

- (ii) He has failed to maintain the honour and dignity of the profession at all times and has failed to abstain from behaviour which may tend to discredit the profession of which he is a member in breach of Canon 1 (b) of the Canons of Professional Ethics.

2.The Evidence

The Respondent neither filed an Affidavit nor testified under Oath. The evidence from the Complainant was both by Affidavits and by oral testimony. The evidence was therefore all one way.

The evidence from the Complainant was as follows:

- (i) The Complainant is the Victoria Mutual Building Society, a Building Society duly incorporated under the Building Societies Act with its registered office at 8-10 Duke Street in the parish of Kingston (the Society).
- (ii) By virtue of an Agreement for Sale dated the 23rd of July 2012, Cedric Everton Perue and Cedric Sheldon Perue (hereinafter referred to collectively as “the Vendors”, agreed to sell property at Lot 288 Havendale St. Andrew registered at Lot 288 Havendale St. Andrew registered at Volume 1409 Folio 603 (the property) to Purchasers, Virginia Mae Johnson and Cravian Co-Randie Ranglin, for the sum of Eighteen Million Dollars (\$18,000,000.00). Pearson & Company acted as the Attorneys-at-law for and on behalf of the Vendors. Pearson & Company is a sole practice whose only Attorney is Mr. Anthony Pearson, Attorney-at-Law and the Respondent Attorney-at-Law to this complaint.
- (iii) At the signing of the Agreement for Sale, the Society was the holder of a legal mortgage #1454315 over the property registered on the 23rd of April 2007 in the sum of Eight Million, Five Hundred and Fifty Thousand Dollars (\$8,550,000.00) with interest to secure the said sum loaned to the Vendors.
- (iv) The Purchasers were granted a loan from the Society in the sum of Thirteen Million Dollars (\$13,000,000.00) in order to purchase the property.
- (v) It was agreed between the parties that the proceeds of the mortgage to the Purchasers would first be applied to discharge the vendors’ mortgage with the Society and subsequently the net proceeds of mortgage would be paid to the Vendors.
- (vi) On January 28, 2013, in furtherance of the purchase of the property, the Purchasers executed a mortgage deed with the Society in order for the Society to issue a mortgage loan to them of Thirteen Million Dollars (\$13,000,000,00).

- (vii) The Law Firm of DunnCox represented the Society in the transaction.
- (viii) The Respondent provided the Society's Attorneys-at-Law, DunnCox, with the relevant documents requested by DunnCox to complete the transfer of the property and register the mortgage secured by the Purchasers. The Respondent noted that it would receive the net proceeds of sale after the amount required to liquidate its clients (the Vendors") indebtedness to the Society was deducted.
- (ix) On February 28, 2013, The Vendors' mortgage was discharged by the Society. On March 27, 2013, Thirteen Million Dollars (\$13,000,000.00) was wire transferred by the Society to the account of the Respondent. The payment of Thirteen Million Dollars (\$13,000,000.00) by the Society to the Respondent was made as a result of a mistake of fact, in that, due to an oversight, it failed to deduct the sums from the mortgage proceeds to settle the mortgage of the vendors.
- (x) On or about the 11th of April 2013, the Society discovered the said mistake and advised DunnCox of the same.
- (xi) DunnCox then made verbal contact with W. Anthony Pearson, the Respondent on or about the 11th of April 2013 and requested that the excess mortgage proceeds of Nine million Nine Hundred and Seventy Two Thousand Nine Hundred and Seventy Nine Dollars and Fifty Three Cents (\$9,972,979.53) be returned.
- (xii) On April 16, 2013, DunnCox wrote to the Respondent demanding the immediate repayment of the excess mortgage proceeds being the amount due and owed by the Vendors to settle their mortgage accounts with the Society. DunnCox demanded that restitution/repayment be made via RTGS directly to the Society's Bank account and provided the details of said account. To date there has been no written response from the Respondent.
- (xiii) Subsequent to several telephone conversations between Mr. W. Anthony Pearson, the sole Attorney of Pearson & Company, and Mrs. Helen E. Evelyn, a Partner of DunnCox no monies have been repaid to the Society, despite promises by Mr. Pearson to do so.
- (xiv) The Complainant also filed an action in the Supreme Court against the Respondent for the said sum and obtained Judgment against him.

