

Decision of the Disciplinary Committee
of the General Legal Council

Complaint No. 199/94

Gloria Reid v Leeland Playfair an Attorney-at-Law

PANEL - HILARY PHILLIPS - CHAIRMAN
JEANNE ROBINSON-FOSTER
JEROME LEE

The Complainant in this matter was not represented by Counsel, and on both hearing dates the defendant was absent. The Affidavit of Service was taken as being read into the proceedings on the 15th July, 1995 when the matter commenced and it was specially noted that the Notice for the hearing on the 23rd March, 1996 when the matter was concluded was both registered to and hand delivered to the defendant. The matter therefore proceeded in the absence of the defendant.

The Application filed by the complainant herein is dated the 28th October, 1994, and was accompanied by an Affidavit of the complainant sworn to on the 27th day of October, 1994 and a further Affidavit of Horace Reid sworn to on the 21st day of November, 1995. The charge against the attorney, was that he had committed acts which constituted conduct unbecoming his profession, that is in breach of S.12 of the Legal Profession Act and which was further particularized in the Affidavits which accompanied the Application to wit, acts which would constitute a breach of the Legal Profession (Canons of Professional Ethics) Rules, viz Canons I(b), III(k), IV(r) and (s) and VII(b)(ii).

The Application filed is executed by Gloria Reid and she states that she, Dorothy, Rupert and Horace, her sister and brothers, owners of premises at 6 Brentford Road, decided to sell the premises as they were all residing abroad. The premises had been bequeathed to the parties by their mother and aunt now deceased. Mr. Playfair, Attorney-at-Law, was contacted, and requested to sell the premises on their behalf. Ms. Reid states in the Application that in May, 1993 she was contacted by Mr. Playfair and informed

that Mr. Playfair had obtained a purchaser and she deponed that she was sent a Transfer of Land which was signed and returned to Mr. Playfair with the Certificate of Title for the premises. Ms. Reid further said in her Affidavit that Mr. Playfair called indicating that the purchasers had forfeited the sale and no further information was received from Mr. Playfair, but she deponed that when she came to Jamaica she visited the site, the old building hithertofore on the property had been demolished and a large building was being constructed. She deponed that she attended on the office of Titles and obtained a copy of the Certificate of Title which disclosed that the property had been transferred to Simeon Campbell for the sum of \$110,000.00. She said she had not received any monies from Mr. Playfair.

She asked for an investigation and a restraint to be placed on the construction of the building. She thereafter set out the alleged breaches by the attorney of the Act and the Canons.

Mr. Horace Reid in his Affidavit, said he was contacted by Mr. Playfair through long distance telephone conversation from Jamaica. He deponed that through discussion Mr. Playfair and he had agreed a sale price of \$135,000.00. He submitted the Transfer signed by all the registered proprietors for the sum of \$130,000.00. It was not, at the time when attached to the Affidavit, signed by any purchaser. A copy of the Certificate of Title for the premises was also attached to the Affidavit but he specifically stated that at the time when the Title was submitted to Mr. Playfair there were no notes under the word "incumbrances."

He further deponed that he had not signed any Agreement for Sale and to the best of his knowledge and belief, neither had any of his siblings. The only document signed was the Transfer.

Mr. Reid said that he contacted Mr. Playfair who informed him that the buyer was no longer interested due to lack of funds. Mr. Reid's response to Mr. Playfair was not to sell the property as he

and his siblings were not satisfied with the price of \$135,000.00. This price Mr. Reid thought was far below the market price. He said Mr. Playfair agreed to this. He said Mr. Playfair said he would obtain a valuation of the property from CD Alexander & Co., to date, he deponed, he had not been informed whether Mr. Playfair had received the valuation. Mr. Reid further deponed that up to the present time of signing the Affidavit, on the 21st November, 1995, Mr. Playfair had not been in touch with him by letter or telephone.

He further stated that having received certain information, he came to Jamaica, visited the premises at 6 Brentford Road, noticed that 'the place' was demolished and he tried to contact Mr. Playfair without success.

He said it was at this stage that he obtained a copy of the Title from the Titles Office and noticed that the premises was transferred to Simeon Campbell, businessman and his wife Eltega on 6th June, 1994 and sold for \$110,000.00. He said that the tenants hithertofore on the property, had removed therefrom without any notification whatsoever. He reiterated that he had not received monies from Mr. Playfair nor had he heard from him. He said that he had lately observed that a business place had been erected on the premises.

He therefore alleged that Mr. Playfair had acted in breach of the Legal Profession Act and Canons and made this Affidavit in support of # 199/94 complaint against Mr. Playfair.

