DECISION OF THE DISCIPLINARY COMMITTEE OF THE GENERAL LEGAL COUNCIL

COMPLAINT NO: 82/2010

BETWEEN CHERRIL LAM & FITZROY McLEISH COMPLAINANTS

AND DEBAYO ADEDIPE RESPONDENT

Panel: Mr. Allan Wood, Q.C.
Mrs. Margarette Macaulay
Dr. Randolph Williams

Parties Appearing: Ms. Cherril Lam, Fitzroy McLeish and Debayo Adedipe
Dates of Hearing: 29th January, 18, 28 and 29th March, 5th May, 13th June, 30th July, 8th October 2011

1. The Complainants are husband and wife who reside in Canada and also own a home in Jamaica. They have brought a complaint against the Respondent in respect of his conduct of the sale of property to them by Movern Developments Limited (hereafter called Movern), a company that was at all material times owned or controlled by Mr. Moses Leader. The property to be sold was two parcels of land part of Villa situate at Mandeville in the parish of Manchester and being part of the lands remaining in the Certificate of Title registered at Volume 1290 Folio 367 of the Register Book of Titles.

2. The Complainants allegations of misconduct by the Respondent were that:-
   i. He has not provided me with all information as to the progress of my business with due expedition, although I have reasonably required him to do so.
   ii. He has not dealt with my business with all due expedition.
   iii. He has acted with inexcusable or deplorable negligence in the performance of his duties.
   iv. He has breached Canon 1(b) of The Legal Profession (Canons of Professional Ethics) Rules which states, "An attorney at all times shall maintain the honour

and dignity of the profession and shall abstain from behaviour which may tend to discredit the profession of which he is a member".

3. The Legal Profession (Canons of Professional Ethics Rules) 1983 Canon IV (r) and (s) provide:-

"(r) An Attorney shall deal with his client's business with all due expedition and shall whenever reasonably so required by the client provide him with all information as to the progress of the client's business with due expedition.

(s) In the performance of his duties an Attorney shall not act with inexcusable or deplorable negligence or neglect".

4. At the hearing, oral testimony was given by the first named complainant, Cherril Lam and as well by the Respondent and Mr Dewaine Larmond, the Acting Director of Planning of the Manchester Parish Council and a number of documents were tendered into evidence.

EVIDENCE OF THE COMPLAINANTS

5. Cherril Lam testified that:

i. By agreement in writing dated 2nd May 2008, she and her husband had agreed to purchase two lots of land in Leader Plaza in Mandeville from Movern.

ii. Prior to signing the agreement while the Complainants were in Jamaica, Moses Leader pointed out to them land at the rear of the Plaza which was sloping and covered with debris. He required a payment of 25 per cent of the purchase price of $7.5m on signing of the agreement and promised to level the land and provide them with immediate possession so that they could place a container on the land to commence doing business.

iii. The Respondent had acted for the Complainants in 2006 when they acquired a house in Mandeville. The Respondent was approached to act for the

Complainants and he indicated that Mr Leader was also his client. The Complainants then left the Island for Canada. An agreement for sale was drawn up by the Respondent and sent to the Complainants in Canada. An amendment was made to the draft agreement to note that the vendor required US $10,000.00 to be paid in Nigeria. Including the aforesaid sum, the full 25 per cent deposit to be paid by the signing of the agreement amounted to $1,875,000.00.

iv. The amended agreement was sent by the Respondent to the Complainants in Canada under cover of a letter dated 23rd April 2008 (exhibit 9). The agreement was duly executed and returned to the Respondent and bears the date 2nd May 2008 (exhibit 1).

v. The full balance of the deposit and initial payment was paid to the Respondent less the sum of US$10,000 that had been remitted to Nigeria as instructed by Moses Leader.

vi. However the land was not cleared and levelled and stamp duty and transfer tax on the agreement was not paid.

vii. The Respondent advised them that Mr Leader had left the Island.

viii. The Respondent sent a letter by courier dated 7th November 2008 (admitted as Exhibit 2) that advised the Complainants that they could not terminate the agreement and he also advised them to make no further payments as stipulated by the agreement.

ix. Thereafter in or about the month of April 2009 she consulted attorney-at-law Damion Masters and thereafter she consulted Mr Leon Hosang of Murray and Tucker who advised them in December 2009 to move their container onto the lands but they could not find the lots.

x. They went to the Manchester Parish Council and Mr Shawn Rowe of the Planning Department went with them to the site and advised that the only land remaining in the Plaza was reserved as common areas and for parking. There was no land available to be sold to them and a letter from the Manchester

Parish Council to the Chairman of the Disciplinary Committee under the signature of Dewaine Larmond, Acting Director of Planning with Plan attached was admitted as Exhibit 5. That letter referred to the section of the Plan to the eastern section of the subdivision and stated that that section was reserved for parking and that there had been no further subdivision of that space.

xi. The Complainant maintained that she wanted her money back.

xii. In cross-examination it was put to Ms Lam that the Respondent had always maintained that he could not act for the Complainants. She denied that suggestion. However when the agreement for sale was prepared she had stated that she would have a friend in Canada who was a lawyer look at it but then she got to understand that the laws and conditions in Canada were different so that made no sense.

xiii. The agreement that had been signed was the second draft. A condition that money was to be paid in Nigeria was added. The agreement also reflected that J$206,000.00 had been paid. That payment had been made before the Complainants left Jamaica. Mr. Leader thereafter requested them to pay US$10,000.00 to some one in Nigeria and Ms. Lam required that this payment be recorded in the agreement.

xiv. She maintained that the Respondent acted for her and that she trusted him. That the Respondent never told her that he could not act for both parties. That when the Respondent told her not to make the further payment under the agreement he did not go on to tell her that he was not acting for her.

xv. She was aware that the most eastern section of the land was to be split into three lots of which two would be transferred to the Complainants but she was not aware of the size of the lots. That when the agreement was made with Mr Leader, he had pointed out an open space at the end of the Plaza and indicated that the lots were there. He gave them no diagram. This was just a few days before they had to leave Jamaica to return to Canada and she spoke to the

Respondent. On returning to Canada an agreement in writing was sent to them by the Respondent.

xvi. There was an unpaved parking area at the rear of the Plaza which is the eastern area. That no application for subdivision had been made.

xvii. Ms Lam agreed that no bill had ever been sent by the Respondent and there had been no discussion of fees with the Respondent as had been the case when the Respondent had acted for her in the earlier purchase of a home in Mandeville in 2006.

