

DECISION OF THE DISCIPLINARY COMMITTEE
OF THE GENERAL LEGAL COUNCIL

Complaint 75/2021

Between	Carol Jackson	Complainant
And	Jennifer Housen	Respondent

Panel: **Mrs. Tana’ania Small Davis K.C.**
 Ms. Marjorie Shaw
 Mr. Seyon Hanson

Hearing dates: July 16, 2022, September 24, 2022, November 12, 2022, November 18, 2022, and February 10, 2023

1. This is a complaint brought by Carol Jackson (“Complainant”) against Jennifer Housen, Attorney-at-Law (“the Respondent”) by way of an Application dated the 17th day of May 2021 and supported by the Affidavit sworn by the Complainant on the 17th day of May 2021, in which the following grounds are set out:
 - i. She has acted with inexcusable or deplorable negligence in the performance of her duties.
 - ii. She is in breach of Canon 1(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. The Panel conducted a hearing of the Complaint and received evidence from both parties at sittings held on July 16, 2022, September 24, 2022, November 12, 2022, November 18, 2022 and February 10, 2023. The parties were invited to file written submissions at the conclusion of the evidence and both complied. The Panel reserved its decision in order to consider the evidence and the submissions filed. The relevant Canons for consideration in respect of this complaint are Canons 1(b) and IV(s).

THE EVIDENCE

3. The Complainant’s Affidavit evidence is that on or about June 12, 2018 she engaged the Respondent as her attorney to have carriage of sale of two (2) parcels of land registered at Volume 1302 Folio 624 of the Register Book of Titles to the purchaser Tanglewood Limited for One Hundred Thousand Pounds (£100,000.00). Her complaint as set out in the

Affidavit is that the property has been transferred to Tanglewood Limited and she has not received the purchase money in full, and she states that the outstanding balance is approximately Twenty Thousand Pounds (£20,000.00) plus interest. The following documents were admitted in evidence:

- i. **Exhibit 1A**- Form of Application against an Attorney-at-Law dated 17th May 2021;
 - ii. **Exhibit 1B**- Affidavit sworn to on 17th May 2021;
 - iii. **Exhibit 2**- Affidavit of Carol Jackson in Response to Ms. Jennifer Housen's Affidavit sworn on 11th February 2022;
4. The following documents were exhibited to Complainant's first Affidavit (i.e. **Exhibit 1B**) and formed part of her evidence:
- i. Email dated August 13, 2019 from Caribbean Legal Practice to Carol Jackson;
 - ii. Contract for Payment of Debt dated the 30th day of November 2019;
 - iii. Email thread for the period July 9, 2019 to July 16, 2019 between Jennifer Housen to Ras Dawit Haile Selassie;
 - iv. Agreement for Sale dated the 12th day of June 2018;
 - v. Certificate of Title registered at Volume 1302 Folio 624 of the Register Book of Titles;
 - vi. Notice to Proprietor of Caveat No. 2234550 Against Dealings dated January 20, 2020;
 - vii. Memo from Janet Edwards Paralegal for Caribbean Legal Practice (undated);
 - viii. Email dated September 10, 2020 from Jennifer Housen to Everal Webster;
 - ix. Letter dated August 12, 2019 from Jennifer Housen to Tanglewood Heights Limited.
5. The Respondent filed an Affidavit in response dated February 1, 2022 in which she stated inter alia as follows:
- i. She confirmed being retained by the Complainant in connection with the sale of two parcels of land registered at Volume 1302 Folio 624 of the Register Book of Titles to Tanglewood Heights Limited for the sum of £100,000.00 equivalent to J\$17,000,000.00;
 - ii. The Complainant instructed her to represent the purchaser as well, and she satisfied herself that there was no conflict, and appreciated that if there ever were to be a conflict she would resolve it by ceasing to represent both parties;
 - iii. The agreement required payment of a deposit of £60,000.00 paid directly to the Complainant, and the balance of £40,000.00 would be payable three months after the title was transferred in the Purchaser's name, and in the event this was not paid within the three month period the Purchaser would (1) provide a unit in the proposed development at a value of no less that

