

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE**

GRENADA

CLAIM NO. GDAHCV 2007/0237

BETWEEN:

JOEL GANPOT

Claimant

and

BRENDA WARDALLY-BEAUMONT

Defendant

Appearances:

Mr. Alban John, Ms. Thandiwe Lyle, Learned Counsel for the Claimant

Dr. Francis Alexis, Q.C, Ms. Winifred Duncan-Phillip, Learned Queen's Counsel and Counsel respectively for the Defendant.

2014: December 16, 17;
2015: January 26.

RULING

(Jurisdiction of Court to discipline Attorneys-at-Law; suspension or striking off from Roll; misappropriation of client funds; professional misconduct.)

- [1] **WALLBANK J. (Ag):** On 17th December 2014 the Court delivered a decision that conduct by the Defendant Attorney-at-Law should be referred to a disciplinary tribunal comprising at least two Judges of the Supreme Court for a determination whether the Defendant should be suspended from practice or struck from the Roll for professional misconduct. Given the gravity of the potential consequences for the Defendant I directed that the

decision would be deemed to take effect upon the delivery of reasons for the decision. These are the reasons.

Opening remarks

- [2] This matter has manifestly and understandably attracted a degree of public interest. At an earlier hearing of this matter Learned Counsel for the Claimant invited the Court to make a pronouncement to reassert fundamental principles for the benefit of Attorneys-at-Law and the public in general. I therefore make the following opening remarks.

Misappropriation of funds by an Attorney-at-Law

- [3] This matter concerns alleged misappropriation by an Attorney-at-Law of funds belonging to a client, the Claimant. Misappropriation by an Attorney-at-Law of client funds breaches a number a fundamental principles that an Attorney-at-Law is bound to uphold. One of these is an obligation on such an Attorney-at-Law to protect a client's money and assets. This principle goes to the heart of a solicitor's duty to act in the best interests of a client.¹
- [4] Misappropriation of client funds can take many forms. All such forms are seriously egregious. They cause scandal, incalculable distress and anxiety to the immediate victims, and great harm to the administration of justice system, including to public confidence in the Courts and the legal profession. Misappropriation of client funds is not the preserve of the thoroughly devious, which is why instances undermine the reputation of the legal profession so profoundly². They breach the tenet around which the entire civil administration of justice revolves, that client funds are sacrosanct.
- [5] Why misappropriation of client funds is so serious bears reflection. The first reason of course is the immediate harm it causes. Then there is the indirect damage that it does to

¹ Cf United Kingdom Solicitors Regulation Authority Principles 2011, Principle No. 10. At 2.14.

² Cf: "Cash-strapped firms a "real risk" to clients": Law Society Gazette, 13 February 2014: "Mike Haley, SRA director of supervision, said: 'Tough economic times can sometimes lead ethical and upstanding solicitors to stray from the straight and narrow. They think that because they are breaking the rules for the best of intentions - to keep the firm afloat - that this is somehow acceptable. That is simply not the case'."

the fabric of society as a whole. It constitutes a breach of contract, but is more than that. It is a breach of trust, but is also more than that. Breaches of contract and trust can be, and unfortunately are, committed by tradesmen, businessmen and ordinary members of the public, but a solicitor is none of these. He or she practices pursuant to an oath that he or she professes upon admission. That is why a solicitor is referred to as a professional, in the original and etymologically correct sense of the word. Misappropriation of client funds is a betrayal of the obligations freely assumed, for all time, when the solicitor takes the oath.

- [6] Betrayal of an oath is a form of perjury. Historically, even when oaths were made generally and extra-judicially and thus not punishable by common law or statute, breach of an oath was treated as aggravation for offences committed by officers.³
- [7] Again, historically, and in the Anglo-Saxon legal context, King Alfred the Great in the 9th century A.D. accorded greater priority to the need to keep oaths than to prevent murder, treason and other heinous crimes, by making this the subject of the first statute in his Legal Code.⁴ Whilst the punishment, as a penalty, for oath breaking was less than for those other offences, breach of oaths was visited with far more sophisticated but nonetheless dire consequences, which were simultaneously a punishment in terms of imprisonment, a removal of weapons privileges and property rights, a spiritual penance assigned by a Bishop, and measures calculated to rehabilitate and rebuild relationships ruptured thereby. Failing all such measures, and as a last resort, the unrepentant oath traitor was to be cast out of civilized society: treated as an outlaw and excommunicated, and, should he be slain

