

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

COMPLAINT NO. 78/2015

In the Matter of FACTORIES
CORPORATION OF JAMAICA LIMITED
and HAROLD BRADY, an Attorney-at-
Law.

AND

In the Matter of the Legal Profession Act,
1971

Panel: Daniella Gentles-Silvera - Chairman
Trevor Ho-Lyn
John Graham

Appearances: Desmond Sicard, representative of Factories Corporation of Jamaica
Limited

Maliaca Wong, Attorney-at-Law, for the Factories Corporation of Jamaica
Limited

Harold Brady (on 30th September, 2016 only)

Hearing: 30th September, 2016, 17th January, 2017 and 24th January, 2017.

Feb 2017
25th
Oct.

COMPLAINT

1. The complaint against the Attorney-at-Law, Harold Brady, (hereinafter called “the Attorney”) as contained in the Form of Affidavit sworn to on the 24th March, 2015 by Clive Greyson, Managing Director of Factories Corporation of Jamaica Limited (hereinafter called “the Complainant”) is that:

- (a) “He has not accounted to me for all monies in his hands for my account or credit, although I have reasonably required him to do so.

- (b) “He is in breach of Canon I (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.’”
2. On the 7th October, 2016 the Form of Application was amended and a Supplemental Form of Affidavit sworn to on the 7th October, 2016, by Kenneth Rowe the present Managing Director of the Complainant, in which two additional grounds of complaint were stated being:
- (a) “He failed to deliver up the file with due expedition after being requested so to do in breach of Canon IV (r); and
- (b) “He failed to submit the Agreement for Sale within thirty (30) days of the date of the Agreement or at all and to pay the relevant duties causing 100% penalty to be incurred in breach of Canons IV (r) and IV (s).”
3. The Amended Form of Application and the Supplemental Form of Affidavit by the Applicant were served on the Attorney on the 10th October, 2016.

APPEARANCES AND HEARINGS

4. On the 30th September, 2016 the Attorney appeared and requested an adjournment of the matter. The Panel considered the application against the background of the seriousness of the complaint, the age of the complaint (having been filed in 2015), the fact that this Panel had granted the Attorney two (2) adjournments of the matter on the 30th July, 2016 and again on the 22nd September, 2016 not to mention the fact that prior to the 30th July,

2016 the matter had come up for hearing on the four occasions being 25th July, 2015, 3rd October, 2015, 27th February, 2016 and 11th June, 2016. Further the Attorney had failed to comply with the orders of the Panel made on the 30th July, 2016 that he file an affidavit in response and a list of documents he wished to rely on by the 15th August, 2016. Finally, on the 22nd September, 2016 when the matter was last before the Panel, it was made very clear by the Panel to the Attorney that we would be proceeding on the next occasion being today. Accordingly, the Panel decided to proceed with the hearing of the matter. The application for the adjournment was therefore refused.

5. The matter commenced with the evidence of Desmond Sicard and in the middle of his evidence the Attorney again requested an adjournment of the matter which we refused to do. The Attorney elected to leave the hearing.
6. Mr. Sicard's evidence was taken followed by Mrs. Scott-Motley whose evidence was not completed so the matter was adjourned to the 26th November, 2016.
7. Notes of the evidence of the proceedings of the 30th September, 2016 was sent to the Attorney under cover of letter dated the 22nd September, 2016. On the 26th November, 2016 Mrs. Maliaca Wong appeared for the Complainant. The Attorney did not appear nor was he represented. The matter was adjourned on an application of Mrs. Wong as her witness, Mrs. Scott-Motley, was unable to attend. The Panel had been alerted to the problem of Mrs. Scott-Motley's not being able to attend the hearing fixed for the 26th November, 2016 by letter dated the 22nd November, 2016 from Mrs. Wong which was copied to the Attorney. The matter was adjourned to the 17th January, 2017.

8. On the 17th January, 2017 after satisfying ourselves that the Attorney had been served with notice of the hearing on the 14th December, 2016, the Panel continued the hearing in the absence of the Attorney pursuant to **Rules 5 and 21 of the Legal Profession (Disciplinary Proceedings) Rules** set out in the **4th Schedule to the Legal Profession Act** and, in exercise of its discretion to proceed with the hearing in the absence of the Attorney, which is provided for under **Rule 8 of the Legal Profession (Disciplinary Proceedings) Rules**.
9. The Panel continued the hearing of this matter on the 17th January, 2017 with the evidence of Mrs. Scott Motley and completed same.