- J\$10,000,000.00 to the Vendor and (2) be liable for an action in debt and interest at the rate of 10% per month until the balance is paid;
- iv. The transfer of title to the Purchaser was effected on August 20, 2018 and the balance purchase price became due on or before November 20, 2018;
 - v. Unknown to her, the Purchaser had transferred sums in excess of her fees and the relevant duties and taxes to her account, and later informed her that the additional amount should go towards the balance purchase price;
 - vi. Upon the expiry of the period for payment of the balance purchase price the Complainant invoked the interest clause, and she took responsibility for the interest for the time the money had been in her account (paid in by the purchaser without her knowledge), and thereafter entered into an agreement with the Complainant for the payment of the interest on the sum that had been in her possession;
 - vii. Whereas she is liable for the interest, she is not liable to the Complainant for the balance purchase price as the Complainant has a right of action in debt or breach of contract against the Purchaser, and she lodged a caveat claiming an equitable interest in the property as provided in the agreement;
 - viii. She denies acting with inexcusable and deplorable negligence.

6. The following documents are exhibited to the Respondent's Affidavit:
 - i. Copy Retainer Agreement dated January 15, 2018;
 - ii. Copy Agreement for Sale dated June 12, 2018;
 - iii. Copy duplicate certificate of title registered at Volume 1302 Folio 624 of the Register Book of Titles;
 - iv. Copy Purchaser's Statement of Account;
 - v. Copy debt settlement agreement dated September 14, 2020.
7. The Respondent filed the Second Affidavit of Jennifer Housen in response to Second Affidavit of Carol Jackson. The Respondent's two affidavits were admitted in evidence as **Exhibits 4** and **5** respectively.
8. The Complainant and the Respondent both gave oral evidence and the following are key points of evidence elicited in cross examination:

Complainant

- a. She appreciated that if the purchase price was not paid on time she had the option of lodging a caveat;
- b. She lodged a caveat;
- c. The Agreement for Sale was signed after the Retainer Agreement;
- d. She had an expectation that the Respondent would ensure that what was due to her was given to her one way or another;

- e. She filed a claim against the purchaser to recover the balance purchase price which is consistent with special condition M of the Agreement for Sale (The Fixed Date Claim Form filed August 25, 2022 was tendered into evidence as **Exhibit 3**);
- f. She did not read the sales agreement fully prior to signing;
- g. When she signed the Retainer Agreement she appreciated that if the purchase price was not paid on time, she had the option of lodging a caveat.

Respondent

- a. The Caveat Register was tendered into evidence as **Exhibit 6**;
- b. She paid the Complainant approximately \$7,000,000.00 which represented the sum of £21,874.35 received from the Purchaser plus the interest in respect of the sum she took responsibility for;
- c. The money she received from the Purchaser included sums in respect of other transactions which she was doing for him.

Discussion/Analysis of the Evidence

- 9. The Complainant retained the services of the Respondent by Retainer Agreement dated January 15, 2018 in which the recorded instructions are, *inter alia*:

“2. Your instructions to me and The Action I Will Take

You have instructed me to act on both your and the Purchaser’s behalf in the sale/purchasing of property in Banks, St. Ann, Jamaica...In the event that the payment is not made by date specified, the Seller will be at liberty to lodge a caveat against the property, with interest accrued on the outstanding sums at the Court’s rate of interest. ...

15. Both you and the Purchaser have requested that I act on both your behalf as there is no conflict in the price, encumbrances or otherwise relating to the property...there is no conflict of interest in my firm acting for you and the Purchaser in this matter. In the event that a subsequent conflict arises, I have advised you that we will place the transaction on hold, that I will continue to represent the purchaser, however, allow you as the Vendor time to seek alternative legal representation in the event the sale/purchase is proceeding. No acts will be taken during that period, to compromise your title or funds relating to the property.”

