

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

COMPLAINT NO. 153/2011

PANEL

PAMELA E BENKA-COKER Q.C.  
CHARLES PIPER  
DEBRA MCDONALD

CARLTON & NADINE DUNKLEY           COMPLAINANTS

SHELDON CODNER                       RESPONDENT

HEARING DATES; 14<sup>th</sup> January 2012 and 21<sup>st</sup> February 2012.

**THE COMPLAINT:** By Form of Affidavit dated the 11<sup>th</sup> October 2011, the Complainants Carlton and Nadine Dunkley (hereinafter referred to as the Complainants) initiated this complaint against the respondent Attorney –at-law (hereinafter referred to as the Attorney.)

The affidavit in support of the Complainants is very detailed and need not be replicated verbatim in this judgment. It is sufficient to summarise its contents so that it is made clear what the factual allegations are which form the basis of the complaint.

The Complainants state that in or around December 2010, they engaged the services of the Attorney to act on their behalf in the purchase of lands located at 2 & 3 Woodlawn, Mandeville in the parish of Manchester, registered at Volume 1339 folio 293 and Volume 1341 Folio 70 of the Register Book of Titles.

On the 5<sup>th</sup> February 2011, the Complainants further allege, that they paid over the sum of JMD \$4,050,000.00 to the Attorney by way of National Commercial Bank Jamaica Limited manager's cheque.

On the 4<sup>th</sup> March 2011 they paid over the sum of JMD \$47,000.00 to the Attorney by way of a cheque drawn on the account of Nadine Burke dated the 4<sup>th</sup> March 2011. The Complainants were issued receipts for these sums by the Attorney. They received a copy of the Agreement for Sale as well as a Purchasers' Statement of Account from the vendor's

Attorneys -at-law Messers Samuda & Johnson dated the 15<sup>th</sup> April 2011. This statement reflected that the sums paid to the Attorney on the 5<sup>th</sup> February 2011 and the 4<sup>th</sup> March 2011 have been paid by the Attorney to Samuda & Johnson.

The Complainants asked the Attorney to secure early possession of the property, the subject of the sale, as there was evidence that the property was being vandalized.

The Complainants aver that being satisfied that the Attorney was paying over the sums paid to him to Samuda & Johnson, they made two further payments to the Attorney in pursuance of the Agreement for Sale.

On the 20<sup>th</sup> April 2011 they delivered Jamaica National Building Society manager's cheque 5114971 dated the 20<sup>th</sup> April 2011 in the amount of JMD \$18,500,000.00. The Attorney also issued a receipt for this sum.

On the 3<sup>rd</sup> May 2011, the Complainants delivered National Commercial Bank Jamaica Limited cheque in the amount of \$2,600,000.00 to the Attorney for which sum a receipt was issued.

Between mid April 2011 and May 14<sup>th</sup> 2011, the Complainants sought to contact the Attorney by various means, namely cell phone, e-mail, and at his offices by telephone in an effort to find out about the progress of the sale which the Attorney was handling on their behalf, in particular when they could secure early possession of the property.

They were unable to do so, and various excuses were proffered by his secretary as to why they were unable to contact the Attorney. When they were able to speak to the Attorney he would advise that he was still waiting to hear from Samuda & Johnson.

On the night of the 15<sup>th</sup> May 2011, the Complainants received a telephone call from the Attorney, who advised them that there may be a problem in them acquiring the property. The Attorney further advised that he had heard that someone was planning to lodge a caveat against the title to the property.

The Complainants enquired of the Attorney if he had made the last two payments to Messers Samuda & Johnson. He said he had but the firm had returned the funds, and instead wanted a letter of undertaking for the full amount outstanding. At this time the Complainants had paid more than 90% of the purchase price of JMD \$27,000,000.00.

The Complainants met with the Attorney at his offices on the evening of the 16<sup>th</sup> May 2011. The Attorney indicated to the Complainants that he would be sending a cheque to Messers Samuda & Johnson the next morning.

