

**SANCTION DECISION OF THE DISCIPLINARY COMMITTEE OF THE
GENERAL LEGAL COUNCIL**

COMPLAINT NO. 177 of 2022

**In the Matter of Donesha Desgouttes And
Garth Taylor, an Attorney-at-Law.**

AND

**In the Matter of the Legal Profession Act,
1971**

Panel: Daniella Gentles-Silvera - Chairman
Anna Gracie
Rose Bennett-Cooper

Appearances: The Complainant, Donesha Desgouttes.
The Respondent, Garth Taylor.
The Respondent's Attorney, Mrs. Jacqueline Cummings

Hearing Dates: 8th & 16th September 2023

- 1) On the 29th day of July 2023 we found the Respondent Attorney, Garth Taylor, guilty of professional misconduct having breached Canon IV (r) of the Legal Profession Canons of (Professional Ethics) Rules .Given our findings we gave the Respondent time to let us have submissions on sanction or to present evidence to us in this regard.
- 2) On the 8th September 2023 at a sanction hearing the Respondent called David Thomas who after affirming gave evidence that he was the Island Bishop of all the Mount Olivet Churches in Jamaica and he was the Pastor of Little Shilo Pentecostal Tabernacle. Pastor Thomas said that he has known the Respondent for over 8 years as he was a client of the Respondent. He

said the Respondent did excellent work, was punctual, cooperative and communicated with him which was mainly by telephone but at times he would communicate by way of letters. He was successful in the case in which he represented Pastor Thomas.

- 3) Mrs. Cummings submitted that the situation was difficult as at present no one knew the extent of the injuries suffered by the Complainant. She further submitted that as the insurance policy limit is exhausted and the driver/owner of the third party vehicle has died should the Respondent, now file suit as up to the last time of checking no administration in the estate had been commenced, it is likely that the Complaint would end up with a paper judgment which cannot be enforced. She submitted that in the absence of medical evidence from the Complainant as to her injuries the Panel should award no more than a nominal sum of say \$25,000.00 by way of restitution which she submitted should also take into account the fact that the Complainant contributed to the present situation by not following up on her case and obtaining a medical report. Further no evidence has been established in relation to any expenses incurred by the Complainant.
- 4) The failure of the Respondent to communicate with the Complainant as to the importance of bringing to him a medical report in relation to the injuries she sustained in the motor vehicle accident and the effect it would have on her case, particularly as he had received a letter from the insurance company inviting him to send in a claim has led to the Complainant for practical purposes, losing her right to pursue a claim for compensation for the injuries sustained and losses suffered consequent upon the motor vehicle accident.
- 5) In the circumstances, the question which this Panel has to determine is what is the value of that right which encompasses what the Complainant's prospects of success was and what the results of the litigation would be. We are guided by the cases of Corfield v DS Boshier & Co. [1992] 1 EGLR 163 , Yeoman v. Ferries [1967] SC 255 and Kitchen v Royal Air Forces Association and others [1958] 2 All ER 241.
- 6) In Yeoman v. Ferries [1967] SC 255 a plaintiff sustained injuries in the course of his employment when a ladder he was on slipped and he fell. He instructed his solicitor to make a claim against his employer. This was not done and the action became statute barred. The plaintiff sued his solicitor for damages for professional misconduct. The court held that the court must look at the value of a lost chance to make a claim and if suit had been filed the

plaintiff may have on a balance of probability recovered damages and therefore entitled to damages against his solicitor. On page 6 of the said Judgment the Court held that:

“The matter was discussed in England in Kitchen v Royal Air Force Association, 1958 1 W.L.R. 563. The Master of the Rolls set out two types of case in which he thought the question of assessment of damage involved no difficulty. He said (at pp. 574-575): ‘If, in this kind of action, it is plain that an action could have been brought, and if it had been brought that it must have succeeded, of course the answer is easy. The damaged plaintiff then would recover the full amount of the damages lost by the failure to bring the action originally. On the other hand, if it be made clear that the plaintiff never had a cause of action, that there was no case which the plaintiff could reasonably ever have formulated, then it is equally plain that the answer is that she can get nothing save nominal damages for the solicitors’ negligence. I would add, as was conceded by Mr. Neil Lawson, that in such a case it is not enough for the plaintiff to say: Though I had no claim in law, still, I had a nuisance value which one could have so utilized as to extract something from the other side and they would have had to pay something to me in order to persuade me to go away.

Where a solicitor has been negligent, in a case like the present, he has, in my opinion, been guilty of depriving his client of a right, the right legitimately to press a claim for damages. I consider it would be grossly unjust to that client to say that that right had no value because, years after it should have been pressed, if necessary, to action and trial, it was held that the action of the pursuer failed at a time when, and in a court in which, it would not have been judged, but for the negligence of the solicitor concerned.”

- 7) In Kitchen v Royal Air Forces Association and others [1958] 2 All ER 241, Lord Evershed M.R. stated on page 250-251 of the Judgment:

“I come last to what may be the most difficult point of all, namely, assuming that the plaintiff has established negligence, has she proved anything other than nominal damages? It is necessary to say something of the nature of the problem which (as I understand the law) the court has to solve in determining the measure of damages in such a case as this.....

If, in this kind of case, it is plain that an action could have been brought, and that if it had been brought, it must have succeeded, the answer is easy. The damaged plaintiff then would recover the full amount of the damages lost by the failure to bring the action originally. On the other hand, if it be made clear that the plaintiff never had a cause of action, that there was no case which the plaintiff could reasonably ever have formulated, then it is equally plain that she can get nothing save nominal damages for the solicitors' negligence...

In my judgment, assuming that the plaintiff has established negligence, what the court has to do in such a case as the present is to determine what the plaintiff has lost by the negligence. The question is: Has the plaintiff lost some right of value, some chose in action of reality and substance? In such a case it may be that its value is not easy to determine, but it is the duty of the court to determine that value as best it can.”

- 8) The Complainant gave evidence that she was injured in a motor vehicle accident. Being a passenger in one of the motor vehicles it is very probable that had suit been filed she would have been entitled to compensation from at least one of the owners/drivers if not both. We

really do not need to speculate as to her prospects of success as the evidence before us was that an insurance company for one of the owners contacted the Respondent as the Attorney for the Complainant and requested that he ^{put} in a claim. Based on the invitation from the insurance company it is more than reasonable to infer that the insurance company would have been minded to settle the claim of the Complainant therefore her prospects of success was great. The other question for us to determine is had the Respondent put forward a claim what would have been the result. No medical report was put in evidence so that we could see the extent of her injuries. In cross examination the Complainant said arising out of the accident she had back pains and pain in her feet. She did not sustain any broken bones. Further she gave no evidence as to any expenses she incurred consequent upon the accident. In all the circumstances we believe that an order for the Attorney to pay to the Complainant a nominal sum is fair and reasonable.

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9) It is therefore the decision of this Committee that pursuant to section 12 of the Legal Profession Act the Attorney, Garth Taylor:

i) is fined in the amount of \$50,000.00 which is to be paid over to the Complainant; and

ii) is to pay costs of these proceedings in the amount of \$30,000.00 to the General Legal Council

sums both to be paid on or before 29 September 2023.

Dated the 16th day of September 2023

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[Signature]

DANIELLA GENTLES-SILVERA

[Signature]

ANNA GRACIE

[Signature]

ROSE BENNETT-COOPER

