gave the Blakes' a letter of possession but they did not receive the Certificate of Title and nine (9) years had passed up and until the time of giving evidence.

Mr. Valentine Blake gave evidence also. He said the moneys paid over to Mr. Brown were a little less than \$500,000.00. He recalled with clarity the lot purchased, 10 Belgrade Manor, Kingston 19, and he stated that he had paid the amount in United States Currency. He said he had paid this money at Laws Street.

the sum of \$49,400.00 by cheque.

Thereafter Mrs. Blake told the Panel that it was Mr. Johnson who had obtained the lawyer for them in the transaction.

Mrs. Blake stated that the lawyer had given them the Letter of Possession dated 31st May 1994 which was tendered as Exhibit 2 and is set out below in its entirety.

LETTER OF AUTHORITY

To: Mrs. & Mrs. Blake
6 Dianne Crescent
Kingston 3

Dear Mr. & Mrs. Blake:

You are hereby authorised to enter upon and take possession of Lot Numbered 10 at Belgrade Manor, Kingston 19, purchased by you under an Agreement for Sale duly executed by the Purchasers and the Vendor.

Dated this 31st day of August 1994

Yours faithfully

Sgd: Freddie Brown
A. Freddie Brown (Mr)
Attorney-at-Law
60 Laws Street
Kingston

Mrs. Blake further informed the Committee however that in spite of receipt of this letter the Complainants did not get possession of the land. They received no title and when they did go to the property, they were unable to identify their lot, as there were a lot of "bushes and trees. It is like a big jungle." Mr. Blake said that the Complainants had originally been able to identify their lot as the one they were going to buy as Mr. Brown had taken them up there and showed them their lot. He (Mr. Blake) had been able to identify it then, as he (Mr. Brown) had taken a bulldozer there cleared a section and they were able to see the lot from the cleared land. But Mr. Blake said that they did not get anything else to point out their lot and although Mr. Brown had promised to go back and take them up there, he had

not turned up to do so. Mrs. Blake also said that to date she had not received any Surveyor's Report. Mr. Blake stated that Mr. Johnson would have to clarify the true role that Mr. Brown played in this matter, but confirmed that in his recollection Mr. Brown had told them that he was a lawyer, and had so acted. Mrs. Blake's position was that Mr. Brown had been instructed to complete the matter and to give them the Title and he had acted with inexcusable or deplorable negligence in that regard and had failed to deal with their business with due expedition.

Finally Mrs. Blake tendered a Statement of Account dated 2nd June 1994 from Mel Brown, Freddie Brown & Co, as Exhibit 3 which showed a balance outstanding to Mr. Brown in the sum of \$36,220.16. Mrs. Blake said that amount had also been paid.

Mr. Franklyn Johnson gave evidence.

He stated that he had introduced the Blakes to Mr. Brown as Mr. Brown had been selling, which he said he knew, as he saw that information in the paper. That both Mr. Brown and Mrs. Elise A. Taylor were selling land.

Mr. Johnson said he took the Blakes to Mr. Brown's office. He knew that Mr. Brown was an attorney and that he was acting as an attorney for himself and that he wanted cash. He confirmed that Mr. Brown was acting, as an attorney for the Blakes too. He said that Mr. Brown, his son, the Blakes and his wife had all visited the property to look at the land. He said that there was a bulldozer there doing some weed cutting and the lot to be purchased by the Blakes was pointed out to them, that is their lot different from all the others.

Mr. Johnson stated that he had seen a plan of the property on the wall in Mr. Brown's office, which had been pointed out to him by Mr. Brown as being the plan of the property. Mr. Brown, he said, insisted that he wanted cash and also in United States Currency. Mr. Johnson said he had been present when the Blakes paid over the money. Sometimes he said Mrs. Blake's sister was also present. He confirmed also that the Title was

supposed to have been produced within six (6) weeks.

Mr. Johnson said that no Agreement for Sale was ever produced to the Blakes for their signature, that is not in the office of Mr. Brown when he went there with Mrs. Blake. He indicated that he knew Mrs. Elsie Taylor as he had done some real estate business with her before.