The Complainants instructed the Attorney to return to them the outstanding amount of JMD \$21,000,000.00. The Attorney agreed to deliver a cheque to the Complainants on Tuesday the 17<sup>th</sup> May 2011. The Complainants did not receive this cheque from the Attorney.

Attorney-at-law Marvalyn Taylor Wright telephoned the Complainants on the 17<sup>th</sup> May 2011 and advised them that she had received the file from the Attorney with a cheque but the figures and the numbers on the cheque did not correspond.

The Complainants tried to get in touch with the Attorney by telephone and e-mail. The Attorney responded by e-mail and then telephoned the Complainants begging them not to report the matter.

The Attorney has paid over a total of JMD \$9,000,000.00 of the outstanding \$21,000,000.00 to Samuda & Johnson through Mrs. Taylor Wright. There is an outstanding amount of \$12,000,000.00. The Attorney has not indicated how he will repay this amount and has failed to account to the Complainants for this sum.

The Complainants reported the matter to the Fraud Squad and the Attorney was arrested by the Fraud Squad on the 17<sup>th</sup> August 2011. The sum of \$12,000,000.00 is still outstanding.

#### **THE GROUNDS OF COMPLAINT:**

- 1 He has acted with inexcusable or deplorable negligence in the performance of his duties.
- 2 He has not accounted to me for all moneys in his hands for my account or credit although I have reasonably required him to do so.
- 3 He is in breach of Canon 1(b) which states " An attorney shall at all times 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.

**THE EVIDENCE:** On the 14<sup>th</sup> January 2012 when the complaint was called there was no response from the Attorney. The Complainants were present. The panel satisfied itself that the Attorney had been properly served with the Notice of Hearing in keeping with the provisions of regulations 5 and 21 of the Fourth Schedule to the Legal Profession Act and determined to proceed with the Hearing of the complaint in the absence of the Attorney, as it is permitted to do, pursuant to regulation 8 of the Fourth Schedule to the Legal Profession Act.

**CARLTON DUNKLEY:** this Complainant stated that he is Carlton Dunkley, he is a businessman and he lives at Whales District, Newport P.O. Manchester. He stated that he is married to Nadine Dunkley who is the joint Complainant in this matter.

He first met the Attorney in December 2010 at his offices at 4 Latham Avenue, Kingston 6. He knew the Attorney by name. He did not know him before, but they are from the same Town, Frankfield. He had heard the Attorney was a good lawyer and that he would speed up the Transfer.

He wanted the Attorney to have carriage of sale in relation to two adjoining lots with Townhouses on the lots. These are three bedroom Townhouses which were incomplete.

First Global Bank was selling this property under powers of sale in a mortgage and placed an advertisement to that effect in the Sunday Gleaner. His wife and he made an offer and it was accepted. The agreed purchase price was \$27,000,000.00 (twenty seven million dollars). His wife and himself are the joint purchasers of the property.

His wife and he did sign an Agreement For Sale. **This Agreement dated the 5<sup>th</sup> April 2011 was admitted in evidence as exhibit 1.** This Agreement was executed by both the vendor and the purchasers. Even before the Agreement was signed, the Complainants paid over the sum of \$4,050,000.00 to the Attorney in February 2011.

This amount was paid by National Commercial Bank manager's cheque. **The counterfoil or stub of this manager's cheque No. 101794 in the amount of \$4,050,000.00 was admitted in evidence as exhibit 2.**

**The receipt issued to the Complainants by the Attorney for this sum, No 022 was admitted in evidence as 2A.**

In March 2011, the Complainant further stated that an additional sum of \$47,000.00 was paid to the Attorney. **A copy of the cheque dated the 4<sup>th</sup> March 2011 representing this payment was tendered in evidence as exhibit 3.** This cheque is made payable to Sheldon A Codner and Co, drawn on the Bank of Nova Scotia Jamaica Limited on the account of Dr. Nadine Burke.

