

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

IN THE MATTER of Peter Reid and
Derrick Darby, an Attorney-at-Law

A N D

IN THE MATTER of the Legal
Profession Act

Before Mrs. Margarette MacCaulay
Ms. Lilieth Deacon
Mr. David Batts

Complainant Mr. Peter Reid in person
The Attorney not appearing or being represented

Hearing dates: 9th November, 2002 and 1st March, 2003.

1. The Form of Affidavit by Applicant is dated 16th January, 2001. The Complainant in that document alleges that the attorney:-
 - (a) withdrew from his employment without taking reasonable steps to avoid foreseeable prejudice or injury.
 - (b) has not provided him with all information as to the progress of his business with due expedition.
 - (c) has acted with inexcusable negligence in the performance of his duties because he was absent from court.

2. When the matter was called on the 9th November, 2002 the attorney Mr. Derrick Darby was called but gave no answer. Service of Notice was by registered post to Mr. Derrick Darby at 65 Barry Street, Kingston. That Notice was posted on the 9th October, 2002 and the Affidavit of Eulalee Steele to that effect is dated the 6th November, 2002. Notice of the resumed hearing on the 1st March, 2003 was sent by registered post to Mr. Derrick Darby on the 27th January, 2003. The notes of evidence of the previous hearing were sent by bearer under cover of letter dated 24th February, 2003 to his address at 65 Barry Street, Kingston.

3. The Committee heard evidence from the Complainant, Mr. Peter Reid who stated that in 1990 he had an accident in which he was injured. He said that he first went to Mr. Wentworth Charles who referred him to Mr. Derrick Darby. The Complainant was then resident in the United Kingdom. The circumstances surrounding the accident occurred whilst he was a passenger in a van. The driver was going very fast on a wet road and the van overturned. The Complainant sustained a broken rib, and 2 torn muscles in the back. He said that for three (3) years he was unable to work. He said he provided all relevant information to Mr. Darby and that suit was commenced in court on his behalf.

Mr. Darby, he says, kept telling him that the matter would be tried. He however never got a date and went to check the court's file himself and discovered that it had been thrown out of court. The copies of the court documents he obtained were tendered in evidence as **Exhibit 1**.

4. The Complainant deponed further that Mr. Darby wrote to Miss Shand (who was also injured in the accident and for whom a suit had been brought) informing her that \$40,000.00 on account of Security for Costs was required. He said however that Mr. Darby told him not to make any payment in respect of Security for Costs for his suit. The Complainant says that he paid the \$40,000.00 Security for Costs on Miss Shand's behalf. A letter dated 16th July, 1998 from Derrick Darby to the Complainant was admitted as **Exhibit 2**. A letter dated 22nd January, 1996 Derrick Darby to Dorothy Shand was admitted as **Exhibit 3**.

5. The Complainant stated that Mr. Darby told him he did not have to pay Security for Costs because he was resident in Jamaica. He stated that he was then in the process of moving back to Jamaica. The Complainant then gave the following bit of evidence,

“Panel: How long after you received the letter of July 18 you paid the money?”

Reid: About 2 weeks after I was in Jamaica I went over to Mr. Darby and he explained to me and I went and paid this money myself.

Panel: Did you go and pay it to Mr. Darby?

Reid: No, I paid it in the court.

Panel: Why was the decision made to pay the money after you got the letter?

Reid: Because after I went I asked Mr. Darby why he did not tell me about the money and after I got the copies over the court and realized the case was thrown out I phoned Ms. Shand and told

her what happen, so she came down.

Panel: So she flew out?

Reid: Yes.

Panel: You were telling us that Mr. Darby say he didn't know about the security for costs.

Reid: Yes, he say he did not know until after I got the letter. Mr. Darby was not present at the hearing for the application of security fund.

Panel: The document show that the matter was dismissed for want of prosecution on the 10th November, 1999. Did Mr. Darby inform you of that?

Reid: No, sir.

Panel: Did you make any inquiry?

Reid: After I spoke to Mr. Derrick Darby he said the only thing we can do is to appeal.

Panel: Did you instruct him to appeal?

Reid: Yes.

Panel: Has there been any appeal?

Reid: No sir, no appeal."

6. The Complainant further stated that apart from the J\$50,000.00 he paid into court he had made no other payments to Mr. Darby. He said he had a contingency agreement with him, **Exhibit 4**.