Finally he stated that he had gone with the Blakes to Mr. Brown's office when they were trying to get information from him with regard to the progress of the transaction, but there were always a million and one stories, he said, given by Mr. Brown as to why the transaction had not been completed and he always promised that the purchase would be completed.

That was the end of the case for the Complainants.

The Complainants case is very clear.

The Blakes paid over sums to Mr. Brown acting as an Attorney-at-Law on their behalf as purchasers and on his own behalf as Vendor of Lot 10 Belgrade Manor, Kingston 19. Moneys were requested in cash and were paid in United States Currency and Jamaican Currency in cheque and/or cash. Sums totalling Three Hundred and Forty Six Thousand and Twenty-Nine Jamaican Dollars and Eighty-Four Cents (J\$346,029.84) and Three Thousand One Hundred and Twenty-Five United States Dollars (US\$3,125.00) were paid over to Mr. Brown as can be seen from the receipts, all referable to the purchase transaction.

A Certificate of Title ought to have been produced.

A letter of Authority was given (Exhibit 2).

Mr. Brown having identified the lot, either through bushes and trees or a plan on the wall, has not several years later, produced the Certificate of Title for the premises.

THE BURDEN AND STANDARD OF PROOF

The burden of proof is on the Complainants to prove the allegations made against the Respondent. The standard of proof applicable once there is any element of deceit or moral turpitude is a high standard of proof and not a mere balance of probabilities.

In this case, the Complainants allege that they have given sums of Three Hundred and Forty Six Thousand and Twenty-Nine Jamaican Dollars and Eighty-Four Cents (J\$346,029.84) and Three Thousand One Hundred and Twenty-Five United States Dollars (US\$3,125.00) to the Respondent, without any or any credible information as to the progress of the matter and without any accounting of the sums so provided. In this case therefore, the Panel should apply the criminal standard of proof, that is to say proof to the point where the members feel sure that the charges are proved or proved beyond reasonable doubt.

See *Bhandari & Associates [1956] All ER, 742 and 744*

See *Re a Solicitor [1992] 2 All ER, 35*

FINDINGS OF FACT

We find as follows:

- (1) Mr. & Mrs. Blake attended on the offices of Mr. Brown, Attorney-at-Law of 60 Laws Street, Kingston and entered into an agreement for sale with him, acting as Vendor, attorney for himself and for the Blakes, the propriety of this action will be addressed later in this judgement.
- (2) Mr. Brown requested cash and the following funds were duly paid over to him.
 - 1) 23rd September 1991 - \$50,000.00
 - 2) 24th September 1991 - \$49,400.00
 - 3) 2nd October 1991 - \$60,000.00
 - 4) 4th October 1991 - \$186,629.84
 - 5) 30th January 1992 - US\$2,125.00
 - 6) 11th February 1992 - US\$1,000.00

- (3) On the 31st day of May 1994, Mr. Brown gave the Blakes a Letter of Authority which purported to give them possession to a lot on a part of a larger tract of land, which they could not access at all.
- (4) Although all the moneys requested of the Blakes were paid there was
 - 1) no Agreement for Sale prepared
 - 2) no Agreement for Sale was stamped
 - 3) no Instrument of Transfer prepared
 - 4) no Certificate of Title obtained

Several years having passed there is no evidence that any sub-division has been approved, been effected and certainly no Certificate of Title has been produced.

Re Canon IV(r)

There is a duty placed on all attorneys to conduct the business of their client's with due expedition, within a reasonable time frame. In this case, all sums had been paid over to Mr. Brown as attorney-at-Law/Vendor, and he has not to date produced even a signed Agreement for Sale. There is no credible evidence that any sub-division is even taking place at Belgrade Manor, Kingston 19. The only evidence before the Panel therefore is that sums have been obtained by Mr. Brown from the Blakes for the purchase of such land identified only through a search between bushes and trees.