EVIDENCE

At the hearing of the complaint on the 15th July, 1995, Ms. Gloria Reid gave evidence.

She stated that she was a retired secretary living at 3605 Canal Avenue, Brooklyn NY 11224.

In her evidence she stated that Dorothy, sister, and brothers Rupert and Horace Reid and herself jointly owned the subject property which had been handed down to them by her grandmother and mother. She said it is a family home. She said her mother had died 6 years before. She said the property had been willed to the registered proprietors and had been lawfully probated. A copy of the Certificate of Title in respect of 6 Brentford Road was tendered in evidence as Exhibit 1.

Ms. Reid indicated that the Certificate of Title for the premises was given to Mr. Playfair by her brother Horace. She said it was her brother Horace who had engaged the services of Mr. Playfair. She said her brother Horace also resided in the United States. She said that she signed an agreement that Mr. Playfair had sent and she received it from her brother. He gave it to all three (3) siblings to be signed.

Ms. Reid said the price in the agreement she signed was \$130,000.00, but later, on the paper she saw, said \$110,000.00. She agreed that the Transfer exhibited as Exhibit 2 was the document given to her by her brother for signature.

Ms. Reid made an interesting statement, on page 3 of the transcript she said

"Yes after we signed, we realized we shouldn't have but he said it was OK, he would get it appraised."

Ms. Reid then said

"I have never spoken to Mr. Playfair, my brother did."

So it was obvious that there had not been any direct contact or engagement between Ms. Reid and Mr. Playfair, save and except that she was to have been the beneficiary of the work that he was engaged to do.

Ms. Reid could only say, and did say, that after signing the transfer, she sent it to her brother. She maintained however that she had not received any money from this transaction.

Ms. Reid said at the end of her testimony that she had never written to Mr. Playfair. She confirmed however, that she had attended on the premises and the building previously situate thereon had been torn down.

Her final statement was that she had not received anything, had not heard anything, "not even word of mouth."

On the 23rd March, 1996, Mr. Horace Reid gave evidence. He is a City Inspector for highways residing in the United States for approximately 15 years.

He told the tribunal that Gloria Reid was his sister and Mr. Playfair had first contacted him by telephone in respect of the premises. He said Mr. Playfair said he had a buyer.

He said Mr. Playfair submitted a document to him for signature. This was Exhibit 2. He said Mr. Playfair prepared it and all siblings including Mr. Horace Reid, signed the transfer and then Mr. Reid handed the transfer to Mr. Playfair. Mr. Reid said he gave the Certificate of Title for the property to Mr. Playfair.

Then he said he spoke to Mr. Playfair and told him not to sell the property, with which he agreed. Mr. Playfair said he could obtain a 'real valuation' of the property but he would not sell the property.

Mr. Reid said that was the last time he heard and spoke to him. He was expecting him to get the new valuation. He said he sent some one to look at the property, the building there has been demolished.

He said subsequent to that he went to the Bar Association. He has not been able to find Mr. Playfair.

He has moved his office.

When last he spoke to Mr. Playfair he said he didn't have an office.

In answer to a question posed by the panel

"Have you tried to contact him?", he said he had not contacted him but he had been to the police. Mr. Reid said it was only 2 - 3 weeks after the signed the document Exhibit 2, that he contacted Mr. Playfair and told him not to proceed.

Mr. Reid said he had never met anyone by the name of Simeon Campbell. He also said he had never agreed to the sum of \$110,000.00 as the purchase price. He confirmed what Ms. Gloria Reid had said that to date he had not received any funds in respect of the sale of the property.

Mr. Reid said that he had not gone back to Mr. Playfair as he was waiting on Mr. Playfair to get the valuation. Mr. Reid confirmed that his telephone number and his address remains the same. He said that he had not signed any document asking the tenants on the property to quit the premises.

Mr. Reid said in his evidence that he was acting on behalf of his sisters and brothers when he entered into this agreement and it was his evidence that none of his brothers ever contacted Mr. Playfair only his sister Gloria Reid. This of course is denied by her.

That was the totality of the evidence tendered in this matter. As previously stated, the attorney did not respond to the complaint, did not attend the hearings nor did anyone attend the hearings on his behalf.

It is trite law that the burden of proof is on the complainant to prove the allegations that she has made against the Defendant.

In this matter the committee is of the view that the allegation of professional misconduct involves "an element of deceit or moral turpitude", and therefore "it is the duty of the domestic tribunal investigating the allegation to apply a high standard of proof and not to condemn on a mere balance of probabilities."