EVIDENCE

10. The evidence was given on behalf of the Complainant by Mr. Desmond Sicard, the Chief Strategic Officer and Estate Manager of the Complainant. As Estate Manager, his job included managing the estate department which deals with sale transactions and *inter alia* real estate matters. Mr. Sicard's evidence was that he was intimately involved in the negotiation of the sale of the property being the subject matter of the complaint.
11. According to the Complainant, in or around 2006, the Attorney represented the Complainant in the sale of property being Lot 4 on the proposed subdivision plan of Garmex Freezone and Commercial Complex located at 76 Marcus Garvey Drive, Kingston comprising 2.0708 hectares and being part of land comprised in Certificates of Title registered at Volume 1195 Folio 15, Volume 1295 Folio 541 and Volume 1373

Folio 160 of the Register Book of Titles (hereinafter called “the Property”) to Neville Eden Gallimore for the sum of One Hundred and Forty Million Dollars (\$140,000,000.00).

12. The Complainant entered into an Agreement for Sale of the Property. The Agreement for Sale was dated the 15th April, 2014 (Exhibit 4A). The full purchase price and costs were paid to the Attorney by the Purchaser which the Attorney acknowledged in a Vendor’s Statement of Account dated the 29th April, 2014 which he issued to the Complainant under cover of letter dated the 30th April, 2014 (Exhibits 1A and 1B). The Statement of Account showed that the Attorney owed the Complainant One Hundred Forty Two Million Six Hundred Sixteen Thousand Seven Hundred Sixty One Dollars and Fifty Six Cents (\$142,616,761.56) which was inclusive of interest for the periods:

23rd February, 2011 - 30th April, 2013: \$10,532,769.15

1st May, 2013 - 28th February, 2014: \$5,016,552.27

1st March, 2014 - 30th April, 2014: \$1,026,040.14

13. Indeed from 2013 by letter dated the 30th April, 2013 and in 2014 by letter dated the 3rd March, 2014 the Attorney had written to the Complainant and confirmed that he held funds on account for it which was accruing interest at the firm’s bank at the Bank of Nova Scotia Jamaica Limited at a rate of 4½% per annum (Exhibits 2 and 3).

14. On the 23rd April, 2014 in response to a letter dated the 22nd April, 2014 (Exhibit 5) from Harold Brady & Co., Attorneys-at-Law, asking for the Complainant’s banking information so that the Attorney could wire the funds pursuant to the Statement of

Account to the Complainant (Exhibit 1B), the Complainant enclosed its banking information and asked that the Attorney lodge the net proceeds of sale to its account by wire transfer.(See Exhibit 6)

15. The funds were never wired to the Complainant's account. In or around July, 2014 the Complainant terminated the services of the Attorney and retained the services of Donna Scott-Motley of Scott Bhoorasingh & Bonnick, Attorneys-at-Law who took over conduct of the matter on the 7th July, 2014 (Exhibit 8). The Attorney paid Seventy Million Dollars (\$70,000,000.00) of the proceeds of sale of the Property in two instalments:

(a) \$20,000,000.00 to the Complainant in July, 2014; and

(b) \$50,000,000.00 to Scott Bhoorasingh & Bonnick., Attorneys-at-Law in August, 2014.

16. The balance owing to the Complainant was One Hundred Eleven Million Three Hundred Eighty Thousand Three Hundred Sixty Four Dollars and Sixty Two Cents (\$111,380,364.62) after taking into account the Seventy Million Dollars (\$70,000,000.00) paid above, that is, One Hundred and Two Million and Three Hundred Sixty One Dollars and Fifty Six Cents (\$102,303,061.56) being the balance plus interest of Nine Million Seventy Eight Thousand Three Hundred and Three Dollars and Fifty Six Cents (\$9,078,303.56) as set out in the amended Statement of Account prepared by Mr. Sicard (Exhibit 7).

17. According to Mrs. Scott-Motley, it took the Attorney sometime to give her the documents pertaining to the sale transaction including the Agreement for Sale which she received in 2015. Mrs. Scott-Motley gave evidence that when she took over the matter from the Attorney, the Agreement for Sale for the Property which was dated the 15th April, 2014 had not been stamped and the deposit on account of the purchase price for the Property had been paid by the purchaser. She indicated that the Agreement for Sale was not stamped within the requisite thirty (30) days of signing or fourteen (14) days of the assessment of transfer tax and stamp duty. Upon receiving the Agreement for Sale she had it stamped and given the failure to stamp same within thirty (30) days of the date of the Agreement for Sale the Complainant had to pay a penalty. The full amount paid was Twenty Five Million Two Hundred Thousand Dollars (\$25,200,000.00) of which Twelve Million Six Hundred Thousand and Twenty Dollars (\$12,600,020.00) was the penalty which is specified by the Stamp Commissioner's Office on page 8 of the Agreement for Sale (Exhibit 4A).

18. After the Agreement for Sale was stamped, Mrs. Scott-Motley caused the Property to be transferred to the purchaser who had paid all of the purchase price and one-half costs to the Attorney which he owed to the Complainant less the Seventy Million Dollars (\$70,000,000.00) he paid.