7. The Complainant gave evidence that he had been offered \$200,000.00 to settle the claim but that he had rejected that offer. [See bundle of documentation admitted as

Exhibit 5]. He denied ever telling Mr. Darby that he was experiencing financial difficulty and that that was the reason he was unable to pay \$50,000.00 as Security for Costs. He admitted having financial difficulties in 1995-1998 but stated he could have paid the J\$50,000.00. He stated that although his house in England had been repossessed at about that time because he could not afford the equivalent of a monthly J\$48,000.00, this was because he did not wish to exhaust his Jamaican Dollars. Tendered in evidence as **Exhibit 6** was his VMBS bank book which as at July 1995 disclosed a balance of \$56,516.34. The balance in December 1995 was \$63,149.52.

8. Such was the evidence in this matter. This Committee is mindful of its duty to maintain the standards of the profession. In doing so, evidence in respect of offences must be such as to satisfy us that we feel sure the attorney has been guilty of misconduct in a professional respect ***Bhandari v Advocates Committee [1956] 3 ALLER 742, In Re a Solicitor [1992] 2 AER 335.***

9. We have carefully considered the evidence of the Complainant. We have also reviewed the exhibits. Our Findings of Fact are as follows:-

- (a) Messrs. Wentworth S. Charles & Co. commenced legal action in Suit No. 140 of 1993 - Peter Reid v A.P. Tours Ltd. and Mervin Palmer on the 5th August, 1993.
- (b) A Defence was filed to the action on the 19th September, 1994. A Summons for Directions was filed on the 30th March, 1995. It was first

listed for hearing on the 21st November, 1995. That Summons for Directions was filed by Derrick Darby & Co. on behalf of the Plaintiff.

There was therefore at this stage a change of attorneys.

- (c) By Summons filed on the 21st February, 1995 the Defendant in the action applied to the court for an Order that the Plaintiff, Peter Reid pay Security for Costs of the proceedings on the basis that he Peter Reid was resident outside Jamaica. In response an Affidavit of Peter Reid dated 3rd April, 1995 was filed by Derrick Darby & Co. In that Affidavit Peter Reid the complainant stated that he had returned to Jamaica since January 1994 and that he had substantial holdings in Jamaica and maintained a savings account at the Victoria Mutual Building Society.
- (d) The Defendant served a Notice requesting Mr. Peter Reid to attend for Cross examination and in consequence the Summons was adjourned Sine Die on the 6th April, 1995.
- (e) The Re-Issued Summons for Security for Costs was heard on the 12th June, 1995. The Order of the court (dated 13th December, 1995) recites that the Plaintiff, Mr. Peter Reid was unrepresented at the date of hearing. The Master therefore made an Order for Security for Costs in the amount of J\$50,000.00 and that in default of payment all further proceedings were to be stayed. We find as a fact that no-one attended on Mr. Peter Reid's behalf. This finding is also supported by the Minute of Order signed by the Acting Master and dated 21st November, 1995. **[Exhibit 1]**.

- (f) On the 12th January, 1998 Derrick Darby & Co. filed a Notice of Intention to Proceed with the legal action.
- (g) By Summons dated 12th February, 1998 the Defendant applied to dismiss the action for Want of Prosecution. This Summons was supported by an Affidavit from Mr. David Johnson, the Defendants attorney who stated in part:

“That the Plaintiff has failed and or refused to comply with the said Order for Security for Costs made on November 21, 1995 and has since that date taken no steps either by himself or through his said Attorneys to prosecute his claim herein save for the filing of a Notice of Intention to Proceed on January 12, 1998. That a period of in excess of two years has therefore elapsed without any steps being taken by or on behalf of the Plaintiff to prosecute this action.

That having regard to the foregoing I do verily believe that the delay on the part of the Plaintiff in prosecuting this action has been inordinate and inexcusable and is prejudicial to the Defendants. That almost eight years have elapsed since the occurrence of the accident, the subject of this action and even if the Plaintiff were now permitted to proceed with this action I do verily believe that the trial of the same would not be possible before the year 2000 as other actions have already been fixed for trial up to March, 1999.”

- (h) We find contrary to the evidence of the Complainant that he was advised by the attorney to pay the amount of J\$50,000.00 as Security for Costs. We find however that such advice was given on the 16th July, 1998 almost three (3) years after the Order for Security for Costs was made.
- (i) On the 14th July, 1998 the attorney Derrick Darby filed an Affidavit in which he admitted delays. He also alleged that the Defendant had

acquiesced in that delay (which related to the time for filing a Statement of Claim). He stated further that the Plaintiff Peter Reid had developed health problems related to the accident and which caused him to incur serious financial difficulties and this he said prevented Mr. Peter Reid satisfying the Order made by the court on the 21st November, 1995. Mr. Darby also stated that he had contacted the Plaintiff who stated he would pay into court the necessary funds within 15-30 days.