The Letter of Authority refers to an Agreement for Sale which has to date not been produced. It could all be a sham. We do not know.

Suffice it to say nine (9) years has elapsed without any or any credible explanation. That is just too long.

We find that Mr. Brown has failed to comply with the obligation placed on him under Canon IV(r) of the Legal Profession (Canons of Professional Ethics) Rules.

Re Canon IV(s)

Mr. Brown was required and retained as an Attorney-at-Law to exercise that reasonable care and skill which could be expected from a normally competent and legal practitioner. His obligations in this transaction, were to prepare and provide an Agreement for Sale relative to the matter, containing the relevant provisions and conditions, which would be binding on the parties, particular Mr. Brown who acted as Vendor and attorney and finally to take all steps to see the matter through to completion, performing the work with the skill and care that would be required of a normally competent practitioner.

Mr. Brown effected none of the following. His actions display not only lack of skill and care, but in circumstances where he was acting on his own behalf and on behalf of the purchasers, where he would have owed the Complainants a fiduciary duty, and where a clear conflict of interest arose, which would be in breach of the canons, if not scrupulously complied with, but which do not form the basis of a charge in this complaint, his actions cannot bear either close scrutiny or transparency. Mr. Brown acted not only for vendor and purchaser but was also the vendor himself. He had an interest in the property and therefore the outcome of the transaction. Whereas he may have obtained the consent of both parties to act, the transaction could have been a complicated one, requiring subdivision as it appears to have done, and there could therefore have been information in his possession which was adverse to the purchasers, and which he did not disclose.

The general common law principle relative to attorneys acting for parties with opposed interests is set out in the Privy Council case of **Clark Boyce v. Mowat [1994] 1 AC 428** and is instructive. The canons are also quite clear on the obligations which arise in these circumstances. (See Canon IV (j)(k)(l) and (m). Mr. Brown regrettably was not charged under these canons so we shall say nothing further on his actions in this regard in this matter.

Mr. Brown was also not charged under Canon VII (b) (ii) to account for all sums in his hands, which could have grounded a case herein, as monies were paid to him for a specific purpose about which the Complainants have heard nothing. We will, however, comment no further in this regard either.

We do find, Mr. Brown, however, guilty of not only a lack of skill and care which is not a breach under the professional canons, but guilty of excessive, deplorable and/or inexcusable negligence or neglect.

We are impelled to note also that the Respondent has failed to attend any of the hearings. He has also not provided any information, documentary or otherwise to assist the Panel in its deliberations. The Panel wishes to place on record its concern that such a senior Attorney would pay such scant regard and show such disrespect to the body charged with the onerous responsibility of hearing matters in relation to complaints of professional misconduct and which is empowered to make decisions and orders relating to an attorney's continued entitlement to practise as an attorney-at-Law.

CONCLUSIONS

In this case, we find that the Complainants have proved their case beyond reasonable doubt.

We find the Respondent is in breach of Canons IV(r) & (s) of the Legal Professions (Canons of Professional Ethics) Rules. Accordingly in all the circumstances, we find that the Respondent has acted in breach of s.12(1) of the Legal Profession Act and is guilty of misconduct in a professional respect.

Pursuant to s.12(4) of the Legal Profession Act, we order:

- 1) That the Respondent's name be struck off the roll of the names of Attorneys entitled to practise in the Island of Jamaica

2) That there be payment by the Respondent to the Complainants of the amount of Three Hundred and Forty-Six Thousand and Twenty-Nine Dollars

+ eight for call

(J\$346,029.84) and Three Thousand One Hundred and Twenty-Five United States Dollars (US\$3,125.00), (representing sums paid by the Complainants to the Respondent) with interest at the rate of 15% from 1993 until present.

1st Jan

3) That the Respondent pay the costs of this application in the amount of Fifty-Thousand Dollars (\$50,000.00) to the Complainants

Dated the 30th day of December, 2002

January 03



Hilary Phillips, Q.C.



Bert Samuels



Beryl Ennis