EVIDENCE OF THE RESPONDENT

6. The Respondent testified that:

i. He never acted for the Complainants but for Movern Developments Company Limited and Moses Leader, only. He had been contacted by Mr. Leader who told him about the proposed purchasers and the Respondent told him that he knew them and had acted for them before.

ii. The parties negotiated the price and all preliminaries themselves. What had been initially proposed was the sale of a parcel to the Complainants that would be subdivided into three lots. However, Mr. Leader became impatient and sold a lot to someone else, hence the agreement for sale related to two lots.

iii. Ms. Lam did contact him and indicated her interest in purchasing the land. He told her that Mr. Leader had previously been his client and that he would not represent both sides. She told him that that was alright because her lawyer in Canada would vet the agreement. He sent her the agreement in Canada.

iv. An initial sum of money was paid by the Complainants to the Respondent because Mr. Leader insisted that he would not have an agreement unless some money was sent to him first.

v. The area of land agreed upon was elevated and rocky and also had to be subdivided. The draft agreement for sale was prepared and sent to Ms. Lam in Canada and at her instructions it had to be amended.

vi. Upon signing the agreement, Mr. Leader was required to level the land and to subdivide. This did not happen.

vii. There was provision in the agreement for payment of instalments to be made. Ms. Lam made enquiry about when the levelling and subdivision would be done and he could only tell her what his instructions were. When the time came for further payments to be made, he strongly advised that she should make no further payment until the levelling and subdivision had been done. In giving this advice, he reiterated that he did not represent her.

viii. Mr. Leader went to the United Kingdom in September 2008 without levelling the land or commencing the subdivision process and to the best of his knowledge, Mr. Leader did not return to Jamaica.

ix. He has had many enquiries from Ms. Lam and her attorneys namely Damian Masters and Murray & Tucker and he responded to all enquiries.

x. As regards the identification of the land, to the best of his knowledge the two lots to be sold were at the eastern extremity, an area requiring some levelling. He had not identified the lots nor was he able to say where the exact lots or area to be sold were.

xi. So far as he was aware, a notice making time of the essence was given on behalf of the Complainants (Exhibit 10) dated 14 July 2009 but he was not aware the agreement was cancelled. The Complainants would only be entitled to recover their money if there was cancellation.

xii. Notwithstanding the provisions in the agreement, he did not stamp the agreement which he understood to require payment of stamp duty and transfer tax. He did tell Mr. Leader there would be a penalty. Mr. Leader accepted that it was his duty to stamp the agreement.

xiii. The agreement also required that the attorney having carriage of the sale make provision for the other costs of the transaction out of the payment in hand. Such costs would principally be the cost of subdividing and levelling the land

and he had gotten an estimate for that from Mr. Leader. All money received by him had been paid to Mr. Leader.

7. Mr. Dewaine Larmond, Acting Director Planning for Manchester Parish Council, was also called as a witness by the Respondent. At the time of giving his testimony on 28th March 2011, Mr. Larmond did not have the Parish Council file and returned with the file on 29th March 2011 along with photographs of the property (Exhibits 12a to 12d). Mr. Larmond's testimony was that:

   i. He had visited the site and that the eastern section of the land was a rock face that was approximately a 70 degree slope adjoining what is a flat area which is reserved for parking and that had been so designated by the Parish Council when subdivision had been initially granted. The reserved parking area is relatively flat.

   ii. Mr Larmond maintained that the area adjoining the rock face is reserved for parking and is 1,297.05 meters square, while the adjoining rock face is 85.997 meters square.

   iii. The initial plan dated 18th November 1992 had been approved (Exhibit 14) and had been modified and date stamped 1st May 1997 (Exhibit 13a). It was part of this modified plan that was attached to the letter 25th January 2011 signed by Mr. Larmond to the Chairman of the Disciplinary Committee (Exhibit 5). That area showed the most easterly section being the area reserved for parking which was delineated by diagonal lines and written in that section were the words "rock face" but those words did not relate to the area with diagonal lines but to the smaller adjoining area which was 85.997 square meters.

   iv. Mr. Larmond maintained that the revised plan dated 1st May 1997 had been approved by the Manchester Parish Council.

8. At the conclusion of Mr Larmond's testimony, the Respondent also tendered the plan which was deposited with the Titles Office dated 18th January 1992 which was admitted into evidence as Exhibit 14.

ANALYSIS AND FINDINGS

9. The Complaint raises three issues for determination namely:-

   i. Did the Respondent ever act for the Complainants or owe them any duty of care.

   ii. If so, was there any breach of the duty owed to the Complainants.

   iii. If there was a breach of duty owed to the Complainants, does that breach amount to professional misconduct.

10. In disciplinary proceedings, the criminal standard of proof beyond reasonable doubt is applicable: In Re A Solicitor [1992] 2All ER 335; Campbell v Hamlet [2005] UK PC 19. The latter decision of Campbell v Hamlet, has in our view settled the point that in disciplinary proceedings, such as in the instant case, it was not desirable that there should be any uncertainty as to the applicable standard of proof and that the relevant standard should be the criminal standard to be applied in disciplinary proceedings concerning the legal profession. In that case, in delivering the decision of the Board, Lord Brown stated at paras 17-22:

> "That the criminal standard of proof is the correct standard to be applied in all disciplinary proceedings concerning the legal profession, their Lordships entertain no doubt. If and insofar as the Privy Council in *Bhandari v Advocates Committee* [1956] 1 WLR 1442 may be thought to have approved some lesser standard, then that decision ought no longer, nearly fifty years on, to be followed. The relevant passage from Lord Tucker's opinion on behalf of the Board in*Bhandari* at p.1452 reads:
> 'With regard to the onus of proof the Court of Appeal [for East Africa] said: 'We agree that in every allegation of professional misconduct involving an element of deceit or moral turpitude a high standard of proof is called for, and we cannot envisage any body of professional men sitting in judgment on a colleague who would be content to condemn on a mere balance of probabilities.' This seems to their Lordships an adequate description of the duty of a tribunal such as the Advocates Committee and there is no reason to think that either the Committee or the Supreme Court applied any lower standard of proof.'
> It has, of course, long been established that there is a flexibility in the civil standard of proof which allows it to be applied with greater or lesser strictness according to the

seriousness of what has to be proved and the implications of proving those matters. Lord Bingham of Cornhill CJ pointed this out in the Divisional Court in *B v Chief Constable of Avon and Somerset Constabulary* [2001] 1 WLR 340, 353-4 and continued, at para 31 (p 354):

'In a serious case such as the present [concerning the making of a sex offender order] the difference between the two standards is, in truth, largely illusory. I have no doubt that, in deciding whether the condition ... is fulfilled, a Magistrate's Court should apply a civil standard of proof which will for all practical purposes be indistinguishable from the criminal standard.'

