

DECISION OF THE DISCIPLINARY COMMITTEE  
OF THE GENERAL LEGAL COUNCIL

COMPLAINT NO. 162/2002

IN THE MATTER of a Complaint by  
Patrick Stephens ("the Complaint")  
Against Evol Lyn Cook, Attorney-at-Law  
("the Attorney")

AND

IN THE MATTER of the Legal Profession  
Act

PANEL

C. D. R. BOVELL, Chairman  
LINCOLN A. C. EATMON  
DANIELLA R. GENTLES-SILVERA

HEARING DATES: 2<sup>ND</sup> February, 2008, 3<sup>rd</sup> April, 2008, 26<sup>th</sup> July, 2008, 18<sup>th</sup> June, 2011,  
19<sup>th</sup> November, 2011, 28<sup>th</sup> April, 2012, 24<sup>th</sup> November, 2012, 23<sup>rd</sup> March, 2013, 27<sup>th</sup> July,  
2013 and 26<sup>th</sup> October, 2013, 28<sup>th</sup> March 2015.

*COOK*  
*DC*

Complaint

1. The complaint against the Attorney, Evol Lyn Cook, (hereinafter called "the Attorney" is contained in the Form of Affidavit sworn to on the 8<sup>th</sup> July 2002 (Exhibit 8) and was as follows:-

" (4) The complaint I make against the Attorney-at-Law is that he has acted with inexcusable or deplorable negligence in the performance of his duties. 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."

2. The panel commenced hearing this matter on the 2<sup>nd</sup> February, 2008 with the evidence of the Complainant, Patrick Stephens, (hereinafter called “the Complainant”). His examination-in-chief continued on the 3<sup>rd</sup> April, 2008 when he was also cross examined by the Attorney’s Attorney-at-Law. The matter was thereafter adjourned for the Attorney to obtain the title for the property being the subject matter of the complaint as he indicated that it was with National Commercial Bank.
3. The matter has been excessively long in being completed, but the Panel took the view that there were delays in completing the transfer to the Complainant by the Attorney that could best be handled by the Attorney so that the Complainant could get his registered title. Unfortunately this proved not to be the case and we had to conclude the hearing after the lapse of a long period of time when the matter came on for hearing for the last time on 26<sup>th</sup> October, 2013 and the Attorney was absent without any explanation. The Complainant was present in person from New York. The Panel decided to conclude the matter based on the Complaint (Exhibit 8), the Complainant’s evidence given on 2<sup>nd</sup> February 2008, various Exhibits and progress reports from the Complainant and Attorney noted by the Panel over several years. Also, costs of \$590 U.S. were awarded to the Complainant against the Attorney being his air-fare to and from New York.

### **History**

4. Briefly, the history of the transaction that led to the complaint is as follows:
  - (i) The Complainant purchased a parcel of land from one Louise Brown (“the Vendor”) which was part of Armadale, in the Parish of St. Ann registered at Volume 1397 Folio 188.
  - (ii) There was an Agreement for Sale dated August 31, 1992 prepared by the Attorney on behalf of the Vendor with a purchase price of \$250,000 (Jam). A deposit of \$100,000.00 was to be paid, with the balance on Completion, which was to be in 12 months from the date of the agreement (i.e. August 31, 1993). The Attorney had Carriage of Sale and also acted on behalf of the Complainant/Purchaser. It was known at the time that sub-division

approval would be required and also that the title was deposited with a Bank to secure a loan to the Vendor.

- (iii) The Complainant paid the deposit to the Attorney and was told that the costs of obtaining the title would be taken out of the deposit. See Receipt dated 31<sup>st</sup> August 1992 (Exhibit 1), and the breakdown of the costs of \$10,236.50, (Exhibit 2).
- (iv) The Complainant paid the balance of purchase money by three (3) instalments, \$99,000 on 31<sup>st</sup> August 1992, \$31,000 on 3<sup>rd</sup> September 1992, and \$20,000 on 6<sup>th</sup> January 1993 (Exhibit 3).
- (v) The Complainant followed up the Attorney with regard to getting his title until 1995 without success, when he went to Messrs. Ernest Smith & Co., Attorneys-at-Law to communicate with the Attorney as to why the new title was not ready. Mr. Smith pointed out to the Complainant that sub-division approval was required and directed the Complainant to a surveyor who was paid by the Complainant and sub-division approval dated 1<sup>st</sup> September 2000 was obtained from the St. Ann Parish Council (see Exhibit 6).
- (vi) One would have thought, that with this hurdle overcome the new title would soon be forthcoming. However, this was not to be. Mr. Smith subsequently reported to the Complainant that the Agreement for Sale had not been stamped by the Attorney, so the transfer could not go any further.
- (vii) In July 2001 the Complainant made a complaint to the Jamaica Bar Association and in December 2001 to the General Legal Council. The formal Affidavit by the Complainant was dated 8<sup>th</sup> July 2002. It should be noted that in some of the correspondence and other documents the complaint number has been incorrectly stated as No. 126/2000. The correct number is 162/2002.

