

DECISION OF THE DISCIPLINARY COMMITTEE
OF THE GENERAL LEGAL COUNCIL

IN THE MATTER OF
KEMTEK DEVELOPMENT & CONSTRUCTION LTD.
(KARL TULLOCH) VS. BARBARA LEDGISTER
COMPLAINT NO. 111/2019

PANEL: MR. PETER CHAMPAGNIE, Q.C.
MS. LILIETH DEACON
MS. CARLENE LARMOND

This is the verdict of the Panel in respect of Complaint No. 111/2019

The Complaint

This complaint against the Respondent Attorney-at-Law, Mrs. Barbara Ledgister, arises from Mr. Karl Maurice Tulloch, a Director and shareholder of Kemtek Development and Construction Ltd. The particulars of the complaint are that the Respondent breached her irrevocable professional undertaking contrary to Canons VI (d) and (e) of The Legal Profession (Canons of Professional Ethics) Rules, (1978). As a consequence, the Complainant extends to another breach, asserting that the Respondent has otherwise acted in a manner contrary to Canon I (b) of the said Rules in engaging in conduct which tends to discredit the profession of which she is a member.

The Evidence

The hearing of this complaint commenced on January 11, 2020. The sole witness in this matter against the Respondent was Mr. Karl Maurice Tulloch, a Director and shareholder of the Complainant. Mr. Tulloch said on oath that he signed an Affidavit in this matter on June 11, 2019. This Affidavit was tendered into evidence as **Exhibit 1** with no prior objections taken.

Attached to Exhibit 1 were a copy of a Duplicate Certificate of Title registered at Volume 1514, Folio 392, a Letter of Undertaking dated February 2, 2018, a letter dated October 4, 2018 from the firm of Nunes Scholefield DeLeon & Co. Also attached was a letter of demand dated February 28, 2019 from the said law firm mentioned herein. These four (4) attachments were exhibited as **Exhibits 1a – d** respectively. Mr. Tulloch went on to indicate that he also, on behalf of the Complainant, filed a Form of Application against Attorney-at-Law which was dated June 11, 2019. Without any objections, this was tendered into evidence as **Exhibit 2**. Exhibit 1 through to 1a-d, and Exhibit 2 revealed in total that the Complainant had entered into an Agreement for Sale with Mr. Silvera Thomas in relation to a property situated in the parish of St. Ann registered at Volume 1514, Folio 392 (Exhibit 1a). The company entered into an Agreement for Sale with Mr. Silvera. The Attorney-at-Law for the purchaser in respect of this Agreement for Sale was Mrs. Barbara Ledgister, whereas the Complainant was represented by the firm of Nunes Scholefield DeLeon & Co. In the course of completing the Agreement for Sale the Respondent provided a professional undertaking by letter dated February 2, 2018 (Exhibit 1b). The undertaking was to pay the sum of \$18,077,380.00 or £112,983.63 in exchange for the Duplicate Certificate of title for the property mentioned herein before. The Respondent received the requisite title duly endorsed in the name of the purchaser which was sent to her under cover letter dated October 4, 2018 (Exhibit 1c). Despite several demands for payment of the outstanding sum due and owing to the Complainant, the Respondent did not honour her professional undertaking. This resulted in a demand letter from the Complainant's then Attorney; (Exhibit 1d). Despite this, the Respondent did not act to fulfil her professional undertaking that was given. Tendered into evidence as **Exhibit 3**, without any objection, was a letter dated January 31, 2019. The content of this letter was yet another letter of demand imploring the Respondent to fulfil her professional undertaking.

This was followed up by another letter on the part of the Complainant's Respondent dated February 28, 2019 which reiterated the demand and a threat to report the matter to the General Legal Council if the undertaking was not honoured. This was tendered into evidence, without any objection, as **Exhibit 3a**. The final document that was alluded to and put in the evidence through Mr. Tulloch was a Statement of Account which, without any objection, was tendered into evidence as **Exhibit 4**, which showed the amount that was outstanding for the Complainant. This was in essence the sum total of the evidence in chief of Mr. Tulloch on behalf of the Complainant.