The same approach has been taken in later cases. In the Court of Appeal in *Gough v Chief Constable of the Derbyshire Constabulary* [2002] QB 1213, Lord Phillips of Worth Matravers MR held with regard to the serious consequences of making a banning order under the Football Spectators Act 1989:

'This should lead the Justices to apply an exacting standard of proof that will, in practice, be hard to distinguish from the criminal standard' (para 90 at p 1243).

Most recently, in the House of Lords in *R (McCann) v Crown Court at Manchester* [2003] 1 AC 787, Lord Steyn agreed (para 37 at p812) with what Lord Bingham had said in *B* about 'the heightened civil standard and the criminal standard [being] virtually indistinguishable' and concluded: 'In my view pragmatism dictates that the task of magistrates should be made more straightforward by ruling that they must in all cases under section 1 [of the Crime and Disorder Act 1998, providing for anti-social behaviour orders] apply the criminal standard'. Lord Hope of Craighead (para 83 at p 826) similarly recognised that in all these cases 'the civil standard of proof will for all practical purposes be indistinguishable from the criminal standard' and held that 'the standard of proof that ought to be applied in these cases to allegations about the defendant's conduct is the criminal standard'.

Perhaps more directly in point, however, is the decision of the Divisional Court in *In Re A Solicitor* [1993] QB 69, concerning the standard of proof to be applied by the Disciplinary Tribunal of the Law Society. Lord Lane CJ, giving the judgment of the Court, referred to the Privy Council's opinion in *Bhandari* and continued at p 81:

'It seems to us, if we may respectfully say so, that it is not altogether helpful if the burden of proof is left somewhere undefined between the criminal and the civil standard. We conclude that at least in cases such as the present, where what is alleged is tantamount to a criminal offence, the tribunal should apply the criminal standard of proof, that is to say proof to the point where they feel sure that the charges are proved or, to put it another way, proof beyond reasonable doubt. This would seem to accord with decisions in several of the Provinces of Canada.'

A little later in the Court's judgment Lord Lane referred to the provision in the Bar's Code of Conduct requiring the tribunal to apply the criminal standard of proof and observed at p.82: 'it would be anomalous if the two branches of the profession were to apply different standards in their disciplinary proceedings'. This last observation, of course, clearly warranted the Law Society Disciplinary Committee thenceforth applying the criminal standard in all cases rather than merely in those, earlier referred to, 'where what is alleged is tantamount to a criminal offence'.

Their Lordships would add that, even had they concluded that the criminal standard should apply only in disciplinary cases where what is alleged is tantamount to a criminal offence, that, at least arguably, would include the present case. This was certainly no mere contractual dispute. The appellant accordingly makes good this first stage of his argument."

11. However there was also an important observation at par. 24 of the judgment of the

Privy Council where, in rejecting the argument that the Committee had applied the incorrect standard in that case, Lord Brown made the following observation as to the standard of proof of factual sub-issues that lead to the ultimate conclusion that a charge has been established beyond reasonable doubt, as follows:

> "Their Lordships are unimpressed by these arguments. In the first place there is nothing in the Committee's own determination to suggest that it applied a lower (still less a materially lower) standard of proof than that of beyond reasonable doubt. On the contrary, the final paragraph of the Committee's determination quoted in para 10 above suggests rather that they applied a high standard. Even moreover so far as the Court of Appeal's judgment is concerned, the reference to 'a balance of probabilities' is a slender basis upon which to found a contention that such was the standard of proof applied in deciding the central allegation of professional misconduct. It is noteworthy that immediately after reference to 'a balance of probabilities' the Court of Appeal's conclusion was that something (the making of the disputed phone call) 'was far more likely'. The fact is that all the quoted expressions used throughout the Court of Appeal's judgment related, not to the critical final issue as to whether the allegation of professional misconduct was made out, but rather as to how a number of factual sub-issues fell to be resolved. To find this complaint proved it was not necessary for the Committee or the Court of Appeal to find each and every sub-issue proved beyond reasonable doubt. A sufficient number of strong probabilities (or even mere probabilities) can in aggregate amply support a finding of proof beyond reasonable doubt. That, indeed, is how many a criminal case is proved in reliance principally upon circumstantial evidence."

12. The Panel is also guided by the decision of the Court of Appeal in Witter v Roy Forbes (1989) 26 JLR 129 at 132 to 133, where Carey JA noted that in promulgating the Canons, the General Legal Council had taken a practical approach, no doubt appreciating that where an attorney conducted a busy practice some slips would inevitably occur that could be labelled as negligence or neglect, but as this was the expected and perhaps unavoidable consequence of a busy practice, an attorney should not to be penalised for same as having committed an act of professional misconduct. The proper remedy would be to seek redress by way of an action in the Court for negligence and not to penalize the attorney for an act of professional misconduct. Nevertheless, there was a level of neglect or negligence which no reasonably competent attorney would be expected to commit and this is what Canon IV (s) addressed as being professional misconduct by attaching the label "inexcusable or deplorable". It is for the Disciplinary Committee to determine whether the attorney

had gone beyond an acceptable level of negligence or neglect into the realm of what is "inexcusable or deplorable". Carey JA stated:-

> "The Council is empowered to prescribe rules of professional etiquette and professional conduct. Specifically, rule (s) of Canon IV is concerned with professional conduct for Attorneys. It is expected that in any busy practice some negligence or neglect will occur in dealing with the business of different clients. But there is a level which may be acceptable, or to be expected, and beyond which no reasonable competent Attorney would be expected to venture. That level is characterised as 'inexcusable or deplorable'. The Attorneys who comprise a tribunal for the hearing of disciplinary complaints, are all in practice and therefore appreciate the problems and difficulties which crop up from time to time in a reasonably busy practice and are eminently qualified to adjudge when the level expected has not been reached. I cannot accept that the determination of the standard set, will vary as the composition of the tribunal changes. The likelihood of variation is in the sentence which different panels might impose but that, doubtless, cannot be monitored by the Court or the Counsel itself. What I have said in regard to Canon IV(s) applies equally to Canon IV (r) on the ground the phrase 'with due expedition' is not certain and positive in its terms."

ISSUE 1- Did the Respondent owe any duty to the Complainants?

