

DECISION OF THE
DISCIPLINARY COMMITTEE OF THE GENERAL LEGAL COUNCIL

COMPLAINT NO. 255 of 2017

IN THE MATTER OF DAMIAN BARRETT vs JEROME
DIXON, an Attorney-at-Law.

AND

IN THE MATTER OF THE LEGAL PROFESSION ACT,
1971

PANEL: Mrs. Daniella Gentles-Silvera - Chairperson
Mrs. Debra McDonald
Mr. Kevin Powell

APPEARANCES: Mr. Damian Barrett

HEARING: July 14 and 26, 2018 and October 1, 2018

Introduction

1. Damian Barrett (hereinafter called "the Complainant") is an attorney-at-law. By Form of Application dated October 10, 2017 and Form of Affidavit sworn to by him on the same date, the Complainant has alleged himself aggrieved by an act of professional misconduct committed by another attorney, Jerome Dixon (hereinafter called "the Attorney").

2. The Complainant's ground of complaint is that he is in breach of Canon 1(b) which states that **"...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."** He states in his affidavit evidence: **"The essence of my complaint has to do with the failure of [the Attorney] to honour any of the two undertakings which he had given me to secure the payment of the balance of a Judgment Debt in respect of his client."**

3. Before considering the substantive complaint, the Panel notes that the Attorney did not participate in this hearing. On the day before the hearing was scheduled to commence the Attorney submitted a letter dated July 13, 2018 to the Committee indicating that he had “twisted his ankle”, could not attend the hearing, promised to provide a medical report and requested that the hearing be adjourned.
4. The Panel decided not to adjourn the hearing after it considered all the surrounding circumstances. These include the seriousness of the complaint against the Attorney, the fact that he had been served on the June 15, 2018 about 29 days before the date of the hearing and had not filed any affidavit in response to the complaint or identified or provided any documents on which he intended to rely.
5. The Complainant was also present and ready to proceed. The Panel therefore proceeded with the hearing in the absence of the Attorney pursuant to Rule 8 of the Fourth Schedule to the Legal Professional Act entitled Legal Profession (Disciplinary Proceedings) Rules.
6. The Panel decided it would take the Complainant’s evidence and adjourn for the notes of the evidence to be sent to the Attorney giving him an opportunity to respond and/or make himself and/or his counsel attend the next hearing to cross-examine the Complainant, give evidence or make submissions. Having taken the Complainant’s evidence on July 14, 2018 notice of the next hearing date and the notes of his evidence was sent to the Attorney on July 17, 2018.
7. When the Panel reconvened on July 26, 2018 the Attorney did not attend, the medical report promised in his letter of July 13, 2018 had still not been provided and no other communication had been received from him since his letter of July 13, 2018.

The Factual Background

8. The Complainant's evidence is that he acts for senior citizens in a matter in which they obtained a judgment for the sum of \$4,474,465.75 against Cavell Qualis. To secure payment of the judgment debt, Ms. Qualis provided the Complainant with the duplicate certificate of title for property registered at Volume 1102 Folio 997 of the Register Book of Titles ("the Property"). This was in July 2015 and at that time Ms. Qualis was represented by another attorney.
9. In December 2015 Ms. Qualis was represented by the Attorney. By letter dated December 4, 2015 the Attorney gave his professional undertaking to the Complainant to pay the judgment debt on completion of the sale of certain property by Ms. Qualis which he said was expected to be completed by January 31, 2016.
10. The letter of undertaking was admitted into evidence as part of Exhibit 2 being the Form of Affidavit by Applicant dated the 10th October, 2017 and read as follows:

December 4th, 2015

**Damian Barrett
Attorney-at-Law
135 Tower Street
Kingston**

Attention: Mr. Damian Barrett

Dear Sir,

Re: Judgment Debt for Cavell Qualis

We write in respect to the captioned matter.

Please be advised that Cavell Qualis is selling property in Industry Banks part of Tanglewood, Priory, St. Ann. The said sale is expected to close by January 31st, 2016. We hereby give to you our professional undertaking to pay to you the monies due and owing by our client being Four Million Seven Hundred Eighty Six Thousand Three Hundred Twenty Nine Dollars and Eight Cents (\$4,786,329.80) upon completion of the sale.

Kindly extend your usual kind courtesies herein.

Yours Sincerely,
Dixon and Associates Legal Practice

PER:
JEROME DIXON (MR.)

11. The Complainant did not receive payment of the judgment debt on or after January 31, 2016. Instead, in May 2016 he received two cheques from the Attorney totaling \$2,100,000.00 and was informed he would receive the balance within four weeks.
12. The Complainant did not receive the balance as promised or at all. Instead, in or about August 2016 he was contacted by the Attorney who asked him to release the duplicate certificate of title to the Property ("the Title") to the Attorney and then he would be paid the balance of the judgment debt within two weeks from the date of the release. The Complainant said he told the Attorney he was not in Kingston having left to travel to Mandeville and in any event, he would require a letter of undertaking before releasing the Title.
13. The Attorney offered to meet the Complainant in Mandeville. On the same date the Attorney travelled from Kingston to Mandeville where he met the Complainant, collected the Title and provided the Complainant with letter dated August 31, 2016.
14. That letter stated:

August 31st, 2016

**Damian Barrett
Attorney-at-Law
135 Tower Street
Kingston**

Attention: Mr. Damian Barrett

Dear Sir,

Re: Judgment Debt for Cavell Qualis

We write in respect to the captioned matter.