- (viii) The complaint came up several times and the Attorney attended giving various excuses as to why the transfer could not be completed. The Panel agreed to adjourn the matter on many occasions to allow the Attorney to take the necessary steps to obtain the title. For the sake of completeness, we would mention a few of them (a) the title could not be located. It was eventually found to be at NCB, Browns Town Branch. (b) the Vendor had died and her Death Certificate could not be obtained. Eventually the Complainants representative in Jamaica obtained the death certificate (in October 2010), and this was given to the Attorney. (c) Finally, when the documents were supposedly lodged at the Titles Office they were returned because of a Restrictive Covenant on the title prohibiting sub-division of the land.
- (ix) The Attorney in December 2008 applied to the Supreme Court to modify the Restrictive Covenant against sub-division. However, this was rejected on the grounds that the Attorney could not be the Applicant.
- (x) When the Complaint came up for hearing on 24<sup>th</sup> November 2012 the Attorney attended and advised the Panel that the Application was continuing before the Master but the sub-division plan was not clear and he had to get it clarified by the surveyor who had prepared the plan. The Attorney was to keep in contact with the Complainant's representative in Jamaica and the matter was adjourned to 27<sup>th</sup> July 2013. On that date the Attorney appeared in person and said he was trying to locate the surveyor as an affidavit had to be given by him to be filed in Court. The matter was again adjourned to 26<sup>th</sup> October 2013 for Trial and the Attorney was requested to give a report in writing to the Disciplinary Committee Office before that date. This was not done.

## Findings of Fact and Law

5. The Attorney failed to stamp the Agreement for Sale when the agreement was signed by the Vendor and the Complainant in 1992. It was not until 2002 that the Attorney submitted the agreement to the Stamp Commissioner. That is 10 years after the agreement was signed. There is no excuse for this as it should have been stamped within 30 days after it was signed. In addition, it was not until Ernest Smith & Co. was retained by the Complainant that the sub-division plan was obtained and submitted to the St. Ann Parish Council by the Complainant and Ernest Smith & Co. The Complainant had to pay for this and it was approved by the Parish Council in July 2000. There was also undue delay in obtaining the Duplicate Certificate of Title from NCB in Browns Town.
6. The failure by the Attorney to act promptly after the signing of the Agreement for Sale in 1992 by the parties is certainly inexcusable and deplorable negligence. The Complainant was forced to additional expense to retain the surveyor and an attorney to obtain sub-division approval which the Attorney should have obtained. The failure to stamp the agreement within the prescribed time by itself is a breach of the duty of care owed by an attorney to his client. The excessive delay in this case is extreme and there is no valid excuse that was offered by the Attorney. The other actions that should have been taken, and the long time that the panel afforded the Attorney to complete the matter have only compounded the initial failure by the Attorney to act as he should have done.

## Decision

7. We find the Attorney guilty of professional misconduct in breach of Canon IV (r) & (s) of the Legal Profession (Canons of Professional Ethics) Rules in that the Attorney has not dealt with his client's business with all due expedition and the conduct of the attorney amounts to inexcusable and deplorable negligence or neglect.
8. Pursuant to the above Findings it is **Hereby Ordered** that the Attorney Evol Lyn Cook be fined a sum of \$350,000 J and we direct that the entire fine be paid to the Complainant as compensation for the delay and costs that he has incurred and may have to incur to ensure that the matter undertaken by the Attorney is completed.

9. The Attorney is to pay the Complainant the sum of \$590.00 U.S as costs ordered on 26<sup>th</sup> October 2013, if not already paid.

DATED THE 28<sup>th</sup> JANUARY , 2015



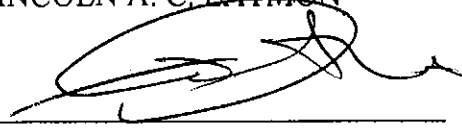
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CHRISTOPHER BOVELL



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LINCOLN A. C. EATMON



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DANIELLA R. GENTLES-SILVERA