13. The terms of the Agreement for Sale dated 2nd May 2008 that was drawn up by the Respondent are of cardinal importance to a determination of the issues that arise in this complaint. The terms of the agreement that are of importance are as follows:-

Description of Property	All That parcel of land consisting of two lots and being part of All That parcel of land part of the Villa situate at Mandeville in the parish of Manchester and being a part of the remaining portion of the land comprised in certificate of title registered at Volume 1290 Folio 367 of the Register Book of Titles.
Consideration	Seven Million Five Hundred Thousand Dollars ($7,500,000.00)
Terms Of Payment	A deposit of Seven Hundred And Fifty Thousand Dollars ($750,000.00) (inclusive of the sum of $206,070.00 advanced prior to the date of this agreement) shall be paid on the signing of this agreement. A further sum of One Million One Hundred and Twenty-Five Thousand Dollars ($1,125,000.00) shall also be paid on the signing of this agreement as follows: a) The equivalent of US$10,000.00 shall be remitted to Okechukwu Opara of Lagos, Nigeria by Western Union at the cost of the Vendor. b) The remaining portion of this sum shall be sent to the Vendor's Attorney-at-Law. Three consecutive payments of Nine Hundred and Fifty-Four Thousand One Hundred and Sixty-Six Dollars and

	Sixty-Six Cents ($954,166.66) shall be made four months apart commencing at the end of the fourth monh after the date of this agreement. The balance of Two Million Eight Hundred and Sixty-Two Thousand Five Hundred Dollars ($2,862,500.00) together with the Purchaser's moiety of costs shall be paid on completion.
Completion	Within twelve months of thedate of this agreement.
Title And Costs	Under the Registration of Titles Act. Stamp duty and registration fees to be paid by the Vendor and Purchasers in equal shares. Transfer tax shall be borne by the Vendor. The Vendor and Purchasers shall bear their own legal fees.
Taxes, Water Rates	Property taxes, water rates are to be apportioned as at the date of possession.
Incumbrances Etc.	The property is sold free from incumbrances.
Possession	On payment of the deposit and further sum stipulated for in this agreement.

14. The Agreement for Sale further contained the following Special Conditions 2, 3 and 4, as follows:

> "2. This agreement is subject to the Vendor obtaining the approval of theManchester Parish Council for the subdivision of he land hereby sold.
> 3. It is hereby expressly agreed that the Attorney having carriage of this sale is authorized to apply the deposit and further sumto paying ~~to paying~~ the transfer tax and stamp duty payable on this transaction and making provision for the other costs of this transaction. If for any reason whatsoever the deposit and further payment has to be returned to the Purchaser, the Purchaser shall to the extent of such stamp duty and/or transfer tax so impressed be deemed to have been refunded same by the delivery up to them of the original transfer tax receipt and the agreement for sale duly impressed with the stamps and the same noted by the Vendor as cancelled.
> 4. The Attorney-at-Law with carriage of this sale is hereby expressly authorized to pay over the sums paid hereunder less the sum required for the payment of the costs of this transaction to the Vendor at any time after the stamping of this agreement"

15. Ms Lam maintained that the Respondent acted for the Complainants in addition to acting for the vendor and she denied that the Respondent told her from the outset that he could not act for her. The Respondent denied that he acted for the Complainants and maintained that from inception he told the Complainants that he could not act for them. It is to be noted that the agreement requires payments to be made to the vendor's attorney. With the exception of the sum remitted to Nigeria, the Respondent received all payments. The Complainants had entrusted to him the payment of J$206,070.00 made at Mr. Leader's insistence when they were in Jamaica before the

agreement was drafted. Once the agreement was signed the Respondent held that sum subject to the terms of the agreement in his capacity as attorney for the vendor. Ms Lam also stated in evidence that she did tell the Respondent that she would have an attorney in Canada vet the agreement, but then subsequently she advised him that this made no sense as the laws and conditions in Jamaica were totally different. That is undisputedly so.

16. A duty of care to the Complainants would clearly be owed if the Respondent had been retained by them. It is often quite difficult to determine whether an attorney has been retained by a client for the simple reason that the retainer agreement need not be in writing and indeed such an agreement may not be expressed or verbalised at all but simply implied from the conduct of the parties. Halsbury Laws of England 4th Ed Vol 44(1) at par 103 states:

> "Implied Restainer. Even if there had been no written retainer, the court may imply the existence of a retainer from the acts of the parties in the particular case. Thus where a person has received a fund out of court which was produced by an action, or where a person about to become a trustee has consented to solicitors acting in a mortgage transaction for the trust, or where a defendant called at a solicitor's office and left the writ and other papers and subsequently expressed an intention to go to the bottom of the matter, a retainer was implied."

16. Further, as a general rule, an attorney-at-law who acts for the vendor only owes no duty to the purchaser in a conveyancing transaction. However, he may step out of his normal role by agreeing to act for both the vendor and purchaser or in any event the attorney may assume some responsibility to the purchaser even when he has not been formally retained by the purchaser. The classical situation of the assumption of responsibility is where the attorney takes it on himself to give advice even when not

retained in circumstances where he ought to know that the advice will be relied on. In such circumstances the attorney owes a duty of care even where there is no contractual obligation: Hedley Byrne & Co. Ltd v Heller & Partners Ltd. [1964] AC 465; Al-Kandari v J R Brown & Co. [1988] Q.B. 665; Gran Gelato Ltd v Richcliff (Group) Ltd [1992] Ch 560.

17. Sir Donald Nicholls VC in the Gran Gelato Case at p 570 discussed the applicable principles in a conveyancing transaction where the vendor's solicitor did not act for the purchaser in the context of an action for misrepresentation as follows:

> "In my view, in normal conveyancing transactions solicitors who are acting for a seller do not in general owe to the would-be buyer a duty of care when answering inquiries before contract or the like. In reaching the conclusion that the law should not generally import a duty of care in such circumstances, three factors have weighed with me. The first lies in the context in which such representations are made. The context is a contract for sale of an interest in land. The buyer is formally seeking information from the seller about the land and his title to it. The answers given by the solicitor are given on behalf of the seller. The buyer relies upon those answers as answers given on behalf of the seller, although the confidence of the buyer and his solicitors in the reliability of the answers may be increased when they see the answers have been given by a solicitor in the ordinary way. They will expect the seller's solicitor, as a professional acting on behalf of his client, to have got the answers right. I venture to think that in these circumstances one would expect to find that the law provides the buyer with a remedy against the seller if the answers were given without due care. I am far from persuaded that the fair and reasonable reaction to these facts is that there ought also to be a remedy against the other party's solicitor personally. Secondly, what one finds is that the law does indeed provide the buyer with a remedy against the seller in respect of any misrepresentation in the answers given on his behalf. As already noted, the seller himself owes a duty of care to the buyer. When, as is usual, the answers are given by the seller's solicitor, the seller will be as much liable for any carelessness of his solicitor as he would be for his own personal carelessness. He will be so liable, because in the ordinary way the solicitor has implied authority from the seller to answer on his behalf the traditional inquiries before contract made on behalf of the buyer. In providing the answers the solicitor is acting within the scope of his authority. Some of the inquiries will raise questions of fact. Others will raise legal, conveyancing points which the client cannot answer himself.
> The client leaves all these matters to the solicitor to handle for him, after seeking instructions where appropriate from the client on any particular points on which the client may be expected to have relevant information. Thus, the purchaser to whom incorrect answers are given is not without a remedy even if the fault was that of the seller's solicitor and not the seller himself. Whoever was at fault, the buyer has a remedy for damages at common law against the seller. (This, I interpose, is to be contrasted with a case such as *Smith v. Eric S. Bush* [1990] 1 A.C. 831. There the mortgagor would have been without remedy if he did not have one against the valuer personally or his employer.)