Under cross-examination Mr. Tulloch agreed that the Complainant and the Respondent were no strangers and that they had engaged in other transactions prior to the one in issue. Indeed, it was the evidence of Mr. Tulloch in response to Counsel for the Respondent, that there had never been any issues in the past regarding other undertakings. It was put to Mr. Tulloch whether he acknowledged that the Respondent had since engaged in the process of selling her house to take care of the outstanding balance that was due to the Complainant. Mr. Tulloch indicated that prior to it being brought to his attention in cross-examination he was not aware. Leave was sought and granted for the Complainant's Attorney to further ask a series of questions without any objections from Counsel for the Respondent. The result of these questions was the tendering, without any objection, of the Agreement for Sale, which was tendered as **Exhibit 5**, representing the subject property of this transaction. It was put to Mr. Tulloch that the said Agreement for Sale was entered into in the year of 2017. To this suggestion Mr. Tulloch indicated that he was not sure. This in total was the Complainant's case at the end of which the Panel reminded Counsel for the Respondent of the options that were open to her client, that is, a no case submission or electing to give evidence or otherwise. Counsel for the Respondent indicated that her client would be exercising the right to give evidence.

The Respondent was sworn, and she gave her full names as Barbara Joy Ledgister, Attorney-at-Law of a London, England address. She alluded to the fact that she had given an Affidavit in respect of this matter dated January 10, 2020. An application was made for it to be tendered into evidence and there was no objection. This became **Exhibit 6** with attachments **Exhibits 6a – 6h**. The essence of Exhibit 6 revealed that the Respondent had been battling several health issues which saw her making several hospital visits and convalescing at home. It also revealed that she had been an Attorney-at-Law since 1984 and was admitted to the role as a Solicitor in England and Wales in 1990. Reference was made to an instance of the Respondent receiving a national award being the Prime Minister's medal of appreciation for service to Jamaica and Jamaicans in the diaspora. It was noted that her practicing certificate as a Solicitor was suspended in 2008 and she was fined by the Law Society in the foreign jurisdiction in which she practiced. This sanction subsequently became the subject of further litigation. This Panel paused at this juncture to note that it has disregarded this portion of the Respondent's Affidavit evidence and will not and cannot make any adverse inference or findings based upon this. Consequently, further reference to this aspect of the Respondent's Affidavit evidence in this manner, will not be referred to or entertained, in so far as the deliberation of this matter is concerned.

The Respondent indicated in her Affidavit that in 2013 she met Pastor Everton Brown and in January of 2017 she met up with him again. According to the Respondent, she was reminded by him that he had offered to assist her spiritually and she had rejected his assistance. Consequently, sometime in January or February of 2017 having come into the sum of £4000 she was advised by the said Pastor that this sum would be appropriate to commence the process of him assisting her. The result was a series of prayers and prophesies which, according to the Respondent, revealed that she had been under spiritual attack for a number of years. Her association with Pastor Brown extended to other congregants who were aware of her association with him.

Her relationship with Pastor Brown grew to the extent that he would visit her home to the point where she got the feeling that she was being watched and monitored by him. She indicated that in October of 2017 she was told that she needed to be making more monetary contributions to enable him, on her behalf, to fight against spiritual attacks. According to the Respondent, at paragraph 58 of her Affidavit she stated *"in hindsight around the time that I received the funds from Mr. Silvera Thomas he [Pastor Brown] always insisted on receiving cash so that it could be placed at the church's altar"*. The Respondent indicated that Pastor Brown continued to make more monetary demands. At paragraph 68 the Respondent noted that she asked Pastor Brown to return the funds that she had given to him in the approximate amount of £125,000. Her request for a return of these funds was to no avail and she subsequently advised Mr. Silvera Thomas of the unfortunate turn of events and that she had been scammed but was trying every possible means to obtain the funds. This is noted in paragraph 72 of her Affidavit. The Respondent noted that along the way and at the beginning of June of 2019 she developed a series of health issues. The tenure and conclusion of the Affidavit evidence of the Respondent was that she believed that she was under spiritual discrimination and manipulation. At paragraph 84 of her Affidavit the Respondent said this *"I cannot challenge the Affidavit of Mr. Tulloch and what he has presented is a factual account of what transpired from his perspective"*. The Respondent concludes in her Affidavit that it is not her modus operandi to be dishonest and that she had no dishonest intention. She has expressed remorse. This is set out in paragraph 88 of her Affidavit.

The Respondent was cross-examined by Counsel for the Complainant. She admitted that Mr. Silvera Thomas did in fact give her all the funds to complete the transaction. She indicated that the funds provided by Mr. Thomas were no longer with her and that the funds were not used to complete the transaction concerning Mr. Thomas and the Complainant.

