

DECISION OF THE DISCIPLINARY COMMITTEE OF THE GENERAL LEGAL COUNCIL

In The Matter of Complaint No. 19/2013

Lydia Facey v Lorraine Ramson

AND

In the matter of the Legal Profession Act 1971

Panel : Mrs. Daniella Gentles-Silvera - Chairman

Mr. Jeffrey Daley

Mrs. Nadine Guy

Hearing Dates: 2nd March, 2019

Present: Lydia Facey represented by Patrick Bailey

- 1) Lydia Facey, ("the Complainant") filed a Complaint against the Attorney, Lorraine Ramson ("the Attorney"), on the 14th January, 2013 arising out of her having retained the Attorney to act for her in the purchase of a parcel of unregistered land in Lawrence Tavern in the parish of St. Andrew. The Complainant also asserts that the Attorney had agreed to also act for the vendor, who held a common law title, to bring the land under operation of the Registration of Titles Act.
- 2) The Complaint asserts that the need for the vendor to obtain a registered title for the land was always a significant feature of the agreement between herself and the vendor. The intention, she said, was for her to apply to the National Housing Trust for mortgage financing to purchase the land which she required a registered title for. The loosely made agreement for the Complainant to purchase the land from the vendor, Mr. Uriah Palmer, was reduced into writing and was executed by the parties on the 12th April, 2011. The purchase price stipulated was Eight Hundred Thousand Dollars (\$800,000.00). Mr. Palmer died intestate in or around 2017 without having completed the sale of the property to the Complainant or the registration of the land under the Registration of Titles Act.
- 3) The complaint against the Attorney is that:
 - (i) She has not provided the Complainant with all information as to the progress of the Complainant's business although she has reasonably required the Attorney to do so; and

- ii) The Attorney has not dealt with the Complainant's business with due expedition.
- 4) This matter has had several hearing dates where the Attorney was absent culminating in a hearing date of March 2nd, 2019 when it was heard by this panel in the Attorney's absence pursuant to Rule 8 of the Legal Profession (Disciplinary Proceedings) Rules.

THE EVIDENCE and ANALYSIS

- 5) The evidence of the Complainant was that she went to the Attorney for her to represent her in July, 2011 and the Attorney agreed to represent both herself and the vendor, Mr. Uriah Palmer, in the sale of land part of Temple Hall, Lawrence Tavern in the parish of St. Andrew from Mr. Palmer to the Complainant. The said land (which was unregistered land) was also to be brought under the Registration of Titles Act so the Complainant could get a loan from the National Housing Trust.
- 6) Whilst the panel could not consider the Attorney's affidavit in response since it was not tendered into evidence, the panel did note from the Attorney's letter dated 16th April, 2014 addressed to the Complainant's new Attorney, Ms. Audrey Allen, which the Claimant relied on as a part of her evidence in her Bundle of Documents that the Attorney's position was that she was never retained to act for the Complainant. Another such document contained in the Complainant's Bundle of Documents was a file note dated the 27th June, 2011 signed purportedly by Lydia Ramson in which it is stated that the Attorney advised the Complainant that she could not act on her behalf in making the application to bring land under Registration of Titles Act as she was not the legal owner. In another file note dated the 30th June, 2011 Uriah Palmer visited the Attorney's office where he indicated that he wanted to retain her services to register the unregistered land and he gave her certain documents.
- 7) If indeed the Attorney's account that at all material times she was representing only Mr. Uriah Palmer is to be believed, then it begs the question: why was the Complainant paying legal fees to the Attorney at the inception of her interactions with the Attorney in July 2011 (as evidenced by the receipts from the Attorney in the Complainant's Bundle of Documents) when the Complainant's Agreement to purchase the land was made directly with the vendor in April, 2011? It could not be said that that payment was the usual purchaser's share for preparation of the Agreement. The panel also notes that the Attorney has not repaid those moneys received, to the Complainant. The Complainant paid sums to the Attorney totalling thirty thousand dollars (\$30,000.00) as payments on account of the purchase price. These sums were paid additionally to three (3) payments directly to the vendor totalling one hundred thousand dollars (\$100,000.00) and two (2) payments to the Attorney. The four (4) payments received by the Attorney are evidenced by receipts in the Complainant's bundle of documents. In a letter dated the 9th May, 2013 from Audrey Allen & Co., the Complainant's Attorney, which formed part of the Complainant's bundle of documents, Ms. Allen stated that the Complainant had paid on account of the purchase price for the property and fees and costs the amount of One Hundred Ninety Three Thousand Five Hundred Dollars (\$193,500.00). Of this sum Seventy

One Thousand Five Hundred Dollars (\$71,500.00) appears to represent fees and costs paid to Lorraine Ramson.

- 8) The Complainant testified that whilst she was trying to buy the land from the vendor she was also in occupation of the land as a Lessee paying \$2,000.00 per month to Mr. Palmer. She was a purchaser in possession who had made improvements to the land in building a board house on land with its own bathroom and kitchen and also having brought electricity unto the land at her own expense.

There are several items of evidence in the form of application to bring land under the Registration of Titles Act, Statutory Declarations sworn to by the vendor and a neighbour made in support of that application, receipt from the National Land Agency and Pre-Checked Plan No. PE:355104 prepared by R.L. Wilson, Commissioned Land Surveyor which affirms to the panel that the Attorney had in fact started the process to obtain a registered title for the subject land. The Complainant stated that she had made several enquiries of the Attorney as to the status of the application for registered title but received no favourable answer. The panel saw no correspondence coming from the Attorney providing any explanation as to the reason why the application for a registered Title was taking so long. The Complainant's evidence was that each time she enquired she was rebuffed by the Attorney.