Thirdly, at the forefront of his submissions, Mr. Jackson presented an argument that to impose a duty of care on solicitors would be to expose them to conflicting duties, with one duty owed to their clients, and another different duty owed to the buyer. I am not persuaded that this would be so. The duty to the buyer would be to take reasonable care to see that the answers provided were accurate. That duty would march hand in hand with a duty to the same effect owed by the solicitor to his own client. There would be no conflict. Nevertheless, and although I am not impressed by this argument based on conflict, it does seem to me that in the field of negligent misrepresentation caution should be exercised before the law takes the step of concluding, in any particular context, that an agent acting within the scope of his authority on behalf of a known principal, himself owes to third parties a duty of care independent of the duty of care he owes to his principal. There will be cases where it is fair, just and reasonable that there should be such a duty. But, in general, in a case where the principal himself owes a duty of care to the third party, the existence of a further duty of care, owed by the agent to the third party, is not necessary for the reasonable protection of the latter. Good reason, therefore, should exist before the law imposes a duty when the agent already owes to his principal a duty which covers the same ground and the principal is responsible to the third party for his agent's shortcomings. I do not think there is good reason for such a duty in normal conveyancing transactions.

I add this. I appreciate that one consequence of this conclusion is that the buyer may be left without an effective remedy if the seller becomes insolvent. I do not think that is sufficient reason for adding on to the solicitor-client relationship a duty owed directly by the solicitor to the non-client in normal conveyancing transactions. That those with whom one deals may become insolvent is an ordinary risk of everyday life.

Caveats

I must emphasise two points. First, there will be special cases where the general rule does not apply and a duty of care will be owed by solicitors to a buyer. A good illustration is the New Zealand decision of *Allied Finance and Investments Ltd. v. Haddow & Co.* [1983] N.Z.L.R. 22. There solicitors acting for a borrower certified to an intending mortgagee that specified documents had been duly executed and were fully binding on their client and that therewere no other charges on the boat which was the intended security. The solicitors were held to owe a duty of care to the lender in connection with the giving of that certificate. On any reasonable appraisal of that arrangement, the solicitors must be taken to have assumed personal responsibility to the mortgagee for the accuracy of their certificate. That is a case in which, to adapt the language used by Lord Donaldson M.R. in *Al-Kandari v. J.R. Brown & Co.* [1988] Q.B. 665, 672, in the context of a solicitor acting in adversarial litigation, the solicitors had stepped outside their role as solicitors for their client and had accepted a direct responsibility to the lender.

Secondly, I must emphasise that nothing I have said detracts in any way from the duties owed by a solicitor to his own client when answering inquiries before contract. Nor does it relieve him from full financial responsibility for any carelessness on his part. If by his carelessness be exposes his principal to a claim by a buyer for negligent misrepresentation, he will be liable to indemnify his client on well established principles."

18. It is clear from the evidence of both sides that the Respondent had acted in a previous unrelated transaction for the Complainants when they purchased a home in Mandeville. The matter has to be viewed in that context. Ms. Lam's evidence that in

the course of a previous transaction a close relationship had developed between the Complainants and the Respondent was not disputed by the Respondent. Moreover at Mr. Leader's insistence that a payment had to be made prior to the signing of the agreement, the sum of J$206,070.00 had been paid to the Respondent by the Complainants while they were in Jamaica. That payment was clearly based on some understanding prior to the drafting of the written agreement. In giving her evidence, Ms Lam struck me as an astute business woman. We do not accept that she would have entrusted her money to the Respondent with no receipt or other written acknowledgment if he had stated to her that he was not prepared to act for her. We reject the Respondent's evidence in that regard. Regrettably it is not an unusual occurrence for an attorney to act in such a transaction on behalf of both vendor and purchaser and given the close pre-existing relationship that had existed between the Respondent and the Complainants, we find that this is what occurred.

19. Subsequently it was also made clear to the Respondent that at the vendor's instructions the sum of US$10,000.00 was to be paid in Nigeria and that the Complainants required a written agreement that would reflect those payments as being part of the deposit and first payment, which totalled 25 per cent of purchase price. He knew that the Complainants were relying on him to have a proper enforceable agreement to protect them for the full 25 per cent deposit and initial payment, part of which had been entrusted to him in faith that an agreement would be prepared.

20. The advice that the Respondent gave to the Complainants after the agreement was signed also supports the implication of a retainer and that the Respondent had assumed a duty of care to the Complainants.. When it was clear that Mr. Moses Leader had left the Island without beginning the process to make application to subdivide the land, the Respondent advised the Complainants to make no further payments under the agreement for sale. He did not tell them to get a lawyer because he could not act for them. Thereafter by letter 7th November 2008 to the

Complainants (Exhibit 2), the Respondent advised the Complainants as to their rights and specifically that they had no right at that stage to unilaterally cancel the agreement and urged them not to choose that option as it could result in loss of a part of their initial payment. Clearly, the letter Exhibit 2 was carefully couched having regard to the conflict in which the Respondent was placed, given that he was acting for the vendor but notwithstanding his carefully chosen language, he was plainly giving advice and making recommendations to the Complainants. Significantly we would have expected that if the Respondent did not intend the Complainants to rely on his advice that would have been expressly stated in the letter with an appropriate disclaimer of liability and the Complainants told therein to seek independent legal advice on which they could rely. Further if the Respondent had indeed told the Complainants from inception that he would not act for them, we would have expected that statement to be repeated in the letter. We find that that a retainer is to be implied in all the circumstances and as the attorney having carriage of sale, the Respondent owed the Complainants a duty of care.

ISSUE 2- Was the Respondent's duty to the Complaint's breached?