At the end of cross-examination, the Respondent, through her Counsel, indicated that she had three witness to call to testify on her behalf. As a consequence, the hearing into this matter was adjourned to a subsequent date. What transpired in between was the submission of a supplemental Affidavit by the Respondent to which the Complainant's Respondent had no objection. This supplemental Affidavit of the Respondent dated July 10, 2020 was tendered into evidence as **Exhibit 7** and was supported by further evidence given by the Respondent herself. This was on July 17, 2020. The Respondent testified that there was no longer any outstanding balance owed to Mr. Silvera Thomas and that all monies had been paid including interest and maintenance. She indicated that the original funds intended to complete the transaction was used by Pastor Everton Brown. Reference was made to an appeal against an order for bankruptcy in respect of the Respondent. Once again, this Panel paused to indicated that it will disregard and so do, any evidence of this nature in refence to the Respondent. It is to our view prejudicial and ought not to form any part of our deliberation in this matter. The Respondent indicated that attempts were made to contact Pastor Brown for a return of the funds but again this was to no avail. She also indicated that her medical challenges had become complicated with a diagnosis from Dr. Hugo of Moderate Clinical Depression. This was evidenced by a letter from the said doctor dated August 1, 2019. She indicated that her health issues were under review and were still ongoing. Specific references were made to a number of instances surrounding her health care and what she was experiencing. At the end of the evidence the Complainant's Attorney indicated that he had no questions in cross-examination. The Panel was advised that the Respondent's case was not closed and that additional witnesses were to come, speaking to the character of the Respondent. The matter was adjourned to September 5, 2020 for continuation to accommodate the Respondent's request.

On September 5, 2020 the Respondent, through her Counsel, presented the first of four (4) witnesses, Ms. Carlotta Nelson. Ms. Nelson indicated that she was a business owner and for the purposes of the hearing she had done an Affidavit dated January 20, 2020.

This was tendered into evidence as **Exhibit 8**. Ms. Nelson testified that she had known the Respondent for 27 years and she, the Respondent, is a kind person. She testified that she had attended the same church as the Respondent, known as Christ Liquid Fire Ministries. Ms. Nelson made reference to having knowledge of Pastor Everton Brown and that she also had made payments to Pastor Brown in the past, totalling £1200. She went on to indicate that Pastor Brown's appetite for monies in exchange for prayer increased to £10,000 but she did not satisfy that request. She testified to the professional generosity of the Respondent and that when she found out that the Respondent had paid monies over to Pastor Brown, she was shocked. She concluded her evidence by telling the Panel that knowing the Respondent, she did not know that she would have paid money like that willingly to Pastor Brown without asking certain questions. She added that the Respondent must have been under some spell and that she would not have expected her to do something like that. There were no questions in cross-examination from the Complainant's Attorney.

The next witness was Mrs. Marjorie Henry Lawrence who testified that she was a lecturer at a College in England and that she too swore to an Affidavit dated January 10, 2020, and that the Respondent had acted for her in relation to the purchase of a property, and she was satisfied with her services. She spoke of the existence of Pastor Everton Brown and that she gave him £600 for spiritual services. She said that she was no longer in contact with Pastor Brown especially since the discovery of what he did to the Respondent. She indicated that she was of the view that the Respondent was pressured because of the commanding and charismatic personality of the Pastor and the vulnerability of the Respondent at the time. She indicated nevertheless that the Respondent was not easily swayed and was a very solid intelligent woman.

She said that she was not told before by the Respondent that she would have paid any monies to the Pastor, but the Respondent is a very private person. She reiterated the good character of the Respondent and said that she was a very reliable person who was helpful to others. There was no cross-examination of this witness by the Complainant's Attorney.

The next witness was Ms. Donna Marie Archer who was sworn and gave her occupation as a master life coach among other things. She said she knew the Respondent for the past 25 years and she was her immigration lawyer. Ms Archer said the Respondent offered her first-class service in this regard. She also testified to the existence of Pastor Brown. She regarded the Respondent as intelligent and strong willed with an aptitude to help human beings and stated that she still maintains a high regard for the Respondent. There were no questions in cross-examination.

The fourth and final witness was Mr. Utolee Simmonds who indicated that he was a Reverend Apostle and that he gave an Affidavit in this matter on July 10, 2020. He said that he knew the Respondent for "about 5-6 years to be precise" and he found her to be honest and sincere. Mr. Simmonds said he had heard of Pastor Brown. He spoke to the possibility of spiritual manipulation. He indicated that he was a self-acclaimed Minister with that title as Apostle. In answer to the Panel he indicated that although his Affidavit spoke to knowing the Respondent for about 2 years it felt as though he had known her for 4-5 years. His Affidavit was tendered into evidence as **Exhibit 9**. There were no questions in cross-examination. Counsel for the Respondent then sought to tender into evidence character reference letters dated July 1, and July 10, 2020 as **Exhibits 10** and **11** respectively. This was the case for the Respondent.