Please be advised that our client Ms Cavel Qualis is trying her utmost best to secure a loan to settle her indebtedness. We therefore direct this missive requesting that you forward us the Certificate of Title registered at Volume 1102 Folio 997 of the Book of Titles in the names of Cavell Jones and Kerry-Ann Williams for the sole purpose of securing the sum of Six Million Five Hundred Thousand Dollars (\$6,500,000.00).

We give you our professional and irrevocable undertaking to pay to you the outstanding sum of Two Million Five Hundred Thousand Dollars (\$2,500,000.00) from the said monies. We also undertake not to part with the Certificate of Title or deal with same in any manner that prejudices your interest. Should our client not be successful in her being granted a loan from the approached financial institution we will return the title to you at the soonest.

Kindly extend your usual kind courtesies herein.

Yours Sincerely,

Dixon and Associates Legal Practice

PER:
JEROME DIXON (MR.)”

15. The Complainant waited for three weeks before contacting the Attorney, not having heard anything from him. The Complainant's evidence is that he made enquiries of the Attorney as to the payment of the balance of the judgment and was given deadlines of the end of September 2016 and the end of October 2016.
16. However, no payments were made on those deadlines and after November 2016, despite further attempts at contacting the Attorney, the Complainant did not hear anything further from him.
17. In or about 2018 the Complainant conducted certain checks at the National Land Agency (“NLA”) where he obtained the following documents (which were admitted into evidence):

- a. Instrument of Transfer in respect of the Property dated January 24, 2017.
 - b. Certificate of Payment of Property Taxes over the Property dated February 27, 2012.
 - c. NLA receipt dated March 13, 2017 indicating payment of fees on a transfer of the property contained in certificate of title registered at volume 1102 Folio 997 of the Register Book of Titles and for expedited service.
 - d. Letter of request by the Attorney for expedited transaction dated March 13, 2017.
 - e. Transfer Tax Certificate in respect of the Property dated the March 13, 2017.
18. The documents revealed (which the Complainant's evidence confirmed) that the Property subject of the Attorney's undertaking had been transferred from Cavell Qualis to Valince Robert James on March 13, 2017 by way of gift which was effected after the Complainant had issued a letter of demand to the Attorney on March 14, 2017. A certified copy of the Certificate of Title registered at Volume 1102 Folio 997 was admitted into evidence as Exhibit 4.
19. Prior to obtaining the documents from the NLA the Complainant was not aware that the Property had been transferred. At the date of the transfer of the Property the Complainant's clients were owed approximately \$2.5 million. This money has to date not been paid.

Discussion

20. The Attorney's conduct is alleged to be in breach of his obligation to maintain the honour and dignity of the profession and to abstain from conduct which tend to discredit the profession of which he is a member. The Complainant's complaint is that the Attorney failed to fulfil his professional undertaking given to him.

21. The Panel is also mindful of Canon VI(d) of the Legal Profession (Canons of Professional Ethics) Rules which provides that an attorney shall fulfil every professional undertaking which he gives. Canon VIII(d) also spells out that breach of Canon VI(d) shall “**constitute misconduct in a professional respect and an Attorney who commits such a breach shall be subject to any of the orders contained in section 12(4) of the principal Act.**”
22. The seriousness of failing to fulfil a professional undertaking is not in doubt. Sylvester Morris v General Legal Council, ex parte Alpart Credit Union¹ is a decision of the Court of Appeal which considered an appeal against a finding by the Disciplinary Committee that an attorney was guilty of professional misconduct for failing to fulfil his professional undertaking.
23. In that appeal the attorney acting on behalf of a client in the purchase of property gave an undertaking to send the duplicate certificate of title to the credit union which loaned money for the purchase. The client obtained possession of the title from a clerk in the attorney’s office in his absence and used it to secure a separate loan from another mortgagee which resulted in credit union’s loan being unsecured and the client refused to repay it.
24. The Disciplinary Committee ruled that the conduct of the appellant amounted to misconduct in a professional respect and by way of restitution, ordered the attorney to repay the client’s unsecured loan.
25. The attorney’s appeal to the Court of Appeal was dismissed. The Court of Appeal held, among other things, that where an attorney gave an undertaking in his professional capacity to a third party, he could not exonerate himself by pleading that he had delegated the performance of the undertaking to another person. The fact therefore that the title had been left in the possession of a member of staff at the appellant’s office who delivered it to the client did not exonerate the attorney from liability.