**The Attorney issued a receipt for this sum. This receipt No. 028 and dated the 4<sup>th</sup> March 2011 was admitted in evidence as exhibit 3A.**

The Complainant continued and said that further payments of \$18,500,000.00 and \$2,600,000.00 were made to the Attorney in pursuance of the Agreement for Sale. On the 20<sup>th</sup> April 2011, the sum of \$18,500,000.00 was made to the Attorney. His wife and he sourced these funds as a loan from the Jamaica National Building Society. **The Cheque withdrawal in the said amount and dated the 20<sup>th</sup> April 2011 is admitted in evidence as exhibit 4.**

The Complainant had to pay a fee to negotiate this transaction in the amount of \$1,000.00.

**The receipt evidencing the fee paid was admitted as exhibit 4A.**

**The receipt given by the Attorney acknowledging the receipt of the sum of \$18,500,000.00 was admitted as exhibit 4(b).**

The amount of \$2,600,000.00 was paid by the Complainants on the 2<sup>nd</sup> May 2011 by way of cheque No. 102492 drawn on the National Commercial Bank. **Cheque stub No. 102492 was admitted in evidence as exhibit 5.**

**The receipt No. 150 showing payment of this sum was admitted in evidence as exhibit 5A**

The total sum paid by the Complainants to the Attorney is \$25,197,000.00.

The witness stated that he went to see the Attorney sometime in 2011 and told him that the property was being vandalized and that he needed early possession. The Attorney responded that he was writing to Messers Samuda & Johnson. The Attorney said that he had sent the money to Messers Samuda & Johnson and they had sent it back. That is \$21,000,000.00.

**Receipt No. 1143 dated the 1<sup>st</sup> March 2011 from Samuda & Johnson indicating that they had been paid the sum of \$4,050,000.00 was admitted in evidence as exhibit 6.**

**Document intituled Purchasers' Statement of Account prepared by Samuda & Johnson was admitted in evidence as exhibit 7.**

At the time that the Complainant told the Attorney he needed early possession of the property the Attorney told him that Samuda & Johnson needed a letter of undertaking for the full amount of the purchase price.

The Complainant said he questioned the attorney as to why Samuda & Johnson would want a letter of undertaking when they had received cash. The Attorney said that is what they said.

On Sunday the 15<sup>th</sup> May 2011 the Attorney telephoned his wife and himself and advised them that a little birdie informed him that a previous owner is filing a caveat against the property so it would be difficult if that were done, for the sale to go through.

The Attorney advised that they should meet him at his office at 7p.m. the following day. The Complainants attended the offices of the Attorney earlier than the appointed time. The Attorney and both Complainants spoke.

The Complainant said that he asked the Attorney if he had the Complainants' money. He said yes. The attorney also said that he was going to prepare a cheque in the amount of \$21,000,000.00, get it certified on the 17<sup>th</sup> and send it to Samuda and Johnson. The Complainant said he offered to take it to Samuda & Johnson.

The Complainant also told the Attorney that he would come and pick up the cheque and take it to Samuda & Johnson. The Complainant agreed to meet the Attorney at his offices at 8a.m. the following morning.

The Attorney failed to meet the Complainant as arranged. He waited and waited but the Attorney never kept the appointment. He never got a certified cheque from the Attorney. On that same day the Complainant received a telephone call from attorney-at-law

Marvalyn Taylor Wright who advised him that the Attorney had sent her his files with regards to the sale in Manchester. He had not given the Attorney his consent to send the files to Mrs. Taylor Wright.

On enquiry, Mrs. Taylor Wright said that she saw a cheque on the file for \$21,000,000.00 but the figures and the words did not add up. **Produced as exhibit 8 is a copy of the said cheque dated the 16<sup>th</sup> May 2011 drawn on the National Commercial Bank to Messers Samuda & Johnson.** The Complainant received this copy cheque from Mrs. Taylor Wright. The Complainants saw Mrs. Taylor Wright the same day

The Complainants subsequently e-mailed the Attorney, the Attorney responded and then the Complainants responded. **These e-mails were admitted in evidence as exhibit 9.**

The Complainant confirmed that the Attorney had directed another e-mail to them dated the 13<sup>th</sup> June 2011. **This was admitted in evidence as exhibit 10.**

The Complainant said that some of the Attorney's friends repaid the sum of \$9,000,000.00 to Samuda & Johnson. These friends wanted to meet with him but he declined to do so. This money was paid in July 2011.