In an unusual move the Respondent requested permission to address the Panel directly in terms of submissions and the same was accommodated. The Panel took note of her submissions which spoke to the culture in the United Kingdom in relation to minority groups and the fact that human beings are not infallible, and that among other things, the Panel in deliberating, should consider all things and look beyond the mere letter of the law. To the extent that the Respondent made any admissions inferentially or otherwise through her direct address to the Panel, this Panel wishes to state that it has disregarded same and will focus on the evidence before us.

It is to be noted that both the Complainant and the Respondent's Attorneys-at-Law were subsequently invited by the Panel to provide written submissions in respect of closing arguments. The Panel is indeed grateful for the provision of these by the parties, which were received on September 18 and September 21, 2020, the latter being the Complainant's submissions and the former, the Respondent's submissions.

Issue to be determined

The central issue to be determined is a question of fact. Did the Attorney-at-Law issue an undertaking to the Complainant that was breached? Did the Complainant prove to the satisfaction of the Panel it's case in this regard? If so proved, was it conduct one that would discredit the profession of which the Respondent is a member? Against this background the Panel remind itself that the burden of proof is on the Complainant to prove his case. The Panel also reminds itself that the standard of proof is of the criminal standard. That is, it must be beyond a reasonable doubt. To this regard the Panel affirms the burden and standard of proof set out in Campbell v Hamlet [2005] URPC 19 [16].

It should be noted that a lack of intention to breach a professional undertaking and holding a genuine belief that one's client or circumstances would materialize to fulfil a professional undertaking is not a defence in these circumstances. The Panel therefore finds beyond a reasonable doubt that the Respondent is guilty of professional misconduct.

Analysis of the Evidence and the Law

This Panel in coming to its finding, has had regard for all of the evidence that was presented in this hearing. This includes not only the evidence of the Complainant but also the evidence of the Respondent and all her witnesses. The analysis of the evidence in this matter demonstrates that the Complainant's testimony was not challenged by the Respondent, particularly as it related to the gravamen of the complaint herein. Indeed, the Respondent's evidence in the way of her Affidavit, Exhibit 6 and paragraphs 58, 72, and ultimately, 84, thereof, give currency to this analysis. However, the thrust and balance of the attorney's evidence, are to suggest inter alia that:

1. Her conduct was devoid of any dishonest intent
2. Her actions were the subject of serious manipulation by a third party
3. The said manipulation was occasioned or coincided at a period in her life when she was suffering from not just physical ailments but other maladies which had cast her in a state of depression
4. Her character is and has been of an outstanding quality from which she continues to enjoy the confidence of her former clients, friends, and congregants of her church
5. The Complainant has in the past, benefited from and had no complaint in respect of her services provided
6. That efforts have been made to retrieve the funds being the subject of her undertaking from the third party

7. That presently as this matter now stands, she has made good by satisfying the outstanding balance plus interest, due and owing to the purchaser, Mr. Thomas in this regard.

Having taken into account to the foregoing, and in total, the Respondent's evidence exhibited a very high degree of mitigating evidence. The witnesses called on her behalf, Ms. Carlotta Nelson, Mrs. Marjorie Henry-Lawrence, Ms. Donna Marie Archer and Mr. Utolee Simmonds, along with document Exhibits 10 and 11, were all in this vain. Their evidence also spoke about her character.

Through some of these witnesses, there was information which spoke to the vulnerability and the susceptibility of the Respondent having regard to the all the attendant circumstances of Pastor Brown. However, this Panel notes that none of these witnesses were practitioners in any discipline that would put them in a place to render any professional opinion that was underpinned by formal training about which they spoke. In this regard, they could hardly be considered expert witnesses in the field of psychology or any such related discipline. Quite apart from this, none of these witnesses, other than the "say so" of the Respondent, went beyond providing any proof, that Pastor Brown had in fact received the funds that were intended for the purchaser in this transaction which has caused the Respondent to be before this Panel. At the highest, there is evidence that in respect of some of these witnesses, monies were paid over to a Pastor Brown by them and/or attempts were made by a Pastor Brown to extract monies from them.