(See Bhandari v Advocates Committee [1936] 3 ALL ER, 743)

The Disciplinary Committee derives its jurisdiction to hear matters of this nature from S.12 of the Legal Profession Act which reads as follows:-

"Any person alleging himself aggrieved by an act of professional misconduct (including any default) committed by an attorney may apply to the Committee to require the attorney to answer allegations contained in an affidavit made by such person, and the Registrar or any member of the Council may make a like application to the Committee in respect of allegations concerning any of the following acts committed by an attorney, that is to say-

- (a) any misconduct in any professional respect (including conduct which, in pursuance of rules made by the Council under this Part, is to be treated as misconduct in a professional respect);...

Pursuant to S.12(7) of the Act, the Legal Profession (Canons of Professional Ethics) Rules were promulgated and as stated supra the relevant rules in relation to this matter are rules

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| Canon | I(b) | 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. |
| | III(k) | Where an Attorney commits any criminal offence which in the opinion of the Disciplinary Committee is of a nature likely to bring the profession into disrepute, such commission of the offence shall constitute misconduct in professional respect if <ul style="list-style-type: none"> (i) he has been convicted by any court (including a foreign court of competent jurisdiction) for such offence; or (ii) although he has not been prosecuted the Committee is satisfied of the facts constituting such criminal offence; or (iii) he has been prosecuted and has been acquitted by reason of a technical defence or he has been convicted but such conviction is quashed by reason of some technical defence. |
| | IV(r)&(s) | An Attorney shall deal with his client's business with all due expedition and shall whenever reasonably so required by the client provide him with all information as to the progress of the client's business with due expedition.
In the performance of his duties an Attorney shall not act with inexcusable or deplorable negligence or neglect. |
| | VII(b) | An Attorney shall <ul style="list-style-type: none"> (ii) account to his client for all monies in the hands of the Attorney for the account or credit of the client, whenever reasonably 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.

The analysis of the evidence in this case is not as straight forward as it may appear at first blush but the following appears clear, and we make these findings of fact:-

- (1) The complainant Ms. Gloria Reid although she did not personally engage the services of Mr. Playfair was sufficiently connected to the matter, for his actions as a professional man, in this case an attorney-at-Law to impact on her. He would have been aware on receipt of the documentation in this case, viz the Instrument of Transfer and the Certificate of Title herein that her interest would have been prejudiced if he acted improperly or unlawfully as she was one of the registered proprietors of the relevant property. She certainly could fall within S.12(1) of the Act as a person aggrieved by an act of professional misconduct committed by an attorney and on the facts of this case would properly be so described.
- (2) The Application, in any event is supported by the Affidavit of the person who engaged the services of Mr. Playfair as an Attorney-at-Law, that is Mr. Horace Reid.
- (3) It is clear that the Instrument of Transfer was prepared by Mr. Playfair and sent to Mr. Reid for his signature, and in order for him to procure the signature of his siblings, which he did. The Certificate of Title was requested by Mr. Playfair and both documents returned to him for him to act on behalf of all the registered proprietors of the property at 6 Brentford Road.
- (4) It is clear therefore, on the evidence, that at the time that the Instrument of Transfer was sent by Mr. Reid to Mr. Playfair, the consideration for the property was \$130,000.00. The purchaser had not yet signed.
- (5) There is no evidence that at any time that figure was changed. There is no evidence that any of the Reids gave

Mr. Playfair any instructions and/or authorization to change the consideration figure from \$130,000.00 to a lesser sum.

- (6) Indeed the evidence appears to point in the direction that shortly after the transfer was sent to Jamaica, Mr. Horace Reid discussed with Mr. Playfair that he should not proceed with the transaction, with which he agreed.
- (7) What is not clear after this, as we have no information and no evidence was given was whether this information was communicated to Mr. Playfair before the transfer had been executed by the purchaser.
- (8) What is the evidence however, is that Mr. Reid said that Mr. Playfair said that he would not sell the property. He would get a valuation of the premises.
- (9) Subsequent to this however, without any further communication between the parties, the premises was sold, the purchasers entered on the Certificate of Title for the premises and the building demolished.
- (10) It is extremely difficult to understand why there has been no communication from Mr. Playfair to Mr. Horace Reid whose telephone numbers and address at the time of giving evidence remains the same. We find this a gross dereliction of duty.
- (11) The property has been transferred to Simeon and Eltega Campbell as joint tenants.
- (12) The consideration stated on the Certificate of Title is \$110,000.00.
- (13) This would appear to have been done contrary to the expressed instructions of the client, which instructions Mr. Playfair acknowledged and indicated he would act on.
- (14) The sum stated in the Certificate of Title is either an error or Mr. Playfair has endeavoured to perpetrate a fraud upon the Reids. Bearing in mind the specific instructions given by the client, we do not accept that the sum stated therein is an error.