The Complainants had to find an additional sum of \$10,000,000.00 to pay over to Samuda and Johnson. They paid \$10,000,000.00 The Attorney paid \$9,000,000.00 so the Complainants still owed \$2,000,000.00 on the sale. The Complainants paid this sum of \$10,000,000.00 because the closing date was coming up.

Up to the time of giving evidence the Complainant had not received the \$12,000,000.00 that the Attorney still owed to the Complainants. The Complainants reported the Attorney to the Police in August 2011. The Attorney was arrested for fraudulent conversion of funds.

The criminal case has reached the stage of case management and is still pending. Both his wife and himself gave statements to the Police.

**NADINE DUNKLEY JOINT COMPLAINANT:** This Complainant gave evidence and stated that she is the wife of the other Complainant and a medical doctor employed at the Mandeville Regional Hospital and that she and her husband are purchasers of two lots with incomplete Townhouses on them.

This Complainant corroborated and confirmed the evidence of Carlton Dunkley in every material particular, as she was directly and intimately involved in the conduct of the transaction to purchase the property the subject of the sale.

It will not be necessary to give a detailed review of her evidence. However, copies of four cheques totaling \$10,000,000.00 were admitted in evidence during her testimony.

This Complainant said that in order to pay the sum of \$10,000,000.00 to Messers Samuda & Johnson, the Complainants had to borrow this sum from family. The said sum was paid to Messers Samuda and Johnson as follows.

- 1 Manager's cheque dated the 26<sup>th</sup> September 2011 drawn on the Bank of Nova Scotia for the amount of \$1,000,000.00.
- 2 Manager's cheque dated the 28<sup>th</sup> September 2011 drawn on the Bank of Nova Scotia in the amount of \$1,000,000.00.
- 3 Manager's cheque dated the 27<sup>th</sup> September 2011 drawn on the National Commercial Bank in the amount of \$3,000,000.00.
- 4 Manager's cheque dated the 26<sup>th</sup> September 2011 drawn on the National Commercial Bank in the amount of \$5,000,000.00.

This Complainant further stated that an additional sum of \$2,382,000.00 was paid by the Complainants to Messers Samuda & Johnson. To confirm this payment, cheque stub No. 089145 from the Bank of Nova Scotia was admitted in evidence as exhibit 12. The Complainant said that this sum represented the final payment due to Messers Samuda & Johnson on the purchase price.

The Complainant said that to date the Attorney owes them \$12,000,000.00 plus interest. Interest would also be due to them on the \$9,000,000.00 up to the time that the Attorney paid the \$9,000,000.00 to Samuda & Johnson.

The Complainants were not being charged interest on the family loan.

They did now have possession of the property but have not been able to do anything to the property.

The hearing of the complaint was again adjourned to the 21<sup>st</sup> February 2012. The panel was affording the Attorney yet another opportunity to respond to the allegations.

On an examination of the Master File, it discloses that a letter dated the 31<sup>st</sup> January 2012 was written to the Attorney advising him of what took place in relation to the hearing of the complaint on the 14<sup>th</sup> January 2012. He was supplied with a copy of the Notes of evidence under cover of this letter.

On the 21<sup>st</sup> February 2012 when the complaint was called, both Complainants were present but there was no response from the Attorney. The panel confirmed that the Attorney had been properly served with the Notice of the Hearing in compliance with regulations 5 and 21 of the Fourth Schedule to the Legal Profession Act.

The panel proceeded in the absence of the Attorney. It closed the evidence and heard submissions from both Complainants. The panel then reserved its judgment.