³ "For though an oath be given by him that hath lawful authority, and the same is broken, yet if it be not in a judicial proceeding, it is not perjury punishable either by the common law, or by this act, because they are general and extra-judicial, but serve for aggravation of the offence, as general oaths given to officers or ministers of justice, citizens, burgesses, or the like, or for the breach of the oath of fealty or allegiance, &c. they shall not be charged in any court judicial for the breach of them afterwards. As if an officer commit extortion, he is in truth perjured, because it is against his general oath: and when he is charged with extortion, the breach of his oath may serve for aggravation." Sir Edward Coke, *The Third Part of the Institutes of the Laws of England: concerning High Treason*, London: W. Clarke and Sons, 1809, ch. 74, p. 166.

⁴ The Domboc (Doom Book, or Legal Code) of Alfred the Great, Statute 1: "First, we direct, what is most necessary, that each man keep carefully his oath and pledge."

during pursuit, his body was to lie unransomed.⁵ This package of measures was calculated to cure the temporal (ethical) and spiritual (moral) catastrophe of a broken oath.

- [8] The oath was – and still is – a special kind of bond which binds society together. Again, in the post Anglo-Saxon, English historical Common Law context, oaths gave rise to mutual legal obligations that were known as homage.⁶
- [9] This focus on the historical Anglo-Saxon/English legal dimension of oaths would be incomplete without mentioning that they are a concept common to most if not all peoples, from the dawn of time, usually, but not always, invoking divine assistance⁷.
- [10] The slightest glance at our legal system demonstrates that oaths pervade it. They are the cornerstones of testimony and formal confirmation. Specially appointed officers commission them. Their form is carefully prescribed.⁸ They still are – or should be – the ethical guarantee that enables matters to be progressed with a high degree of confidence.
- [11] The Legal Profession Act, by Section 21 prescribes the current form of oath for Attorneys-at-Law, as follows:

“I, [name], do swear, that I will truly and honestly conduct myself in the practice of law as an attorney-at-law, according to the best of my knowledge, skill and ability, and in accordance with the laws of Grenada.”

The Courts’ treatment of misappropriation by its officers

⁵ Ditto, clauses 1.2 to 1.8.

⁶ Henricus De Bracton (13th Century A.D.), *On the Law and Customs of England, Volume 2*, translated by Samuel E. Thorne, Cambridge, Mass: Belknap Press, 1968, p. 228:

“What is homage? Homage is a legal bond by which one is bound and constrained to warrant, defend, and acquit his tenant in his seisin against all persons for a service certain, described and expressed in the gift, and also, conversely, whereby the tenant is bound and constrained in return to keep faith to his lord and perform the service due. Homage is contracted by the will of both, the lord and the tenant, and is to be dissolved by the contrary will of both, if both so wish, for it does not suffice if one alone wishes, because nothing is more in conformity with natural equity etc. The nexus between a lord and his tenant through homage is thus so great and of such quality that the lord owes as much to the tenant as the tenant to the lord, reverence alone excepted.”

⁷ Grenada has prescribed oaths, some of which invoke God’s help, others, such as the oath to be taken by Attorneys-at-Law, which do not. Examples of states with purely secular oaths are avowedly atheistic societies such as the former USSR.

⁸ See, generally, the Oaths Act, Cap. 217.

- [12] Lest it be thought that the Court is more solicitous of the interests of an Attornery-at-Law than of the victims of his or her alleged professional misconduct, I must state categorically that that is not so.
- [13] Furthermore, lest it be thought that the Courts are slow to punish such wrongdoing by suspension or striking off, it should also be explained that that is an incomplete perception of what the Court tries to achieve. As with the Solicitors Regulation Authority in the United Kingdom, the Court's first priority is always to find a solution for the immediate victims. Often that is complex. In the absence of a centralized compensation scheme and a regulatory body to which Attorneys-at-Law must report financial difficulties in time to enable practices to close or merge with more financially viable firms (to which no shame attaches), such as has been established in the United Kingdom, part of the solution may sometimes be to permit an Attorney-at-Law to continue to practice, with or without conditions, such as supervision, where practical, particularly where the victims themselves do not press for suspension or striking off. In no cases should this be taken to imply that the Court is content to permit an Attorney-at-Law who has shown him or herself by such misconduct to be of unsuitable character to continue in office. It is not.
- [14] By section 75 of the West Indies Associates States Supreme Court (Grenada) Act, Cap. 366, this Court has a summary jurisdiction to fine an officer of the Court for misappropriating funds. That aspect is, currently at least, not in issue, for a number of reasons which need not be rehearsed here.