21. It was understood and agreed with Mr. Leader that upon the Complainants paying the deposit and the initial payment amounting to 25 per cent of the purchase price, the land would be levelled as it was sloping and covered with debris to enable the Complainants to take possession pending completion. The precise area of land which comprised the two lots to be sold was never identified and apart from the general description in the agreement there was no plan annexed to identify precisely the two lots to be sold.

22. Further, there is no dispute that the Complainants paid in total the sum of $1.875m amounting to 25 per cent of the purchase money of which US$10,000 was remitted to Nigeria, whilst the balance was paid to the Respondent. Special Condition 3 expressly required the Respondent to apply the deposit to pay transfer tax and stamp duty and

Special Condition 4 required him to make provision for the other costs of the transaction. The other costs of the transaction would include the costs of making application to subdivide the land to the eastern section into three lots. The agreement for sale was not stamped, transfer tax was not paid and no application was made to obtain subdivision approval. Rather, the attorney paid over all the money received by him to Mr Moses Leader who thereafter left the Island in September 2008 and has not returned. That led to the Respondent giving written advice to the Complainants by letter dated 7th November 2008 (Exhibit 2).

23. The letter dated 7th November 2008(Exhibit 2) wherein the Respondent advised the Complainants as to their rights under the agreement for sale was in the following terms:

> "Our recent discussion refers.
> I confirm that I had been preparing a letter to explain the legal position with the agreement and to give an indication of your rights thereunder.
> 1. The agreement is subject to sub-division approval being granted by the Manchester Parish Council. This is because the lots being sold to you form a part of a larger parcel of land and they have to be cut off.
> 2. The process of obtaining a sub-division approval will not realistically take less then one year from the date of submissionof an application for sub-division.
> 3. Prior to the submission of the application, a sub-division plan has to be prepared by a Commissioned Land Surveyor.
> 4. The time for completion of the agreement is one year.
> 5. Time is not of the essence if this agreement, meaning that the failure by the party to comply with any stipulation as to time does not automatically entitle the innocent party to cancel the agreement.
> 6. Whenever a party to an agreement is dissatisfied with the progress of the contract, that party can always:
> a) unilaterally cancel the contract. This remedy is not always satisfactory because unilateral cancellation sometimes puts the dissatisfied party in breach of the contract. If a purchaser wrongfully cancels an agreement then he/she is liable to forfeit a deposit of 10% of the purchase price is *(sic)* such a deposit was paid (the initial payment was so apportioned in this case).
> b) justifiably cancel for cause if the Vendor is in breach of a fundamental term of the agreement
> c) serve a notice to complete on the purchaser (giving a reasonable time) if the time for completion has passed or none is fixed by the agreement (a time for completion is fixed in this agreement) and cancel at the expiration of the notice if the vendor is not ready to complete before the notice expires.
> d) agree with the vendor for a mutual cancellation of the agreement
> Although the vendor has not levelled the land as discussed and agreed prior to the signing of the sale agreement, that is not a breach that would necessarily entitle you to cancel the agreement.

> The time for completion has not yet passed so you could not properly serve a notice to complete at this time.
> It is open to you at this stage to negotiate and agree with the vendor for a mutual cancellation o *(sic)* the agreement if you have resolved that you do not want to proceed further or to negotiate a variation of the terms having regard to the delay on the vendor's part.
> I urge you not to choose an option that could result in a loss of any part of your initial payments. I venture to suggest that a renegotiation of the terms of payment might be the most prudent course to adopt at this time, particularly if it is coupled with an undertaking on the part of the vendor to level the land as soon as is possible, having regard to this present absence from Jamaica."

24. The advice given in that letter was not correct. The agreement was of the type commonly known as a conditional sale agreement dealt with in the decision in Aberfoyle Plantations v Cheng [1960] AC 115 (PC). In that case, an agreement for sale was made conditional on the renewal of certain leases and it was further provided that in event that the leases were not renewed the agreement would become null and void. It was held that where an agreement for sale of land fixed a date for completion and also stipulated that the contract was subject to the performance of a condition, then the condition had to be performed at the very latest by the date fixed for completion or any extended time granted by the purchaser. Where the condition was not performed within the time fixed for completion, the purchaser was entitled to the return of his deposit. In delivering the opinion of the Board, Lord Jenkins summarised the applicable principles as follows at pg 124:

> "Their Lordships may now return to the question exhaustively debated before them and in the courts below: Within what period of time did the agreement (read in conjunction with the purchaser's solicitors' letter of May 4, 1956) require the condition contained in clause 4 to be performed? The answer to that question must plainly depend upon the true construction of the agreement, or in other words, upon the intention of the parties as expressed in, or to be implied from, the language they have used.
> But, subject to this overriding consideration, their Lordships would adopt, as warranted by authority and manifestly reasonable in themselves, the following general principles: (i) Where a conditional contract of sale fixes a date for the completion of the sale, then the condition must be fulfilled by that date; (ii) where a conditional contract of sale fixes no date for completion of the sale, then the condition must be fulfilled within a reasonable time; (iii) where a conditional contract of sale fixes (whether specifically or by reference to the date fixed for completion) the date by which the condition is to be fulfilled, then the date so fixed must be strictly adhered to, and the time allowed is not to be extended by reference to equitable principles."

25. After referring to the relevant authorities the rationale for the foregoing principles as to conditional sale agreements was explained in the Aberfoyle Plantations Case as follows at pg 126:

> "Before parting with these two authorities their Lordships would observe that the reason for taking the date fixed for completion by a conditional contract of sale as the date by which the condition is to be fulfilled appears to their Lordships to be that until the condition is fulfilled there is no contract of sale to be completed, and accordingly, that by fixing a date forcompletion the parties must by implication be regarded as having agreed that the contract must have become absolute through performance of the condition by that date at latest.
> Similar considerations are in their Lordships' judgment applicable where a conditional contract of sale fixes no specific date for completion of the sale by the performance of both sides of the bargain, but does fix a date for the performance on the part of the purchaser of his part of the bargain by payment of the purchase money, even though no definite date is fixed for the performance on the part of the vendor of his part of the bargain by the transfer of the property. In such a case it could hardly have been intended that the purchaser should on the date specified perform his part of the bargain unless by that date a binding contract had been brought into existence by fulfilment of the condition; for unless that had happened by the date specified there would on that date in truth be no contract for the purchaser to perform."