**THE BURDEN OF PROOF:** the panel recognizes that in law, the burden of proof is on the Complainants to prove their complaint to the standard of proof required in law. It is immaterial that the Attorney never attended and never responded to the allegations in the complaint, in so far as the legal responsibility remains on the panel to evaluate the evidence it has before it to the standard of proof required before it makes any findings that may be adverse to the Attorney.

**THE STANDARD OF PROOF:** The panel reminds itself that in law, the standard of proof in cases of professional misconduct is that of "beyond reasonable doubt". This is the standard that must be applied by the panel in evaluating the evidence adduced before it to determine the appropriate decision to make in the circumstances of the complaint.

**EVALUATION OF THE EVIDENCE:**

The panel was impressed with both Complainants. The panel is persuaded that they spoke the truth. Not only were they impressive witnesses, but they produced documentation to support all the allegations which form the basis of this Complaint. The panel accepts their evidence.

The panel also relies on all the documentary exhibits that were produced in evidence.

The panel finds that the Complainants have discharged the legal burden placed on them and have proven their complaint against the Attorney Sheldon Codner to a standard of proof of beyond reasonable doubt.

**FINDINGS:** The panel makes the following findings of fact and mixed law and fact as it is obliged to do pursuant to section 15 of the Legal Profession Act.

- 1 The Attorney-at-law Sheldon Codner is in private practice with offices at 4 Latham Avenue Kingston 6.
- 2 The Complainants Carlton and Nadine Dunkley are husband and wife who live at Whales District, Newport P.O. in the parish of Manchester.
- 3 On the 5<sup>th</sup> April 2011, the Complainants entered into an Agreement For Sale with First Global Bank Limited to purchase land with unfinished Townhouses situated at 2 & 3 Woodlawn, Mandeville in the parish of Manchester registered at Volumes 1339 Folio 293 and 1341 Folio 70 of the Register Book of Titles.
- 4 The Complainants retained the services of the Attorney to act on their behalf in the sale transaction.
- 5 The law firm of Samuda & Johnson had carriage of sale and acted for the Vendor.
- 6 The purchase price for the land is \$27,000,000.00.
- 7 In pursuance of the Agreement For Sale the Complainants paid over the following sums to the Attorney: \$4,050,000.00 in February 2011, \$47,000.00 in March 2011, \$18,500,000.00 on the 20<sup>th</sup> April 2011 and \$2,600,000.00 on the 2<sup>nd</sup> May 2011.



- 8 The Complainants paid over a total sum of \$25,197,000.00 to the Attorney which sum was to be paid to the attorneys-at-law for the vendor as part of the purchase price for the said property.
- 9 The Attorney admitted receiving all these sums from the Complainants.
- 10 The sum of \$25,197,000.00 represents trust funds which the Attorney was obliged in law to deal with only in accordance with the directions of the Complainants and in their interest only.
- 11 The Attorney paid over the sums of \$4,050,000.00 and \$47,000.00 to Samuda & Johnson.
- 12 The Attorney did not pay over the sums of \$18,500,000.00 and \$2,600,000.00 to Samuda & Johnson although he was obliged in law to do so.
- 13 The Attorney did not refund the amounts of \$18,500,000.00 and \$2,600,000.00 to the Complainants when they demanded that he do so.
- 14 The Attorney sent the Complainants' file to the attorney-at-law Marvalyn Taylor Wright without the consent of the Complainants.
- 15 In this file, the Attorney enclosed a cheque payable to Messers Samuda & Johnson, which cheque purported to be for the amount of \$21,000,000.00.
- 16 On an examination of this cheque, exhibit 8, the figures in the cheque are different from the written sum. The figures stated make no sense, and do not denote any recognizable sum. It is not a manager's cheque.
- 17 It is reasonable to conclude that the Attorney deliberately wrote this cheque in a manner that would prevent it from being paid by the bank on which it was drawn.
- 18 The Attorney did not fulfill his retainer to act for and conclude the business of the Complainants by whom he was retained.
- 19 The Attorney failed to account to the Complainants for the sum of \$21,100,000.00 which was entrusted to the Attorney by the Complainants to be disposed of for and on behalf of the Complainants and at their direction, and accordingly, the Attorney misappropriated that sum.
- 20 The Attorney acted dishonestly in dealing with the sum of \$21,100,000.00 entrusted to him by the Complainants.
- 21 In or around the month of July 2011 the Attorney's friends paid the sum of \$9,000,000.00 to Messers Samuda & Johnson on his behalf on account of the balance of the purchase price.
- 22 The Attorney is still indebted to the Complainants in the sum of \$12,100,000.00
- 23 The Attorney is still facing criminal charges in the Criminal Courts in relation to his alleged fraudulent conversion of sums paid to the Attorney by the Complainants.