The apparent facts of the present case

- [15] The pertinent facts in the present case appear as follows. It should be stressed that a disciplinary process has its own standard of proof to establish whether or not professional misconduct has occurred, and there has as yet been no finding of professional misconduct against the Defendant:

- a. In April 2005 the Defendant received a sum of \$304,419.99 on behalf of one of her clients, Mr. Joel Ganpot, representing settlement sums in matrimonial proceedings between Mr. Ganpot and his ex-wife Mrs. Lester Ganpot.
- b. Despite demands made by or on behalf of Mr. Ganpot the Defendant failed to pay over the said sum.
- c. Mr. Ganpot sued the Defendant. Judgment in Default of Defence was entered against the Defendant in favour of Mr. Ganpot on 13th July 2007 in a total sum of \$308,248.69.
- d. Despite Consent Orders subsequently being entered making provision for liquidation of the Judgment in instalments, a substantial portion of the debt currently remains unpaid.
- e. The Defendant has accepted responsibility for having received moneys for Mr. Ganpot whilst acting on his behalf and for having failed to disburse them to Mr. Ganpot when required to do so.
- f. The Defendant has admitted that all cheques issued by her law firm were signed by her and that she must have used up Mr. Ganpot's funds.
- g. The Defendant seeks to attribute the appropriation of Mr. Ganpot's money to improper acts of an office administrator formerly employed by her and who has allegedly since left the jurisdiction.
- h. The Defendant appears in consequence thereof to have committed one or more acts of professional misconduct contrary to Clauses 2(2) and 81 of the Code of Ethics and Section 54(1) of the Legal Profession Act.

- i. The Defendant has previously consented to, and subsequently satisfied, a judgment against her in Claim No. GDAHCV2002/0101, **Cecilia Yvonne James vs Brenda Wardally-Beaumont**, wherein it was claimed that the Defendant misappropriated a sum in excess of \$100,000 whilst acting for the Claimant in the sale of a property. I pause here to remark that the Defendant's alleged mitigation argument in the present case, that the misappropriation of Mr. Ganpot's money was the doing of a former employee, is called into question by this earlier event, in that one may well ask why it is that the Defendant appears not to have taken appropriate care to prevent a repetition of a similar incident, particularly as she was for all intents and purposes a sole practitioner and thus must have had an appreciation of her firm's fee income before signing off on spending. The apparent repetition suggests, rather, a longer running and more endemic problem in the financial management of the Defendant's practice than she is currently portraying. Disclosure of the Defendant's dealings with the client account should demonstrate the whole picture. Appropriate measures can be put in place to preserve her clients' confidentiality. If the Defendant has nothing to hide, and if the primary responsibility for the shortfall in the present case lies with another, as the Defendant contends, the Defendant should be keen to give full disclosure.
- j. On 19th March 2014 Mr. Ganpot applied for an order for committal of the Defendant for contempt of court arising from breach of an Order made herein on 6th February 2013 and for an Order that the conduct of the Defendant relating to this matter be considered by two Judges of the Supreme Court for the purpose of determining whether the Defendant should be suspended from practicing as a Barrister and Solicitor or removed from the Court's Roll, pursuant to section 82 of the West Indies Associated States Supreme Court (Grenada) Act, Cap. 336 of the Continuous Revised Edition of the Laws of Grenada.
- k. The Defendant has filed evidence in response to this application, and has also applied to vary the terms of the applicable payment order, on 5th December 2014, on grounds that her financial position is precariously insufficient.

- l. Upon the Claimant's Application coming on for hearing on 13th November 2014, the Court ordered that the act by the Defendant, her servant or agent of apparently misappropriating client funds is to be referred to the General Legal Council pursuant to section 34(3) of the Legal Profession Act, No. 25 of 2011, as amended, for further investigation and, if appropriate, action. This has now been done.
- m. Moreover, without prejudice to such a referral, the Court directed the parties to file written submissions on the question whether the Court has jurisdiction to determine an application by a Claimant for an Attorney-at-Law to be struck off from the Roll, directly under the West Indies Associated States Supreme Court (Grenada) Act or otherwise.
- n. This question arises because at the time of hearing of Mr. Ganpot's Application (and possibly now as well) the General Legal Council was, so the Court understands, not fully constituted and/or not operational.