- (15) No moneys have been paid to the Reids.
- (16) No accounting in respect of the transaction has been given to them.
- (17) Mr. Reid endeavoured to locate Mr. Playfair after he discovered that the property had been transferred, and the building demolished, but without success.
- (18) He thought that Ms. Gloria Reid was endeavouring to make contact with Mr. Playfair, but she had never met or spoken with him.
- (19) Ms. Reid was of the view that Mr. Reid was making contact with Mr. Playfair.
- (20) The facts however, suggest that the Reids saw no urgent need for communication with Mr. Playfair but to the contrary it was incumbent on Mr. Playfair and crucial in all the circumstances that he contact Mr. Reid to inform him of what had transpired.

The Committee finds that this property was transferred from the Reid's to Simeon and Eltega Campbell without the knowledge and/or permission of the Reids. Initially Mr. Playfair had authorization to sell the property in the amount of \$130,000.00, but this authorization was later withdrawn. The time frame of 2 - 3 weeks before the authorization to do so was withdrawn may not have been sufficient time to prevent equitable interests to have arisen in the purchasers. We do not know this. Mr. Playfair certainly did not so indicate in the conversation with Mr. Reid. In fact, Mr. Horace Reid said Mr. Playfair agreed not to proceed.

What is clear is that at no time whatever was the instruction and/or authorization given to Mr. Playfair to permit the sale of the premises for \$110,000.00 and in any event he has not accounted for any sums in his possession. In acting for the vendors any sums paid by the purchasers are held in trust for the vendors. The attorney holds the same as a Constructive Trustee and any dealings with the same contrary to the trust is a breach of trust, and is a

most serious defalcation. There is no direct evidence that the amount of \$110,000.00 was paid to Mr. Playfair but the evidence is that the original Certificate of Title was given to him and coupled with the Instrument of Transfer, he was in a position to cause and effect the transfer which has occurred. The committee is of the view that the ONLY reasonable inference to be drawn from this is that in these circumstances the purchasers could not have registered the property without payment of the purchase price, in which case Mr. Playfair would have failed to account to the Reids from the 6th June, 1994 to date, a period of 3 years and 4 months. He has not assisted the tribunal with any information on his own behalf to counter these very serious allegations. We find his conduct throughout appalling. We rely on the case of Re A Solicitor in [1974] 3 ALL ER @ 854 to arrive at our own decision as to whether this conduct as set out above could be properly described as professional misconduct.

CONCLUSION

The Committee after an examination of the evidence, oral and documentary and after careful scrutiny of the relevant law has arrived at the decision, that the conduct of the attorney as set out herein and based on the findings of fact made supra, is unbecoming of an attorney at law and tends to discredit the Legal Profession.

We find that the complainant has discharged the high standard of proof required of her. The committee is satisfied that the evidence discloses that Mr. Playfair has acted in breach of Canons I(b), IV(r) & (s) and VII(b)(ii) of the Legal Profession Act and Legal Profession (Canons of Professional Ethics) Rules. The evidence does not disclose, on the high standard of proof required herein, a criminal act as required under Canon III(k) of the Canons.

Mr. Playfair is therefore guilty of misconduct in a professional respect.

We rely again on the principles set out in the judgment of Lord Widgery CJ in the case Re A Solicitor cited above and pursuant to S.12(4) of the Legal Profession Act we hereby order

- (1) That the name of Leeland Playfair, Attorney-at-Law be struck from the Roll of Attorneys-at-Law entitled to practice in the several Courts of the Island of Jamaica.

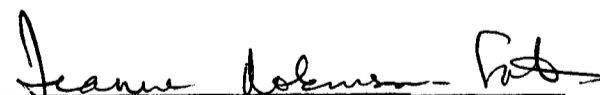
The complainant is at liberty to pursue a claim for damages in the Supreme Court in relation to the unauthorized sale of the property.

The committee apologises for the delay in the delivery of the Judgement herein.

There shall be costs in the amount of Thirty Thousand Dollars (\$30,000.00) to be paid to the complainant herein.

DATED the 24th day of October, 1997


HILARY PHILLIPS - CHAIRMAN


JEANNE ROBINSON-FOSTER


JEROME LEE