26. Similarly by the express terms of the agreement in this case, at Special Condition 2, which has previously been quoted, the agreement for sale was made subject to subdivision approval being obtained and the agreement specified the time for completion as being 12 months from the date of the agreement, that is to say no later than 2nd May 2009. As reflected by his advice in Exhibit 2, that much was appreciated and understood by the Respondent. However he wholly failed to appreciate the legal consequences which were that until sub-division approval was obtained in fulfilment of the special condition, there was no contract of sale to be completed. No where is that stated in the Respondent's advice. The Respondent wholly failed to appreciate the effect of Special Condition 2 was that if subdivision approval was not obtained at the latest by 2nd May 2009, the date fixed for completion of the sale, the Complainants would be entitled to recover any sums paid under the agreement without the need for giving the vendor any further notice making time of the essence. The Complainants were not correctly advised by the Respondent to that effect and in failing to do so, the Respondent was negligent.

27. Further, the Respondent was also wholly oblivious to the fact that he held carriage of sale and that it was accordingly his duty under Special Condition 3 of the agreement to retain sums out of the purchase money and to pay the stamp duty and transfer tax payable on the agreement. It was also his duty as the attorney having carriage of sale under Special Condition 4 of the agreement to retain from the purchase money that was paid to him a sum sufficient to cover the costs of the transaction before paying over any balance to the vendor. Such costs would have included the cost of making the application for further subdivision of the land. The Respondent's evidence was that such an estimate was made by Mr. Leader but he nevertheless paid everything that he had in hand to Mr. Leader.

28. In our view Special Conditions 3 and 4 imposed a duty on the Respondent that was owed to the Complainants in the circumstances of this case. In agreeing to pay the deposit and initial payment totalling 25 percent of the purchase price, the Complainants relied on those provisions in the agreement. So much was made clear to the Respondent. Further as is evident from the fact that a payment was made to him even before the agreement was signed, from the inception the Respondent would have been aware that he was being relied on by the Complainants who knew and trusted him. The Complainants were entitled to rely on the Respondent as the attorney having carriage of sale to carry those provisions into effect. He disregarded the terms of the agreement by paying all money over to the vendor and in so doing he deliberately disregarded Special Conditions 3 and 4 and breached his duty to the Complainants.

29. However, it may well be that the most serious default by the Respondent concerns the description of the property that was inserted in the agreement for sale. In preparing the agreement, the Respondent owed a duty to take steps to identify exactly what was the land that was the subject of the agreement given that the lots were part of a larger parcel that had to be subdivided into three. In breach of his duty, the Respondent

wholly failed to take any steps to properly identify the two lots that were to be sold to the Complainants. The description of the lots in the agreement for sale is bereft of any detail so as to be capable of ascertainment. The lots ought to have been identified by either including in the agreement a detailed description of the two lots or by attaching to the agreement a sufficiently detailed plan delineating the lots in relation to the larger parcel or by both a description and a plan. On the evidence, which we accept, the Complainants required a binding agreement before making the full amount of deposit and initial payment. The agreement that was prepared is in our view deficient and uncertain in that there is no proper description of the two lots that were being sold.

30. In submissions to the Panel, the Respondent relied on the case of Scarfe v Adams [1981] 1 ALL ER at 843 and argued that extrinsic evidence could be admitted to identify the specific lots that were the subject of the agreement. In Scarfe v Adams, a house had been subdivided into several apartments which had been sold at auction. The terms of the conveyance that transferred title for the apartments did not define the boundaries of what had been a coach-house divided into two halves and attached to the conveyance was a small scale ordinance plan which did not clearly set out the boundaries. It was held that the transfer deed with plan was ambiguous and therefore extrinsic evidence was admissible to properly identify the boundaries and therefore evidence was admitted of the particulars that had been used in the auction sale which showed the boundaries. In that case there was certainty as to the agreement made at the auction and that was admissible to clarify the vague and uncertain terms of the subsequent conveyance. Griffiths LJ in Scarfe v Adams at p 852 made useful observations as to the care that is needed when lots or large buildings are to be divided when he stated:-

> "I wish now to add a few general observations. I am afraid we have seen little of the art of conveyancing in this case. These days more and more large buildings are being divided and sold in different lots for separate occupation. This calls for careful and skilful conveyancing. I do not know if it is a widespread practice in such transactions to rely on a small-scale Ordnance map without any adequate description of the property in the transfer, as wasdone in this case. But if it is, the sooner it stops the

better. I mention this because the facts of an unreported decision of this court in 197, *Kingston v Phillips [1976]* Court of Appeal Transcript 279, bear a remarkable similarity to the facts of this case. It was a case involving the sale of part of a country house, and the parcels clause read:

'The vendor as beneficial owner hereby conveys unto the purchaser all that piece or parcel of land being part of the Chicklade House Estate at Chicklade in the County of Wiltshire all which premises are by way of identification only more particularly delineated on the plan annexed hereto and thereon coloured pink. And also all that dwelling house together with the outbuildings thereto erected thereon or on some part thereof being part of Chicklade House'.

Buckley LJ, who speaks with far greater authority than I do on these matters, had this to say:

'It will be observed that the parcels as there set out are really almost devoid of any particularity; all that is said about the property conveyed is that it is part of the Chicklade Estate and part of the dwelling house thereon. Unhappily, the plan which was annexed to that conveyance is wholly inadequate to perform the function which the draftsman of the conveyance seems to have contemplated that it would. It is a very dangerous practice for a conveyancer to frame a conveyance with parcels which are not adequately described. Perhaps the most important feature of all the features of conveyance is to be able to identify the property to which it relates; and, if the draftsman of the conveyance chooses to identify the property solely by reference to a plan, it is of the utmost importance that he should make use of the plan which is on a scale sufficiently large to make it possible to represent the property and its boundaries in precise detail, giving dimensions and any other features which may be necessary to put beyond doubt the subject matter of the conveyance'.

It is perhaps a pity that that case was unreported and so was not brought to the attention of conveyancers. I can only express the hope that those words that Buckley LJ and the observations of Cumming-Bruce LJ in the present case may be drawn speedily to the attention of the profession".

31. In contrast to the facts of Scarfe v Adams, in the present case what was agreed to be sold has not been defined with any certainty and there is no extrinsic evidence to make certain what the agreement has left uncertain. The Panel heard the evidence but at the end of the day none of the witnesses, including the Respondent who drew up the agreement could identify by extrinsic evidence the two lots that were agreed to be sold to the Complainants. There was simply no extrinsic evidence available to cure the uncertainty in the description of the property contained in the agreement for sale. Indeed it is that inability to identify the two lots that led to the laying of the complaint. We do not see that Scarfe v Adams can therefore assist the Respondent. As was observed by Griffiths LJ, the drawing up of the agreement called for skilful and careful conveyancing, as to which the Respondent was totally out of his depth.