Material Statutory Provisions

- [16] Section 81(1) of the West Indies Associated States Supreme Court (Grenada) Act, Cap. 336 provides:
"Every person practicing as a solicitor, and whose name is enrolled as a barrister or solicitor, shall be deemed to be an officer of the Court."
- [17] This is repeated, by what appears to be legislative duplication and not repeal and replacement, by section 23(b) of the Legal Profession Act.
- [18] Section 82 of the West Indies Associated States Supreme Court (Grenada) Act, Cap 336, provides:
"Any two Judges of the High Court may, for reasonable cause, suspend any barrister or solicitor from practising in Grenada during any specified period, or may order his or her name to be struck-off the Court Roll."
- [19] Section 33(1) of the Legal Profession Act provides:

“The rules contained in the Code of Ethics set out in Schedule III shall regulate the professional practice, etiquette, conduct and discipline of an attorney-at-law”; and

[20] Section 33(2) of the Legal Profession Act provides:

“A breach of the rules in –

- a. Part A of the Code of Ethics may constitute professional misconduct;*
- b. Part B of the Code of Ethics shall constitute professional misconduct.*

[21] Section 33(5) of the Legal Profession Act provides:

“An attorney-at-law whose name is entered on the Roll shall be deemed to have notice of the provisions of the Code of Ethics”.

[22] The Legal Profession Code of Ethics, at Schedule III of the Legal Profession Act provides in Part A, Clause 2(1):

“An attorney-at-law shall uphold, at all times, the standards set out in the Code of Ethics”.

[23] The Legal Profession Code of Ethics, at Schedule III of the Legal Profession Act provides in Part A, Clause 2(2):

“An attorney-at-law shall maintain his integrity and the honour and dignity of the legal profession and of his own standing as a member of it... and shall refrain from conduct which is detrimental to the profession, or which may tend to discredit it”.

[24] The Legal Profession Code of Ethics, at Schedule III of the Legal Profession Act provides in Part B, Clause 81:

“In pecuniary matters, an attorney-at-law shall be most punctual and diligent; and shall never mingle funds of others with his own, and he shall at all times be able to refund money he holds for others”.

[25] The Legal Profession Code of Ethics, at Schedule III of the Legal Profession Act provides in Part B, Clause 84:

“A breach by an attorney-at-law of any of the provisions contained in this Part, shall constitute professional misconduct, and an attorney-at-law who commits such a breach, is liable to any of the penalties which the Council, the Court, or both are empowered to impose”.

[26] Section 54(1) of the Legal Profession Act provides:

“All monies received for, or on behalf of a client, by an attorney-at-law, shall be held in trust for that client, to be paid to the client, or as the client may direct.”

[27] The Legal Profession Act and Code of Ethics provide no exceptions to the obligations contained therein.

[28] Section 34 of the Legal Profession Act materially provides:

- “(1) A client, or by leave of the Council, any other person alleging to be aggrieved by an act of professional misconduct (including any default) committed by an attorney-at-law, other than a law officer of Government, may make an application supported by an affidavit of facts, of which he complains to the Council, to require the attorney-at-law to answer to the allegations.*
- (2) The Council may, on its own motion initiate an investigation in respect of the conduct of an attorney-at-law.*
- (3) In the matter or hearing before any court, where the Judge considers that any act of professional misconduct has been committed by an attorney-at-law, other than a law officer of Government, he may refer the matter to the Council.*
- (4) A complaint against an attorney-at-law for professional misconduct, shall not be brought more than three years after—*
 - (a) the date of occurrence of the facts giving rise to the complaint; or*
 - (b) the date of knowledge of the facts giving rise to the complaint of the complainant.”*

[29] Section 35 of the Legal Profession Act provides a detailed procedure for making a complaint before the General Legal Council. Its essence is to ensure procedural fairness, especially to the Attorney-at-Law who may be found liable to discipline, as well as a sufficient degree of privacy to enable allegations of misconduct to be thoroughly ventilated, but with the Council’s findings being pronounced in public.

[30] No set procedures attend the exercise of the Supreme Court’s disciplinary jurisdiction by the Tribunal comprising of at least two judges. That is not a deficiency, as the application of principles of procedural fairness is inherent in the exercise of judicial powers. By contrast the General Legal Council is to be constituted by a mixture of Judicial Officers, Attorneys-at-Law, and lay-persons.