- (j) The attorney, Mr. Derrick Darby filed another Affidavit dated 11th December, 1998. That Affidavit stated that an Order for Security for Costs of J\$50,000.00 was made on the 6th April, 1995 and that that amount was “duly” paid on the 2nd December, 1998.
- (k) By Affidavit dated 23rd November, 1998 Mr. David Johnson the attorney for the Defendant alleged that as at the 21st November, 1995 no application had been made to remove the Order staying proceedings nor had the Security for Costs been paid. He alleged further that the First Defendant was then unable to locate the Second Defendant the driver in the accident. The delay had thereby caused prejudice.
- (l) Rather belatedly, the attorney, Mr. Derrick Darby filed a Notice of Change of Attorney on the 23rd April, 1999. We find as a fact however that the attorney Derrick Darby had been acting for the Complainant, Peter Reid since on or about the 30th March, 1995 (see paragraph 9(b) above).
- (m) The Summons to Dismiss was adjourned on a number of occasions but was eventually heard on the 10th November, 1999 when an Order was

made dismissing the action for Want of Prosecution. Mr. Audel Cunningham appeared instructed by Derrick Darby & Co. for the Plaintiff.

- (n) This Committee having viewed the demeanour of the Complainant Peter Reid accepts him as a witness of truth. His recollection of dates was not always accurate e.g. the date he paid the \$50,000.00. We accept that he did have sufficient resources to pay the \$50,000.00 as Security for Costs into court in July 1995.

10. In view of the findings aforesaid it is manifest that the attorney, Mr. Derrick Darby has acted with inexcusable neglect in this matter. He failed to attend at the hearing of the Application for Security for Costs. He also delayed in advising his client that such an Order had been made. This delay resulted in the successful application to dismiss the action for Want of Prosecution.

11. It is therefore the decision of this Committee that the Attorney is to be fined and that some part of the fine be applied to in some way alleviate the loss the Complainant has suffered. That he has suffered loss is clear because he had been a passenger in a bus which overturned on a wet road. In such circumstances a presumption of negligence would have arisen insofar as the driver of the vehicle in which he was travelling was concerned. Further, the matter when struck out was already barred by Statute of Limitation and the offer to settle had already been refused. The Complainant was therefore unable to recommence legal action.

12. This Committee bears in mind the Personal Injuries suffered by Mr. Peter Reid and that in 1995 similar injuries attracted the following awards:

- (a) ***George Wint v Goloub [December 1995] Khan 4d page 211*** - 49 year old salesman suffered moderate to severe tenderness over lower back with pain on bending. \$30,000.00 for Pain Suffering and Loss of Amenities.
- (b) ***Gilbert McLeod v Lemard [March 1996] Khan 4d page 205*** - The Plaintiff suffered pain and tenderness to right side of chest, multiple abrasions to right thigh, knee and leg, 4c laceration to right side forehead, 5 cm. laceration to right foot, loss of consciousness. He was hospitalized for 2 days. General Damages - \$100,000.00.

To this must be added lost earnings or earning capacity and the interest the Complainant would have been able to earn on the damages since 1995.

We bear in mind however that our role is primarily to punish offenders.

Furthermore, the result of legal action can never be guaranteed. The Complainant has really lost the opportunity to have his case heard.

13. It is therefore the decision of this Committee that:

- (i) The attorney Mr. Derrick Darby has in breach of Canon IV(r) failed to deal with his client's business with all due expedition and failed to provide him with all information as to the progress of the client's business with due expedition.

- (ii) In breach of Canon IV(s) that the Attorney has acted with inexcusable and deplorable negligence and neglect.


14. The Committee therefore makes the following Orders:-

- (a) That the attorney Mr. Derrick Darby do pay a fine of \$300,000.00.
- (b) That pursuant to Section 12 (5) of the Legal Profession Act \$250,000.00 of that amount be paid to the Complainant in part compensation of damage caused to him.
- (c) That the attorney Mr. Derrick Darby do pay costs to the Complainant of \$25,000.00.

Dated the 13th day of May 2003



M. MacCaulay



Lilieth Deacon



David Batts