- 9) It became clear from the complainant's evidence that the written agreement made between the Complainant and Mr. Uriah Palmer did not contain all the terms and conditions of the Agreement between the parties. Although this is not the focus of the panel's consideration in this Complainant, it behoves us to state that once the Attorney became involved in the transaction, she should have reduced all of the terms and conditions of the Agreement into writing for the avoidance of doubt. That would have avoided, or, minimized the position that the Complainant now finds herself in with the beneficiaries of Mr. Palmer's estate, who are now attempting to refuse to honour the Agreement for Sale of the subject land, for which there has clearly been part-performance by the Complainant
- 10) The Claimant's evidence in chief was marshalled by her Attorney, Mr. Patrick Bailey. The panel noted the Complainant's demeanour and accept her evidence as truthful.

FINDINGS

- 11) The panel reminds itself that the standard of proof required in this matter is one of proof beyond a reasonable doubt.
- 12) The panel found the Complainant's account that the Attorney was acting for both herself and the vendor simultaneously in the transaction a more probable account than the Attorney's position. However, in any event, even if the Attorney was not retained by the

Complainant her delay in the handling of the application to bring land under the operation of the Registration of Titles Act to facilitate the sale of the subject property and its use as security for a mortgage to fund the said purchase by the complainant directly and adversely impacted the Complainant. Section 12 (1) of the Legal Profession Act states that:

“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 a professional respect ... “

- 13) This provision clearly indicates that any person so affected by the Attorney’s acts or omissions may bring a complaint against the Attorney. It does not limit the bringing of a complaint only to a person who retains the Attorney.
- 14) The Attorney was instructed in or around July 2011 to have carriage of sale in the sale of an unregistered parcel of land being land part of Temple Hall, Lawrence Tavern in the parish of St. Andrew and to make an application to the Registrar of Titles to obtain a registered title for the said property.
- 15) Certain sums were paid to the Attorney by the Complainant directly to the vendor on account of the purchase price and other sums were paid to the Attorney by the Complainant on account of the purchase price, fees and costs incidental to the purchase as evidenced by receipts prepared by the Attorney. The Attorney was at all material times made aware by the Complainant that the completion of the purchase was dependent upon the vendor obtaining a registered title for the said property so that the Complainant could apply for mortgage financing from the National Housing Trust, which would require that the property have a registered title.
- 16) The Attorney commenced the application to the Office of the Registrar of Titles to bring land under the operation of the Registration of Titles Act in or around August 2011 but up to the date of the hearing of this Complaint, some eight-plus years later, the Attorney has not completed the application to register the land and obtain a Certificate of Title for the property.
- 17) The Complainant has been negatively affected by the Attorney’s delay in obtaining a registered title for the subject land because the vendor, Uriah Palmer, died intestate in or around 2017 and his relatives who now exercise control over the said property have indicated that they will not honour the agreement between the Complainant and Uriah Palmer to complete the sale of the said property to her. Had the registered title been obtained by the Attorney timeously and certainly before the death of the vendor the challenges the Complainant now faces to acquiring the land may not have arisen.

- 18) The Attorney's delay of over seven (7) years in completing the application to bring the land under the operation of the Registration of Titles Act and to complete its sale to the Complainant is inordinate and inexcusable. In the oft cited case of Earl Witter v Roy Forbes (1989) 26 JLR 129 the local Court of Appeal per: Carey, J.A. enunciated thus:

"We are not in this appeal dealing with professional misconduct involving an element of deceit or moral turpitude. Both rules of which the appellant was found guilty are concerned with the proper performance of the duties of an Attorney to his client. The Canon under which these rules fall, prescribes the standard of professional etiquette and professional conduct for Attorneys-at Law, vis-a-vis their clients. It requires that an Attorney shall act in the best interest of his client and represent him honestly, competently and zealously within the bounds of the Law. He shall preserve the confidence of his client and avoid conflict of interest. The violated rules, both involved an element of wrong-doing, in the sense that the Attorney knows and, as a reasonable competent lawyer, must know that he is not acting in the best interests of his client. As to rule (r) it is not mere delay that constitutes the breach, but the failure to deal with the client's business in a business-like manner. With respect to rule (s) it is not inadvertence or carelessness that is being made punishable but culpable non-performance. This is plain from the language used in the rules."

- 19) Not only has there been delays but we accept the evidence of the Complainant that the Attorney failed to provide her with information as to the progress of her matter over the years. In all these circumstances we find that the Attorney is guilty of professional misconduct having breached Canon iv(r) of the **Legal Profession (Canons of Professional Ethics) Rules**:

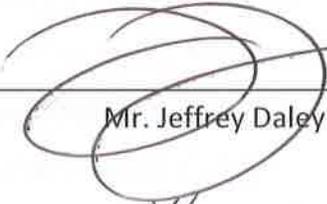
Canon IV (r) - An Attorney shall deal with his client's business with all due expedition and shall whenever reasonably so required by the client provide him with all information as to the progress of the client's business with due expedition.

20) The Attorney's conduct clearly fell below the required standard of professional conduct prescribed by the Canons of the Legal Profession and proof of professional conduct has been made out beyond a reasonable doubt.

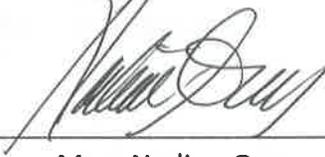
Dated this 14 day of December, 2019



Mrs. Daniella Gentles-Silvera - Chairman



Mr. Jeffrey Daley



Mrs. Nadine Guy