[31] Pursuant to section 37(2) of the Legal Profession Act the General Legal Council does not have the power to remove a barrister or solicitor from the Roll. That is a power reserved by the Legal Profession Act, by section 37(2)(a) and (3) to the Supreme Court, to be

exercised “*in accordance with section 82 of the West Indies Associated States Supreme Court (Grenada) Act, Chapter 336*” by any two judges of the Supreme Court.

[32] By section 37(2)(b) the General Legal Council has power to suspend a practicing certificate of an Attorney-at-Law.

[33] Section 37(3) provides:

“Any two judges of the Supreme Court may, upon hearing an application made by the Council under this Part, order the suspension of an attorney-at-law or have the name of an attorney-at-law struck off the Roll.”

[34] Section 40 of the Legal Profession Act makes an express saving with respect to the Supreme Court’s jurisdiction at common law, in the following terms:

“Notwithstanding anything contained in this Act, the jurisdiction, power and authority vested in any Court immediately before the commencement of this Act—

(a) by the common law, with respect to the discipline of; or

(b)...

barristers, solicitors or attorneys-at-law, shall continue to be exercisable after the commencement of this Act.”

[35] Section 82 of the West Indies Associated States Supreme Court (Grenada) Act, Cap 336, provides:

“Any two Judges of the High Court may, for reasonable cause, suspend any barrister or solicitor from practising in Grenada during any specified period, or may order his or her name to be struck-off the Court Roll.”

The Claimants’ Submissions

[37] The Claimant argues, through Learned Counsel Mr. Alban John, that the Legal Profession Act does not repeal the Court’s powers expressed in section 82 of the West Indies Associated States Supreme Court (Grenada) Act, Cap. 336.

[38] Section 82, he submits, is not expressed to be subject to any other law or provision and it must therefore be treated as standing on its own. Thus once reasonable cause is shown, any two judges of the High Court may exercise the powers conferred by section 82.

[39] The Claimant observes that in **Othneil Sylvester vs Frederick Bruce-Lyle & Kenneth Benjamin (The Disciplinary Tribunal)** HCVAP2007/017, at paragraphs 47 and 48, the equivalent provisions to Grenada's sections 82 and 84 in the Eastern Caribbean Supreme Court (St Vincent and the Grenadines) Act, Cap. 18, were held to import to St Vincent and the Grenadines the law and practice relating to solicitors in force in England and give force locally to that law and practice.

[40] The Claimant submits that section 40 of the Legal Profession Act confers powers additional to section 82 of Cap 336 and is a codification of the common law.

[41] The Claimant submits that *"from the beginning, Solicitors were considered officers of the Court and therefore subject to the discipline of the Court. This disciplinary jurisdiction was exercisable in two ways; it was either punitive or compensatory. Insofar as it was punitive, the Court could strike a Solicitor off the Roll of the Court or suspend him. Insofar as it was compensatory, the Court could order him to pay costs."* The Claimant cites **R & T Thew Ltd vs Reeves (No.2)** [1982] 3 All ER 1086 at p. 1088, paras d and e per Lord Denning M.R. in support of this proposition:

"The jurisdiction of the court over solicitors was much considered by the House of Lords in Myers vs Elman [1939] 4 All ER 484, [1940] AC 282. It originated in early days because a solicitor was an officer of the court. His name was entered on the rolls of the court. He was subject to the discipline of the court. This disciplinary jurisdiction was exercisable in two ways: either by punishing him or by making him pay compensation.

In so far as it was punitive, the court could strike a solicitor off the roll of the court or it could suspend him. In so far as it was compensatory, it could order him to pay costs; sometimes the costs of his own client, sometimes those of the opposite party, sometimes it may be both (see [1939] 4 All ER at 508, [1940] AC 282 at 318 per Lord Wright).

Both these disciplinary powers are preserved by 50 of the Solicitors Act 1974."