19. The Attorney had the opportunity to attend the hearing and cross examine the Complainant's witnesses but elected to leave the proceedings in the middle of Mr. Desmond Sicard's evidence on the 22nd September, 2016 and never returned consequent on which the evidence given by the Complainant's witnesses was not challenged.

FINDINGS OF FACT

20. Having seen and heard the Complainant's witnesses and having perused the exhibits we accept the evidence of the Complainant's witnesses as witnesses of truth and find that the following has been established beyond reasonable doubt:

- a) The Attorney represented the Complainant in the sale of the Property for a sale price of One Hundred and Forty Million Dollars (\$140,000,000.00).
- b) The entire purchase price and one-half costs were paid to the Attorney by the Purchaser.
- c) The Complainant and the Purchaser entered into an Agreement for Sale which was dated the 15th April, 2014.
- d) The Agreement for Sale was not stamped within thirty (30) days of its date and therefore attracted penalties in the amount of Twelve Million Six Hundred Thousand and Twenty Dollars (\$12,600,020.00) which the Complainant was forced to pay when it paid the requisite transfer tax and stamp duty.
- e) The Attorney assured the Complainant that the money he held for the Complainant was on account earning interest at a rate of 4½% per annum.
- f) As of the 29th April, 2014 the Attorney owed the Complainant One Hundred Forty Two Million Six Hundred Sixteen Thousand Seven Hundred Sixty One Dollars and Fifty Six Cents (\$142,616,761.56) being the net proceeds of sale.
- g) Of the amount owing to the Complainant by the Attorney, he paid over Seventy Million Dollars (\$70,000,000.00) in two tranches in July and August, 2014.
- h) The Attorney misappropriated the Complainant's money which ought to have been paid over to it.

- i) As of the 30th September, 2016 the balance owing to the Complainant by the Attorney is One Hundred Eleven Million Three Hundred Eighty Thousand Three Hundred Sixty Four Dollars and Sixty Two Cents (\$111,380,364.62) inclusive of interest.
- j) The Attorney has acted dishonestly and thereby failed to maintain the honour and dignity of the profession and his behaviour has discredited the profession of which he is a member in breach of Canon I (b) of **the Legal Profession (Canons of Professional Ethics) Rules**.

CANONS

- 21. We find that the applicable standard of proof in these disciplinary proceedings which is that of the criminal standard being beyond all reasonable doubt, (**Wilston Campbell v Davida Hamlet (as executrix of Simon Alexander) Privy Council Appeal No. 73 of 2001**) has been established and the Attorney is guilty of professional misconduct as per Canon VIII (d) in that he has breached Canon I (b) and Canon VII (b) of **the Legal Profession (Canon of Professional Ethics)**.
- 22. We find that the Attorney received the purchase price from the sale of the Property and kept it while failing to account to the Complainant for all of the moneys paid to him for the sale of the said Property notwithstanding that the moneys had been collected. In the circumstances, it is reasonable to infer that the Attorney misappropriated the monies paid to him being the net proceeds of sale. Further the Attorney failed to stamp the Agreement for Sale dated the 15th April, 2014 within thirty (30) days of the date and therefore the Complainant was forced to pay a 100% penalty in the amount of Twelve Million Six Hundred Thousand and Twenty Dollars (\$12,600,020.00) to the Tax Administration

Jamaica so that the Agreement for Sale could be stamped and the transaction completed. In light of the evidence that the deposit had been paid to the Attorney out of which the Agreement for Sale should have been stamped, the reasonable inference is that the funds were misappropriated by the Attorney which is further supported by the fact that in July, 2014 the Attorney paid the Complainant Twenty Million Dollars (\$20,000,000.00) and in August, 2014 Fifty Million Dollars (\$50,000,000.00) indicating that he had money on account to stamp the Agreement for Sale. This is more than negligence. It is dishonesty.

23. For ease of reference we set out below the aforesaid Canons.

Canon I (b) provides 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”.

Canon VII (b) provides that:

“An Attorney shall-

- i. ...*
- ii. account to his client for all monies in the hands of the Attorney for the account or credit of the client, whenever reasonable required to do so; and he shall for these purposes keep the said accounts in conformity with the regulations which may from time to time be prescribed by the General Legal Council.”*

24. The Complainant placed all its trust and confidence in the Attorney in retaining him to protect its interest in the sale of the Property and in allowing him to collect the purchase price. This trust and confidence has been betrayed by the Attorney who collected the purchase price and yet failed to account to his client for the balance purchase price.
25. We find the conduct of the Attorney reprehensible. Not only has the conduct of the Attorney caused loss to his client having been deprived of its money since April, 2014 but it has placed a stain on the reputation of Attorneys in general. This Panel must therefore act in the interest of the public to ensure that such conduct is never repeated and that the collective reputation of the profession is maintained.
26. In the circumstances of this case what comes to mind is the judgment of the court in **Bolton v Law Society [1994] 2 All ER, 486** and in particular the judgment of Sir Thomas Bingham, MR:

"It is required of lawyers practicing in this country that they should discharge their professional duties with integrity, probity and complete trustworthiness. That requirement applies as much to barristers as it does to solicitors. If I make no further reference to barristers it is because this appeal concerns a solicitor, and where a client's moneys have been misappropriated the complaint is inevitably made against a solicitor, since solicitors receive and handle clients' moneys and barristers do not.