¹ (1985) 22 JLR 1

26. Carey, J.A. acknowledged that:

...where an undertaking has been given, the question which should be asked is whether the undertaking was given by the attorney in his character of attorney in the transaction of the dispute...it matters not whether some technical defence is open to a party or whether the attorney is guilty of any blameworthy conduct. An ordinary man is expected to keep his word; a fortiori an attorney...It is no answer then to say as this appellant sought to do, that he had issued instructions for he had professionally pledged that he would deliver the certificate of title. It was an obligation or undertaking which he could fulfil because he had the document in his possession. So that even if the Canons were not extant, the appellant as an attorney could be punished by the court which has an inherent jurisdiction to punish its officers. The present Rules and those which predated them and relate to this appeal accept, that conduct which is in keeping with the traditions of the legal profession, has not been changed in any way...The breach of an undertaking amounts to professional misconduct whether at common law or by the present statutory provisions.

27. The Panel takes into account that in order to find the Attorney guilty of professional misconduct it must be satisfied on the evidence beyond all reasonable doubt - see **Wilton Campbell v David Hamlet (as Executrix of Simon Alexander Privy Council Appeal No. 7 of 2001)**.
28. Having considered all the evidence before it the Panel makes the following findings of fact.
29. The Complainant was a candid and believable witness. Even though he was not subjected to cross-examination, the Panel having seen and assessed him, accepts his evidence as accurate and truthful.
30. There letters of December 4, 2015 and August 31, 2016 are the subject of this complaint. We consider them in turn.


31. On a plain reading of the letter of December 4, 2015 the Attorney gave his professional undertaking to pay the balance of the judgment debt being \$4,786,329.80 upon completion of sale of another property which Cavell Qualis had at Industry Banks part of Tanglewood, Priory, St. Ann.
32. The Complainant's evidence is that subsequent to this letter the Attorney sent the Complainant two cheques totaling \$2,000,000.00. However, there was no evidence that this payment was from the proceeds of the sale of the property in Priory, St. Ann.
33. In fact, there was no evidence that the sale of the property in Priory, St. Ann was completed. It would only be in a case where the sale was completed, and the Attorney failed to pay the sum he undertook to pay to the Complainant that it could be found that the Attorney breached his undertaking.
34. The Panel finds that the undertaking given by the Attorney in his letter dated December 4, 2015 to pay the Complainant the sum of \$4,786,329.80 was on condition of the completion of the sale of the property in Priory, St. Ann. In the absence of any evidence that the sale was completed, the Panel finds that the Attorney did not breach this undertaking.
35. The Panel turns to consider the letter of August 31, 2016. This letter is unambiguous. By its wording the Attorney undertook to pay the Complainant \$2,500,000.00 from the monies his client would be lent on the security of the Title.
36. The Attorney's undertaking went further to provide that the Attorney would not part or deal with the Title in any way prejudicial to the Complainant's interest and to or return the Title in the event the Attorney's client did not obtain a loan on the security of the Title.
37. It is also obvious that the letter of August 31, 2016 was written by the Attorney in his capacity as an attorney-at-law.

38. Subsequent to the giving of the undertaking by the letter dated August 31, 2016 an instrument of transfer in relation to the Property was lodged at the Titles Office by the Attorney on March 13, 2017.
39. The instrument of transfer was dated January 24, 2017 and the Attorney witnessed the signatures of all the parties who signed it. The Attorney also paid or authorized the payment of the fee was to the Titles Office for the expedited registration of the instrument of transfer on the Title.
40. On March 13, 2017 the Property was transferred by way of gift to a third party, Valince Robert James.
41. The undisputed evidence is that the Complainant acted on the Attorney's professional undertaking when he gave the Complainant the Title which he had in his possession as security for the payment of the judgment debt owed to his clients.
42. The Panel finds that the transfer the Property without the payment of the balance of the judgment debt to the Complainant was clearly prejudicial to the Attorney and to his clients' interest. The transfer of the Property was not only done with the knowledge of the Attorney but also his active involvement.
43.  By failing to return the Title or to pay the balance of the judgment debt, the ~~Attorney~~ ^{Complainant} failed to fulfil the terms of his professional undertaking. Up to the date of the hearing the Attorney had not contacted the Complainant or made any attempt to pay the balance of the judgment debt or any part of it despite the lapse of more than 2 years.
44. In any event, the Panel finds the Attorney's conduct in these circumstances to represent a failure to maintain the honour and dignity of the profession and his behavior following the undertaking he gave in his letter of August 31, 2016 was of the level that was a great discredit to the profession of which he is a member.

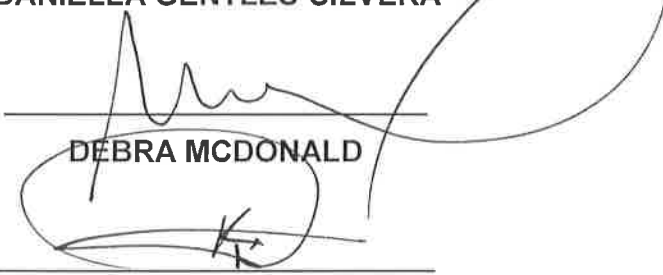
CONCLUSION

18. In all the circumstances, the Panel finds that the Attorney did not honour his professional irrevocable undertaking given to the Complainant in his letter August 31, 2016 and is guilty of misconduct in a professional respect.


Dated the 1st day of October 2018



DANIELLA GENTLES-SILVERA



DEBRA MCDONALD



KEVIN O. POWELL