ISSUE 3- Does the Respondent's breach of duty amount to professional misconduct?

32. It is the view of the Panel that the Respondent is guilty of inexcusable and deplorable negligence and neglect in the conduct of the transaction in breach of Canon IV(s) of the Legal Profession (Canons of Professional Ethics Rules) 1983. To elaborate, this deplorable negligence is reflected in his failure to take any step to identify the lands that were to be sold, hence his preparation of an agreement that left uncertain the description of the property to be sold. Thereafter he failed to retain from the payments made to him the necessary sums required to pay stamp duty and transfer tax on the agreement and he also failed to retain the other sums necessary to cover the cost of the transaction and in particular a sum to cover the cost of making the application for sub-division approval. Notwithstanding that he was the attorney having carriage of the sale, the Respondent appeared to be content to divest the discharge of his duties to Moses Leader, who as far as we are aware is not a qualified attorney-at-law.

33. As a consequence of the Respondent's misconduct, transfer tax and stamp duty has not been paid to date when it was his obligation as the attorney having carriage of sale to do so and no attempt has been made to commence the process of applying for sub-division approval which would require a survey of the lands. His advice to the Complainants as to their right to terminate the agreement was also deplorably negligent as we have demonstrated above. We find that the degree of negligence displayed by the Respondent goes well beyond what can be described as a mere slip. The Respondent has displayed absolutely no competence in the handling and advising on the transaction which he undertook to conduct. His negligence amounts to complete ineptitude which is simply inexcusable and deplorable and amounts to professional misconduct.

SANCTION

34. It is quite clear that the Complainants required a proper and legally binding agreement to secure the payment of the deposit and initial payment amounting to $1,875,000.00.

This they have not received. It is also clear that the Respondent failed to take the basic and elementary steps required of an attorney in preparing such an agreement to identify the subject matter of the sale with certainty. The Respondent's failure to properly advise the Complainants and to prepare a proper and binding agreement and thereafter to retain out of deposit paid to him, a sum to stamp the agreement for stamp duty and transfer tax and to retain the other costs of completing the agreement has resulted in either the loss of their money or at the very least it has certainly made it more difficult to recover same from Movern given that Moses Leader has left the Island with no known date of his return.

35. Further given the uncertainty of the description of the property in the agreement that was prepared by the Respondent, and the incorrect advice given to the Complainants as to their right terminate and to recover the money paid under the agreement if the vendor failed to obtain sub-division approval by the date fixed for completion, it is clear that the Complainants did not receive the protection of either a proper agreement or proper professional advice. The Respondent must also be taken to have assumed the risk when he paid out all the money in hand to the vendor in breach of Special Conditions 3 and 4 of the Agreement for Sale.

36. There are several breaches committed by the Respondent and the loss that flows from the different breaches would not be the same. Of paramount importance however, the Respondent owed a duty to the Complainants to prepare a proper agreement and he failed to discharge that duty. The Complainants sought an order requiring the Respondent to make restitution in respect of all sums that they paid under the agreement. A submission was made by the Respondent that steps could be taken to give certainty to the agreement. That was conceivable if subdivision approval had been obtained which would have identified the two lots. However, subdivision approval ought to have been obtained by the completion date stipulated in the agreement. The agreement, being a conditional contract of sale, went off when

subdivision approval was not obtained by the date specified for completion. In short the Respondent could have averted liability by taking steps to obtain subdivision approval and thereby to cure the deficiency in the agreement but he failed to do so. Accordingly it is our view that the Respondent must make restitution to the Complainants in the amount of $1, 875,000.00. This sum should bear interest at the rate of 6 per cent per annum from 2nd May 2009.

37. The Complainants have been put to considerable costs in travelling from Canada to prosecute the complaint. They have quantified their costs at $500,000.000. However, we make allowance for the fact that the Complainants maintain a home in Jamaica and do travel to the Island with some frequency. In the circumstances, costs are awarded to the Complainants in the sum of $200,000.00

38. **IT IS ORDERED:-**

1. The Attorney, Debayo Adedipe is to pay to the Complainants, Cherril Lam and Fitzroy McLeish the sum of $1,875,000.00 together with interest thereon at the rate of 6 per cent per annum computed from 2nd May 2009 to the date of payment.
2. The Attorney, Debayo Adedipe is also to pay costs to the Complainants, Cherril Lam and Fitzroy McLeish in the sum of $200,000.00.

DATED THE 8th DAY OF OCTOBER 2011

ALLAN S. WOOD, Q.C.

MARGARETTE MACAULAY

Dr. RANDOLPH WILLIAMS

FORMAL ORDER OF THE DISCIPLINARY COMMITTEE OF THE GENERAL LEGAL COUNCIL

COMPLAINT NO: 82/2010

BETWEEN CHERRIL LAM & FITZROY McLEISH COMPLAINANTS

AND DEBAYO ADEDIPE RESPONDENT

Panel: Mr. Allan Wood, Q.C.
Mrs. Margarette Macaulay
Dr. Randolph Williams

DECISION DELIVERED ON THE 8th OCTOBER 2011

UPON THE APPLICATION dated 14th April 2011 made under section 12(1) of the Legal Profession Act coming on for hearing before the Disciplinary Committee on the 29th January 2011, 18th , 28th and 29th March 2011;

AND UPON THE Complainants, Cherril Lam & Fitzroy McLeish appearing and Cherril Lam having given evidence on oath;

AND UPON THE Attorney-at-Law, Debayo Adedipe appearing and having given evidence on oath;

AND UPON DUE CONSIDERATION OF THE EVIDENCE, THE COMMITTEE FINDS that for the reasons that are more fully set out in the written decision dated 8th October 2011, in acting in the sale to the Complainants of two parcels of land part of Certificate of Title registered at Volume 1290 Folio 367, the Respondent was guilty of inexcusable and deplorable negligence and neglect in breach of Canon IV(s) of the Legal Profession Cannon of Professional Ethics Rules.

PURSUANT TO THE FOREGOING FINDING, THE COMMITTEE UNANIMOUSLY ORDERED THAT:

Pursuant to s12(4) of the Legal Profession Act

1. The Attorney-at-law, Debayo Adedipe is to pay to the Complainants, Cherril Lam and Fitzroy McLeish, the sum of $1,875,000.00 together with interest thereon at the rate of 6 per cent per annum computed from 2nd May 2009 to the date of payment.

2. The Attorney-at-Law, Debayo Adedipe is also to pay costs to the Complainants, Cherril Lam and Fitzroy McLeish in the sum of $200,000.00

Dated 21st October 2011

CHAIRMAN OF THE PANEL