- 10. The Agreement for Sale dated June 12, 2018 provided as follows:

*“4. PURCHASE PRICE: ONE HUNDRED THOUSAND POUNDS
(£100,000.00) equivalent to ...*

- 5. HOW PAYABLE: (a) Deposit of SIXTY THOUSAND POUND
....payable wire transfer, or by Manager’s Cheque
directly to the Vendor on signing hereof .
(b) Balance of FORTY THOUSAND

POUNDS...within three (3) months after transfer of Title in the Purchaser's name, subject to Special Condition (M).

SPECIAL CONDITIONS: ...

(M) In the event the full sum of the balance of FORTY THOUSAND POUNDS...is not paid by no later than three months after the Transfer of Title to the Purchaser, the Purchaser will

- a. provide one unit of the Development to the Vendor at a value of no less than TEN MILLION DOLLARS (\$10,000,000.00);*
- b. be liable for an action in Debt, separate from a cause of action in Contract, against them for the sum with the Purchaser liable for all attorney's cost and fees;*
- c. be liable for accrued interest from the start of the end of the requisite three month period at a rate of 10% per month until paid."*

11. The main observation from the evidence is that the Agreement for Sale between the parties, which was prepared by the Respondent Attorney provided for the transfer of the title in the name of the Purchaser, prior to the payment of the balance of the purchase price, and after completion, and provides the Complainant with a number of remedies/entitlements in the event of non-payment of same, namely:
 - i. Interest on unpaid purchase price;
 - ii. The entitlement to a Unit in a Development, at a value of no less than Ten Million Dollars (\$10,000,000.00);
 - iii. An action in debt, separate from an action in contract.
12. The Retainer and the Agreement set out the options available to the Complainant should the Purchaser not perform its obligations, and the Complainant has in fact pursued the said avenues by invoking the interest clause, accepting interest payments from the Respondent on account of funds she had not paid over to the Complainant, despite same having been paid by the Purchaser, and filing a claim against the Purchaser. She also lodged a caveat against the property.
13. Notwithstanding all the contingent remedies provided for in the Agreement, and which have been pursued by the Complainant against the purchaser, the Complainant pursued the complaint because to date the balance purchase price remains outstanding, the remaining interest remains unpaid, and the Development from which the Complainant was to receive

a Unit has not taken place, and she appears to hold the Respondent responsible for the situation in which she finds herself .

14. The Panel has taken note of the manner in which the Complainant gave her evidence insofar as she expressed ignorance to certain questions when initially posed, and then made admissions when confronted with the supporting documents signed by her, as well as the non-disclosure of the fact that she had, in keeping with the options as contained in the Agreement, filed a claim against the Purchaser.
15. The Panel has also taken note of the manner in which the Respondent gave her evidence, her admission that sums were paid to her by the Purchaser, which were not paid over to the Complainant towards the purchase price until some time after payment, and for which she assumed personal responsibility for payment of interest, at the rate provided in the Agreement, of 10% per month. Indeed, this non-payment in itself resulted in a Debt Settlement Contract between the Complainant and the Respondent, which resulted in the Respondent paying significant sums to the Complainant.
16. However unusual were the terms contained in the Agreement, both parties signed same on the advice of the Respondent, and while it is not the Panel's mandate to reopen the agreement of the parties, as peculiar as they may be, the Panel's function is to determine whether the Respondent acted with inexcusable and deplorable negligence in advising the Complainant, and in her handling of the transaction, and whether her conduct maintained the honour and dignity of the profession.
17. The first flag is the significant potential for a conflict of interest. Canon IV (I) of The Legal Profession (Canons of Professional Ethics) Rules provides 'notwithstanding the provisions of Canon (IV) (I) an attorney may represent multiple clients if he can adequately represent the interests of each and if each consents to such representation after full disclosure of the possible effect of multiple representation.'
18. While two parties may be represented by the same attorney in a land transaction, it is notoriously ill-advised, particularly where the sale is not a simple straight forward transaction. As Danckwerts L.J. said in **Gavaghan vs. Edwards [1961] 2 QB 220** at page 225:

" ... it is hardly necessary to say that I regard this situation as very unsatisfactory. In many cases it may work perfectly all right, but if anything whatsoever goes wrong with regard to the sale a solicitor who is acting for both parties is almost a certainty placed in a position where the interests conflict and a difficult situation is likely to arise"
19. The Complainant's evidence is that she did not obtain a valuation of the property. She needed money to do another project and wanted a quick sale. The purchaser planned to do

a development on other land. She also sold at that price with the expectation that she would get a unit in the purchaser's development which she could then sell to make some more money. The Complainant could not identify where in the agreement made any such provision for the unit being a part of the consideration, but she maintained that that provision was included. This evidence is inconsistent with the Agreement for Sale, which did not reflect any such component of the purchase price. The agreement clearly states the purchase price as £100,000/J\$17 million. In fact, the agreement provided that the Complainant would get a unit only where the balance purchase price was not paid within the three months after transfer of title to the purchaser [Clause M]. The Complainant rejected clause M, saying that is not what she agreed to, that the unit was part of the purchase price because the land was worth much more than £100,000.00.

20. As to the balance purchase price, the Complainant's evidence is that when she finally was able to make contact with the purchaser and met with him sometime in 2021 with her current lawyer, the purchaser insisted that he had paid the full purchase price of £100,000.00 to the Respondent and did not have any further obligation to the Complainant under the agreement.
21. The Respondent's evidence is that the Purchaser sent her some funds to settle fees owed to her for other work done, and that she used £21,874.00, the difference over and above what was due to her, to settle the transaction costs. The Respondent was unable to say the precise amount of money that the purchaser sent to her. She did not provide an account, and her evidence in this regard was vague at best, and raised more questions than answers. Given the Respondent's evidence that she did not realize that the Purchaser had sent monies to her in relation to the sale transaction, and since the deposit had been paid directly to the Complainant, there was no explanation as to how the transfer tax, stamp duty and registration fees were paid to enable the transfer of the property to the Purchaser.
22. An attorney owes her client her undivided loyalty. The primary function of an attorney representing a party to a land transaction is to protect the client's interest. The purchaser and the vendor will usually have separate and distinct interests to be protected.
23. From the Respondent's evidence, she was acting for the Purchaser in other matters. Even though the cross examination of the Complainant pursued a line of questions suggesting that it was the Complainant who first approached the Respondent to seek representation, which the Complainant denied, the Respondent could be considered to have treated the Purchaser as her "main client". Indeed, the Retainer Agreement provided that in the event of a conflict of interest, the Respondent would put the transaction on hold, continue to represent the Purchaser and give the Complainant an opportunity to obtain a new lawyer. The Purchaser was expressly stated to be the preferred client from the outset, in circumstances where the Attorney had carriage of sale of the Complainant's property and had structured an agreement whereby the property would be transferred to the Purchaser

prior to the payment of the purchase price, and prior to the fulfilment of the Purchaser's obligations to the Vendor/Complainant. Based on how the transaction was structured, the Complainant would give up legal ownership of the property prior to payment of the full purchase price, and in the event of the Purchaser's failure to pay, she would have to seek redress in the form of interest, lodgement of a caveat, filing an action in debt and contract, and an anticipatory legal interest in a unit in a proposed development, with no stated commencement or completion date.

24. Much was made of the fact that the Complainant initialed each page of the Agreement and signed, thereby signifying that she had in fact read and understood the terms. It is the view of the Panel that the Complainant's denial of the effect of the agreement would fail as against parties to the transaction, and even a third party such as a lender. Where however, the document was prepared by the attorney acting for both sides of the transaction with no record of the explanation of the effect of the terms, and inadequate protection of the Complainant, the attorney put herself in an invidious position in invoking the Complainant's signature as evidence of her understanding and agreement to terms that did not reflect what the Complainant wished to achieve by the transaction.
25. When this is juxtaposed with the effect of the terms of the agreement which resulted in the Complainant/Vendor to giving up her legal interest in the Property prior to receipt of the purchase price, it raises the issue of the propriety of the Respondent's structuring an agreement which allowed for an outcome that produced an inequitable imbalance against the interest of the Complainant.
26. The Panel finds that upon review of the evidence, there are glaring shortcomings in the Respondent Attorney's handling of the transaction, which deviated materially from what would be expected of an attorney exercising reasonable competence and due diligence in the handling of a conveyancing transaction between parties for value and at arm's length.

