

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

Complaint #45/2008

**IN THE MATTER of the Complaint by
SHEILA BALFOUR against the attorney
HOWARD LETTMAN**

A N D

**IN THE MATTER of the Legal Profession
Act**

Panel:

Ms. Margarete Macaulay
Mrs. Ursula Khan
Mr. David Batts

1. This Form of Application and Affidavit in Support were filed on the 12th February 2008 by Sheila Balfour. The complaint being that Mr. Howard Lettman the Attorney-at-Law had acted negligently, had not dealt with the complainant's business with all due expedition and had not provided information as to the progress of the matter.

2. The records indicate that the matter first came on for hearing on the 7th March 2009 on which date the complainant and her legal representative were present but the Defendant attorney, Mr. Howard Lettman was absent. Mr. Adedipe attended on his behalf for the purpose only of requesting an adjournment. This was opposed by the complainant's attorney and the panel decided to take the complainant's evidence in Chief and part hear the matter. The Complainant's evidence in Chief was taken and the matter part heard and adjourned to the 20th June 2009 at 11:00 a.m. Mr. Adedipe remained throughout the proceedings on the 7th March 2010.

3. On the 20th June 2009 Mr. Lettman attended and requested an adjournment on the basis that his attorney was unable to be present. The Complainant opposed the application but it was granted to the 24th October 2009 at 11:30 am. Costs of \$10,000 were awarded to the Complainant.
4. On the 24th October 2009 the panel was advised that the Complainant's attorney was ill. Mr. Lettman was also absent. The matter was therefore further adjourned to the 28th November 2009. This date was rescheduled by written notification as one of the panelist's was unable to attend. The rescheduled date was the 27th February 2010 at 11:00 a.m. but this was itself rescheduled to the 6th March 2010.
5. On the 6th March 2010 Mr. Lettman was absent. However, less than 21 days notice of the hearing had been given to him. The matter was therefore further adjourned to the 5th June 2010.
6. On the 5th June 2010 the panel continued the hearing. Mr. Lettman arrived very late. He produced a requisition from the Registrar of Titles and promised to file an Affidavit and serve the Complainant by the 9th July 2010. He was directed to pay the costs previously ordered of \$10,000.00 by the 9th June 2010. The matter was further adjourned to the 24th July 2010 at 11:30 a.m.
7. On the 24th July 2010 Mr. Lettman failed to appear. He had not filed the affidavit nor had the costs been paid. The matter was stood down until 12:00 p.m.. At that time the panel considered the case closed and adjourned C.A.V. to consider its decision. That decision we now give as well as the reasons therefore.
8. The Complainant has, during the hearing of this matter, been represented by Ms. Carlene Larmond of Counsel and the panel wishes to express its appreciation to Miss Larmond for the assistance given and the able representation made.

9. The Complainant gave evidence on the 7th March 2009 and stated her name was Sheila Balfour and she lived at 47 Garden Boulevard, Kingston 6. She is a Chartered Accountant. She identified her signature on an Affidavit dated 12th February 2008. This Affidavit was admitted in evidence as **Exhibit 1**. Her Supplemental Affidavit dated 6th March 2009 was put in evidence as **Exhibit 2**.
10. The Complainant further deponed that the property she agreed to purchase was Lot Number 2 part of Brumalia, Manchester, Volume 935 Folio 348 of the Register Book of Titles.
11. On the 6th March 2010 the Complainant continued her evidence in Chief. She tendered a further Supplemental Affidavit dated 3rd April 2009 as **Exhibit 3**. In answer to the panel she stated that she paid the requisite deposit to Mr. Lettman. She still wants to purchase the property and hence has taken no step to terminate the contract. She stated that at the time she paid the deposit to Mr. Lettman she was legally represented by Myers, Fletcher & Gordon.
12. The Affidavits, Exhibits 1, 2 and 3 were tendered and admitted in evidence without objection although Mr. Lettman's Counsel was present only on the first occasion when Exhibits 1 and 2 were tendered. Notwithstanding the several adjournments and the fact that the notes of evidence were forwarded to him Mr. Lettman at no time indicated a desire to cross examine the Complainant on these Affidavits. Indeed, had he attended he would have had the opportunity as the Complainant was present on each occasion.
13. The panel reminds itself that in these proceedings the burden of proof is a high one in that we must be sure beyond a reasonable doubt *Re A Solicitor [1992] 2 AER 335*. Having considered the evidence we find the Complainant to be a witness of truth and accept the contents of her Affidavit as such. We therefore make the following findings of Fact:

- (a) The Complainant entered into an agreement to purchase land from Noel Evadne Clayton. The agreement is dated 31st January 2005. The vendor's attorney and the attorney having carriage of sale was Mr. Howard Lettman of Lettman Murray & Associates. The Complainant's attorneys were Myers, Fletcher & Gordon.
- (b) A deposit of J\$312,500.00 was paid to Mr. Howard Lettman on the 6th May 2005.
- (c) The land purchased was Lot numbered Two on the plan of Brumalia of the shape and dimensions and butting as appears by the plan thereof hereunto annexed and being part of the land comprised in Certificate of Title registered at Volume 935 Folio 348 of the Register Book of Titles.
- (d) It was contemplated by the parties to the agreement that a splinter title would need to be obtained by the vendor prior to completion.
- (e) The Survey Plan was approved in or about October 2005.
- (f) In March 2007 Mr. Lettman advised the Complainant's attorneys that the only outstanding matter in relation to the obtaining of title was that the Titles Office may require resubmission of the Parish Council resolutions.
- (g) The Complainant in the period applied for a mortgage to be able to complete the purchase. The Vendor executed a waiver of Special Condition 8 of the agreement.
- (h) On June 4 2007 the Complainant also obtained a letter of commitment for a mortgage for the balance purchase price from JNBS.
- (i) By letters dated 16th July 2007 and 31st July 2007 the Complainant's attorney wrote to Mr. Lettman and enquiring of the difficulties and offering to assist. The letter of the 31st July 2007 stated:

“Dear Sirs:

Further to your fax of July 30 2007 erroneously dated June 30 2007, we wish to advise that we are of the opinion that a statutory declaration by itself will not comply with the requisition issued on June 4 2007. It is our informed opinion that, firstly, what is required is an amendment to the statutory declaration of Neolla Lunan and Osvin Simmonds referring specifically to the splinter title application by date and

description. Secondly, the splinter title application itself will have to be amended to reflect your statutory declaration and must specifically request that each Certificate of Title issued include therein:

"...one undivided 1/6th share on interest in all those parcels of land being the reserved road formerly comprised in Certificates of Title registered at Volume 935 Folio 348 and Volume 935 Folio 255 in the Register Book of Titles".

Please note that we speak without having actually seen the splinter title application, though we had requested same in our fax of July 23 2007 and you had verbally committed to the undersigned that you would send same to him. Nevertheless, ceteris peribus and assuming your application is otherwise adequate, we expect that upon amendment of the splinter title application to reflect these changes you would be fully compliant with the requisition issued by the Titles Office.

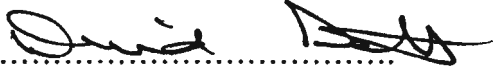
Please be mindful that the delay in completing this sale has put our client under and an extreme financial burden. We cannot understand why the voluntary declaration made by her and Mr. Simmonds on the 27th day of June 2007 has not been submitted to the Titles Office for them to at least issue a further requisition to you requesting that the splinter title application be amended above. Any further delay in our opinion is unwarranted once you have made the changes above to your application.

It is with this in mind that out of professional courtesy I must inform you that our client intends to, if the requisite action is not taken by your office to bring this matter to a close, bring a complaint against you before the General Legal Council.

Please be guided accordingly."

- (j) Mr. Lettman did not respond to the said communication.
- (k) By letter dated 29th October 2007 Mr. Lettman was again written to and the hardship to which the Complainant was exposed brought to his attention.
- (l) The Complainant was forced to seek extensions of the mortgage commitments.

- (m) Mr. Lettman's only written response in the period has been by facsimile dated 30th June 2007 but actually sent on the 30th July 2007 enclosing the requisition from the Titles Office and statutory declaration.
 - (n) As a result of Mr. Lettman's failure to communicate with the Complainant's attorneys JNBS withdrew its letter of undertaking by letter dated 24th April 2008.
 - (o) The withdrawal of the undertaking was expressly stated to be due to the non-response of Mr. Howard Lettman since 6th June 2007.
14. Mr. Howard Lettman has not attended before this Tribunal to explain on oath why the obtaining of splinter titles has taken so long. The Vendor is still alive and as the Complainant stated also disgruntled.
15. The correspondence put in evidence does not reveal any explanation advanced by Mr. Lettman save for the Registrar's requisitions now some three (3) years old. The Committee notes the complaint that the attorney has not provided information as to the progress of the matter, however, this is a duty owed to his client as per Canon IV (r). The Complainant was not Mr. Lettman's client. The duty to act without inexcusable or deplorable negligence is not so circumscribed by the rules however.
16. In the circumstances the Committee finds the attorney guilty of professional misconduct in the following respects:
- (a) He has acted with inexcusable negligence and neglect contrary to Canon IV (s).
17. The Committee has borne in mind the written submissions dated 5th June 2010 as well as the submissions as to costs made by the Complainant's attorney.
18. The Committee is of the view that an appropriate sanction to be applied is:

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David Batts