Although evidence was given by the Respondent herself that in essence her mental state had put her in a vulnerable position, save an except, a medical report from Doctor Hugo, no evidence was put before the Panel that spoke directly to any impairment in relation to her judgement touching and concerning this specific complaint. Any evidence that was put before the Panel that pointed in this direction was short of the requisite expertise and void of specific reference to the particulars which gave rise to this complaint.

The Panel accepts that in law failure to give an undertaking is not a strict liability offence. To this extent Briggs and another vs. The Law Society [2005] EWHC 1830 is an appropriate authority to rely upon. In Briggs' case it was noted that the tribunal was wrong to hold that the breach of an undertaking is always a matter of misconduct. It noted that it almost always will be, but there is room, for a finding of no fault in exceptional circumstances (at p 31.).

Indeed, there can be circumstances arising beyond the control of a Respondent which puts the Respondent in breach of an undertaking. Instances of this could include an intervening act of God in the way of a physical incapacitation by the Respondent. However, in the matter before us this Panel whilst holding that the breach of an undertaking is not a strict liability, does not find upon the evidence that any such exceptional circumstances exist.

The question as to whether the Respondent was dishonest at the material time is a matter to be canvassed based on the evidence. This goes directly to the mens rea of the Respondent. The actual state of the individual's knowledge or belief is a matter of evidence. The authority of Ivey v. Genting Casinos [2017] UKSC 67 at paragraph 74 states that the question whether the person's conduct is honest or dishonest is to be determined by the fact finding by applying the objective standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest. The evidence before the Panel leads it to the conclusion that the Respondent was aware that the funds were not hers to give to any third party. As an Attorney-at-Law since 1984 the Respondent would be aware also that parting with those funds in the circumstances as she did would have been clearly wrong and dishonest.

There are a number of authorities in law which speak to the breach of a professional undertaking, the most often used is Bolton v The Law Society [1994] 2 All ER 113 at page 296.

In that case Lord Justice Thomas noted the following:

“But a solicitor who gives to other people in an undertaking must always act on the assumption that the person to whom he gives an undertaking must be protected, and that he cannot rely upon the apparent trustworthiness of his client to see him right. He has to stand behind his undertaking himself and any attempt to say “Well I trusted my client, and therefore I could do what he asked me to do”, totally undermines, in a grave manner, the high standing in which the Solicitor’s profession is held”

Findings of fact.

This Panel based on this evidence makes the following findings of fact:

1. The evidence presented by the Complainant was not challenged by the Respondent. This notwithstanding the Panel was obliged to consider whether the evidence was of a nature that satisfied the requisite burden and standard of proof mentioned herein before.
2. The Complainant was properly and legally represented through Mr. Karl Tulloch.
3. Mr. Tulloch on behalf of the Complainant presented himself as a witness of truth.
4. The Respondent did provide the Complainant with a letter of undertaking.
5. The letter of undertaking was not fulfilled.
6. The Respondent’s conduct and the attendant circumstances as to why the undertaking was not fulfilled and could not be justified or excused in anyway and it was therefore an act of dishonesty.
7. The Respondent was therefore in breach of canon 6 d and e of the Legal Profession (Canons of Professional Ethics) Rules, (1978) which states that:

(d) An Attorney shall not give a professional undertaking which he cannot fulfil and shall fulfil every such undertaking which he gives.”

(e) “Where an Attorney has been sent money, documents or other things by another Attorney which (at the time of sending) are expressed to be sent only on the basis

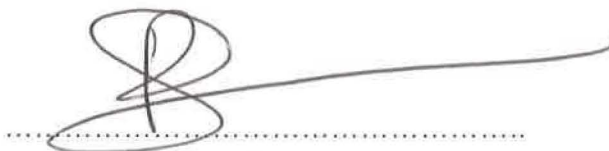
that the Attorney to whom they are sent will receive them on his undertaking to do or refrain from doing some act, the receiving Attorney shall forthwith return such things if he is unable to accept them on such undertaking, but otherwise must comply with such undertaking."

8. The Respondent is in breach of canon 1b 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."*
9. The Respondent by her own evidence admitted to the complaint as alleged.

In the circumstances the Panel, having regard to the principles set in the case of Owen Clunie v General Legal Council [2014] JMCA Civ 31., will afford the opportunity of the Respondent-at-Law to attend to make a plea in mitigation in respect of the sanction to be imposed.

The Panel is obliged to afford the Respondent an opportunity to be heard in respect of mitigation and is minded to convene on another date for this to be done.

DATED THE 16th DAY OF JUNE 2020



MR. PETER CHAMPAGNIE, Q.C.



MS. LILIETH DEACON



MS. CARLENE LARMOND