THE LAW

27. The Panel reminds itself that the burden of proof to establish the complaint rests entirely on the Complainant. The Panel also reminds itself that in disciplinary complaints the standard of proof is beyond a reasonable doubt.

FINDINGS OF FACT

28. Having regard to all the evidence, and the manner in which the Complainant presented her case, the Panel concludes that the complaint has been proved beyond a reasonable doubt and states the following findings of fact:
 - (a) The Complainant retained the Respondent to represent her interest in the sale of her Property to Tanglewood Limited;

- (b) The Respondent attorney also acted for the Purchaser, Tanglewood Limited;
- (c) The Respondent prepared an Agreement for Sale which was initialed on each page and signed by the Complainant as vendor;
- (d) The Respondent was introduced to the Complainant by the Purchaser;
- (e) The Respondent also acted for the Purchaser in separate transaction(s);
- (f) The terms of the Agreement provided that in the event of a conflict of interest, the Respondent would put the transaction on hold to allow the Complainant to find a new lawyer and she would continue to represent the Purchaser;
- (g) There is no evidence that the Registered Proprietor/Vendor/Complainant was advised to secure independent legal representation;
- (h) There is no evidence that the consequences of the terms of the Agreement was explained to the Complainant by the Respondent;
- (i) The Property was transferred from the Complainant to the Purchaser prior to payment of the full purchase price to the Complainant;
- (j) The Complainant sought the Respondent's assistance in collecting the unpaid portion of the purchase price from the Purchaser for her account;
- (k) The Respondent accounted to the Complainant for the sum of £21,874.00 which she had received from the Purchaser and eventually paid over that sum plus interest to the Complainant on account of the balance purchase price;
- (l) The Complainant was told by the Purchaser that he had paid over the full balance purchase price to the Respondent;
- (m) A portion of the purchase price remains due and owing to the Complainant.

DETERMINATION OF THE COMPLAINT

29. The Panel finds that the actions of the Attorney displayed inexcusable or deplorable negligence in the performance of her duties, and that the Attorney's conduct failed to maintain the honour and dignity of the profession. Steps were taken by the Attorney to include provisions that ostensibly provided options to the Complainant in the event of a breach, however the risk was created by the very agreement which allowed for the transfer of a property prior to the payment of the balance purchase price, without a more effective protection of the Complainant's interest, as could have been achieved through the use of a vendor's mortgage for example. Such a provision would have, without more, allowed the Complainant (a) to preserve an interest noted on the certificate of title as notice to the world that she retained an equitable interest in the property, and (b) to recover the property in the event of non-payment of the balance purchase price. The terms of the agreement did not give the Complainant any greater rights of enforcement than she would have had pursuant to the contract pending completion in any event, while retaining her legal interest.

30. The Panel is guided by the decision of the Court of Appeal in **Minett Lawrence v General Legal Council (Ex parte Kaon Northover)** [2022] JMCA 1 at paras. 68, and 77-78, where McDonald-Bishop JA stated as follows:

“[68] In Norman Samuels v General Legal Council [2021 JMCA Civ 15, the court considered the fault required to establish professional misconduct due to inexcusable and deplorable negligence. At paras. [84] and [85] of the judgment, the court referenced several passages from pages 144-146 of the helpful work of John Gould and others in the textbook, the Law of Legal Services (2015). Those extracts are worth repeating in this case, and so I will proceed to do so here:

“[84]... ..They referenced dicta from Saif Ali v Sydney Mitchell & Co [1980] 198 at pages 218 and 220, where Lord Diplock explained that the concept of negligence within this context involves ‘advice, acts or omissions in which the course of [the lawyer’s] professional work which no member of the profession who was reasonably well-informed and competent would have given or omitted to do’. ...