Any solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon him by the Solicitors Disciplinary Tribunal. Lapses from the required high standard may, of course, take different forms and be of varying degrees. The most serious involves proven dishonesty, whether or not leading to criminal proceedings and criminal penalties. In such cases the tribunal has almost invariably, no matter how strong the mitigation advanced for the solicitor, ordered that he be struck off the Roll of Solicitors... It is important that there should be full understanding of the reasons why the tribunal makes orders which might otherwise seem harsh. There is, in some of these orders, a punitive element; a penalty may be visited on a solicitor who has fallen below the standards required of his profession in order to punish him for what he has done and to deter any other solicitor tempted to behave in the same way. Those are traditional objects of punishment. But often the order is not punitive in intention. Particularly is this so where a criminal penalty has been imposed and satisfied. The solicitor has paid his debt to society. There is no need, and it would be unjust, to punish him again. In most cases the order of the tribunal will be primarily directed to one or other or both of two other purposes. One is to be sure that the offender does not have the opportunity to repeat the offence. This purpose is achieved for a limited period by an order of suspension; plainly it is hoped that experience of suspension will make the offender meticulous in his future compliance with the required standards. The purpose is achieved for a longer period, and quite possibly indefinitely, by an order of striking off. The second purpose is the most fundamental of all: to maintain the reputation of the

solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth. To maintain this reputation and sustain public confidence in the integrity of the profession it is often necessary that those guilty of serious lapses are not only expelled but denied re-admission. If a member of the public sells his house, very often his largest asset, and entrusts the proceeds to his solicitor, pending re-investment in another house, he is ordinarily entitled to expect that the solicitor will be a person whose trustworthiness is not, and never has been, seriously in question. Otherwise, the whole profession, and the public as a whole, is injured. A profession's most valuable asset is its collective reputation and the confidence which that inspires."

(pages 491 – 492)

(Emphasis Added)

27. In **Georgette Scott v The General Legal Council (Exp. Errol Cunningham) SCCA 118/2008** the Court of Appeal in upholding the General Legal Council's decision to strike off the Attorney off the Roll of Attorneys stated in paragraphs 49 and 50:

"49. It is abundantly clear that the Committee has a duty under section 3(1) of the Act to uphold the standards of professional conduct of attorneys at law. Barwick CJ stated in **Harvey v Law Society of New South Wales (1975) 49 ALJ 362** at page 364:

'The court's duty is to ensure that those standards of the profession are fully maintained particularly in relation to the proper relationship of practitioner with practitioner, practitioner with the court and practitioner

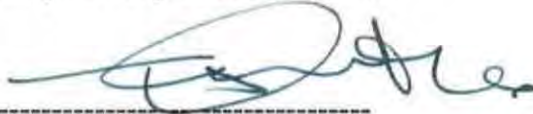
with the members of the public who find need to use the services of the profession.'

50. The Court ought to bear in mind also what Lord Parker CJ said *In re A Solicitor* (*supra*):

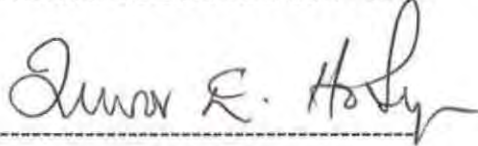
'...A case shortage of this nature inevitably meant that a solicitor had spent a client's money for the purposes other than those of the client. Public confidence in the profession would be shaken if such conduct were tolerated.'

(Emphasis Added)

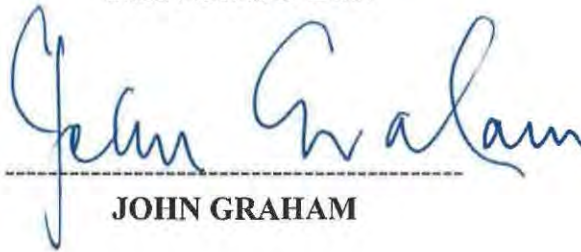
Dated the ^{25th} ~~24th~~ day of February, 2017



DANIELLA GENTLES-SILVERA



TREVOR HO-LYN



JOHN GRAHAM