3.The Law

- (i) The Panel reminds itself that the burden of proof to establish the complaint rests solely and entirely on the Complainant. The panel also reminds itself that the standard of proof which is required from the complaint is proof beyond a reasonable doubt. (**Whilston Campbell v David Hamlet (as executrix of Simon Alexander) Privy Council Appeal No. 73 of 2001.**)

- (ii) In respect of the complaint made regarding Canon 1 (b), the Complainant relies on the decision of the Disciplinary Committee made in the case of **Elaine Farr Francis v Akin Adaramja decided 12th of October 2013 in Complaint No. 35 of 2013** wherein the panel found that the Respondent had misappropriated funds which ought to have been paid over to the Complainant. As a consequence the Respondent was found to be in breach of Canon 19(b). The Panel adopts the reasoning in that Decision and applies it, in so far as it is related to this Decision.
- (iii) The Panel also reminds itself that the Judgment of the Supreme Court in Claim JHCV 03582/2015 is not probative of the complaint herein.
- (iv) The Panel has decided this matter solely on the evidence adduced in the matter inclusive of the exhibits.

4. Findings of Fact

- (1) The Complainant is Victoria Mutual Building Society, a Building Society duly incorporated under the Building Societies Act with registered office at 8-10 Duke Street in the Parish of Kingston (the Society).
- (2) Mr. William Anthony Pearson is an Attorney-at-Law and trades as Pearson & Company Attorneys-at-Law. The Respondent has failed, refused and/or neglected to repay sums paid by the Society to Pearson & company by mistake and in excess of what was due to his client despite several requests by the Society and its Attorneys-at-Law, DunnCox for the repayment of the same.
- (3) The Respondent represented the vendors in an Agreement for Sale dated the 23rd of July 2012 between Cedric Everton Perue and Cedric Sheldon Perue (hereinafter referred to collectively as “the Vendors”, and Purchasers, Virginia Mae Johnson and Carvian Co-Randle Ranglin, for the sum of Eighteen Million Dollars (\$18,000,000.00).
- (4) At the signing of the Agreement for Sale, the Society was the holder of a legal mortgage #1454315 over the property registered on the 23rd of April 2007 in the sum of Eight Million, Five Hundred and Fifty Thousand Dollars (\$8,550,000.00) with interest to secure the said sum loaned to the Vendors.
- (5) The Purchasers were granted a loan from the Society in the sum of Thirteen Million Dollar (\$13,000,000.00) in order to purchase the property.
- (6) It was agreed between the parties that the proceeds of the mortgage to the Purchasers would first be applied to discharge the vendors’ mortgage with the Society and subsequently the net proceeds of mortgage would be paid to the Vendors.

- (7) In January 2013, the Society granted a mortgage in the sum of Thirteen Million Dollars (\$13,000,000.00) to the Purchasers.
- (8) In February 2013 the Vendors' mortgage was discharged by the Society.
- (9) On March 27, 2013, Thirteen Million Dollars (\$13,000,000.00) was wire transferred by the Society to the account of Pearson & Company.
- (10) The payment of Thirteen Million Dollars (\$13,000,000.00) by the Society to Pearson & Company was made as a result of a mistake by DunnCox.
- (11) The Respondent received an amount of \$9,972,979.53 that was not due to either his clients or himself.
- (12) The Respondent Attorney-at-law has failed and/or refused to repay the full sum of \$9,972,979.53 to the Complainant or its attorneys-at-law Dunn Cox.

5. Conclusion


- (a) We find that the Attorney is guilty of professional misconduct in that he has failed to return the monies overpaid to him for which neither his client nor himself had any bona fide claim of right.
- (b) The Attorney has caused the Complainant to suffer prejudice and loss as a result of his failure to repay the sums mistakenly paid to him.
- (c) The conduct of the Attorney was reprehensible and dishonourable and has brought a shame unto both himself and the profession.
- (d) The English Law Society's Guide to the Professional Conduct of Solicitors states that:
"in the absence of an express term, there is an implied term in a professional undertaking that it is to be performed with a reasonable time having regard to its nature. If there is any untoward delay, the giver is under an obligation in professional conduct to keep the recipient of the undertaking informed".

(e) In recognition of the directive of the Court of Appeal in the matter of **Owen Clunie v GLC CA 3/2013** this Panel directs that a date be set to give the Attorney an opportunity to be heard in the mitigation before a sanction is imposed.

DATED THIS ^{12th} DAY OF ~~AUGUST~~ ^{OCTOBER} 2019. 115 24


WALTER H. SCOTT, Q.C.


CHARLES PIPER, Q.C,


MICHAEL THOMAS