[77] ...The multiple roles of the appellant were fraught with inherent risks, which any competent and prudent attorney-at-law of her experience and standing, ought to have recognized. The appellant’s failure to appreciate the precarious position in which she had placed herself and the complainant is enough to demonstrate that, at minimum, she lacked the sound judgment that is required of a member of the legal profession, and at worst, was grossly reckless.

[78] In light of the evidence and the conclusions arrived at as detailed above, I am of the opinion that the Committee was justified in its ultimate finding that he appellant acted with inexcusable and deplorable negligence in the performance of her duties.”

31. The transfer of the property without appropriate terms was detrimental to the Complainant’s legal interests, and caused her to suffer loss, and incur avoidable expenses, and cannot go unnoticed. In the simplest explanation of a conveyancing transaction, a willing buyer sells his/her land to a willing seller who pays an agreed price, in exchange for, and prior to the transfer of the said land, with the use of letters of undertaking for the balance purchase price, in exchange for a registrable transfer, or title issued in the Purchaser’s name. It is indeed quite unusual where land is transferred to a purchaser in the absence of the balance purchase price being tendered, or an acceptable undertaking for same being issued prior to the final stages of completion being initiated. The sequence of events as set out in the evidence, makes it imprudent advice to a vendor, which has resulted in the Complainant taking several steps: a caveat being lodged by the complainant, a claim being filed against the purchaser, interest being paid by the Attorney, and a complaint being filed against the Respondent Attorney, essentially a scramble to recover what has been lost, all as a result of the manner in which the agreement was structured. Indeed, the completion

clause belies the conundrum that the penultimate clauses of the agreement provided for, when in clear simplicity it stated thus:

“7. *COMPLETION* *Within ninety (90) days of the date of this Agreement and Upon payment of the sums payable by the Purchaser herein in exchange for the Duplicate Certificate of Title registered at Volume 1302 Folio 624 registered in the name of the Purchaser”*

32. Other notable terms of the Agreement which are indicative of its deviation from what is usual and acceptable, and which the Respondent as the Attorney for both parties should have fully explained to avoid confusion are the following clauses:

“12. *TRANSFER TAX:* *To be borne solely by the Purchaser*
13. *TITLE AND COST* *Registered Title under the Registration of Titles Act.*
 OF TRANSFER *Transfer to be prepared by the Vendor's Attorney-at-Law. Stamp Duty and Registration Fee are to be borne solely by the Purchaser. The Purchaser shall bear his and the Vendor's Attorney's cost.*

15. *SPECIAL CONDITIONS.....*
 (B) This is a cash sale and not subject to Mortgage.”

33. It is noted from the evidence and observation that the Purchaser was responsible for all expenses of the transfer, including the Complainant's share of the Respondent's fees, and as such this created a heightened responsibility on the part of the Respondent to secure not only the purchase price, but all the contingent costs associated with the transfer, prior to effecting the transfer. The failure to do so was an additional source of confusion and malaise between the parties to the transaction. The Attorney failed in her basic duties to both parties to the transaction, and prepared an agreement which exposed the Vendor, the Purchaser and herself, all at once.

34. During the course of the evidence, reference was made to monies received by the Respondent which were not paid over to the Complainant in a timely manner, however, the Complaint did not reference Canon IV b (ii). The Panel has confined itself to the complaint as filed, and the Canons relied on therein.

35. Consequently, the Panel accepts, on the totality of evidence presented that the Complainant has discharged the requisite burden of proof and finds, beyond a reasonable doubt that the Respondent is guilty of professional misconduct.

CONCLUSION

36. The Panel finds that the Respondent Attorney has not maintained the standards expected of a reasonable Attorney in a conveyancing transaction, and is guilty of professional misconduct and has breached the Canons 1(b) and IV (s).

DATED THE 25TH DAY OF APRIL 2024



TANA' ANIA SMALL DAVIS K.C. (CHAIRPERSON)



MARJORIE SHAW



SEYON HANSON