**CONCLUSIONS:** On the basis of the above Findings the panel concludes that the Attorney-at-law Sheldon Codner is guilty of professional misconduct in that he

- 1 Breached Canon V11(b) (ii) of the Legal Profession ( Canons of Professional Ethics)Rules in that he failed to account to his clients for all monies in the hands

of the Attorney for the account or credit of the clients although reasonably required to do so.

- 2 Breached Canon 1(b) of the Legal Profession (Canons of Professional Ethics (Rules) in that he failed to maintain the honour and dignity of the profession and failed to abstain from behaviour which tended to discredit the profession of which he is a member.

**SANCTIONS:** The panel is of the considered opinion that the conduct of the Attorney has been particularly egregious, inexcusable and unacceptable. The Attorney has acted dishonestly, and by his conduct has breached the trust placed in him by the Complainants and has severely prejudiced their interests.

The judgments of the Disciplinary Committee in circumstances such as these, have repeatedly reiterated the importance of Attorneys-at-law displaying the utmost integrity when carrying out their professional duties. The practice of conveyancing and its customs in Jamaica are such as to demand complete honesty from all Attorneys. If the Legal Profession is to survive and enjoy any level of confidence from the public, then it is important that the highest ethical standards be maintained.

The judicial authorities from the Jamaican Court of Appeal and the Courts in other jurisdictions with the common law as the basis of their jurisprudence confirm that this is the correct approach to be adopted when considering the appropriate sanction to impose for professional misconduct which amounts to dishonest conduct.

The panel relies on and cites the cases of **Bolton v Law Society {1994} 1 WLR 512** the statement of Sir Thomas Bingham M.R, and **Solicitors Regulation Authority and Anthony Lawrence Clarke Dennison {2012} EWCA Civ 42, 3<sup>rd</sup> April 2012**, the statement of Lord Justice Moore – Bick paragraph 10.

The panel is also mindful of the fact that it has a duty not only to protect the general reputation of the profession, but first and foremost to protect the interests of the members of the public and prevent them from being injured and or adversely affected by the professional misconduct of Attorneys-at-law.

The Panel makes the following orders under section 12(4) of the Legal Profession Act as amended:

- 1 The panel orders that the name of the Attorney Sheldon Codner be struck from the Roll of Attorneys-at-law entitled to practise in Jamaica.
- 2 That the Attorney –at-law Sheldon Codner makes immediate restitution of the sum of \$12,100,000.00 to the Complainants with interest at the rate of 6% per annum from the 20<sup>th</sup> April 2011 until payment.
- 3 That the Attorney-at-law Sheldon Codner pays interest at the rate of 6% per annum on the sum of \$9,000,000.00 from the 20<sup>th</sup> April 2011 until the 31<sup>st</sup> July 2011.

5 That the Attorney -at -law Sheldon Codner pays costs of \$50,000.00 to the General Legal Council.

Dated the 19<sup>th</sup> day of MAY, 2012

Pamela E Benka-Coker  
PAMELA E BENKA-COKER Q.C.

Charles Piper  
CHARLES PIPER

Debra McDonald  
DEBRA McDONALD