- [42] The Claimant submits that unlike in the United Kingdom, where admissions to practice and removal therefrom have historically been conducted by the Inns of Court, in the former Colonies, and currently, the Commonwealth Caribbean, the authority to admit Solicitors to practice, and the concomitant power of suspension and removal from the Roll, has resided with the Courts. The Claimant cites ***In re Justices of the Court of Common Pleas at Antigua*** [1830] 1 KNAPP 267 at page 268, and the more modern restatement of the same principle by Byron CJ in *Civil Appeal No. 23 of 2001, Hansraj Matadial vs John Bayliss Frederick* at paragraph 3 in support of this proposition:

*"In England the Courts of Justice are relieved from the unpleasant duty of dis-barring advocates in consequence of the power of calling to the Bar and dis-barring having been in very remote times delegated to the Inns of Court. In the colonies there are no Inns of Court, but it is essential for the due administration of justice that some persons should have authority to determine who are fit persons to practise as advocates and **attornies** there. Now advocates and **attornies** have always been admitted in the Colonial Courts by the Judges, and the Judges only. The power of suspending from practice must, we think, be incidental to that of admitting to practise, as is the case in England with regard to **attornies**. In Antigua the characters of advocates and **attornies** are given to one person; the Court therefore that confers both characters may for just cause take both away."*⁹

*"[3] Historically the judges in England had the right at common law to determine who should be admitted to practice as barristers and solicitors; and, as incidental thereto, the judges had the right to suspend or prohibit from practice. In England this practice has been delegated so far as barristers are concerned, to the Inns of Court and so far as Solicitors are concerned to the Law Society. In the British Colonies, there were no Inns of Court and as an essential requirement of the Administration of Justice the Judges retained the same powers in their own hands."*¹⁰

- [43] The Claimant cites the latter case, at paragraph 6, which in turn cited the Privy Council's decision of Lord Denning in the ***Attorney General of the Gambia vs N'Jie*** [1961] 2 All ER 504 at 509, as authority for a proposition that the Court can exercise the power to suspend or to strike off from the Roll on its own initiative, *ex mero motu*, on information which has come to its notice.

⁹ *In re Justices of the Court of Common Pleas at Antigua* [1830] 1 KNAPP 267

¹⁰ *Civil Appeal No. 23 of 2001, Hansraj Matadial vs John Bayliss Frederick*

- [44] ***In R & T Thew vs Reeves (No.2)*** (supra), Lord Denning MR further explained:
“The punitive jurisdiction of the court itself is now rarely if ever exercised. It is left to the Solicitors Disciplinary Tribunal....Nowadays it would usually be inappropriate for any judge to exercise this punitive jurisdiction of his own motion. ... It should be avoided in all but the most exceptional cases.”
- [45] The Claimant contends that the Court has a summary jurisdiction to discipline an Attorney-at-Law for misconduct, following ***Brendon vs Spiro*** [1937] 2 All ER 496, per Scott LJ at page 500:
“Today, as we know, the ordinary procedure for striking a solicitor off the roll is laid down in the Solicitors Act 1932; but the summary jurisdiction is left unimpaired where the judge thinks it proper to exercise it over a solicitor who has been guilty of misconduct in the course of a case tried before him.”
- [46] On page 501 of that judgment the English Court of Appeal referred to that jurisdiction as being an inherent jurisdiction.
- [47] The Claimant submits further that the Court’s powers to discipline its officers are not related to the rights of parties and the issue of whether such rights have been determined in a claim, following ***In re H.A. Grey*** [1892] 2 QB 440, ***per Lord Esher M.R.***, p 443:
*“It seems to me that the true way of dealing with this case is to deal with it according to the principle which was laid down by this Court in *In re Freston* 11 Q.B.D. 545 and recognized and approved of in *In re Dudley* 12 Q.B.D. 44. The principle so laid down is that the Court has a punitive and disciplinary jurisdiction over solicitors, as being officers of the Court, which is exercised, not for the purpose of enforcing legal rights, but for the purpose of enforcing honourable conduct on the part of the Court’s own officers. ... Such was the principle laid down in the cases to which I have referred, and which were decisions of the Court of Appeal, and therefore are binding on us till overruled by the House of Lords.*

So, if a solicitor obtains money by process of law for his client, quite irrespective of any legal liability which may be enforced against him by the client, he is bound, in performance of his duty as a solicitor, to hand it over to the client, unless he has a valid claim against it. If he spends it, or if, still having it, he refuses to hand it over, he commits an offence as an officer of the Court, which offense has nothing to do with any legal right or remedy of the client.”
- [48] The Claimant observes that this position was followed in ***Othniel Sylvester*** (supra), at paragraphs 51 to 55, in the Eastern Caribbean.

[49] The following dicta cited there are particularly pertinent:

"[51] ...The client had a legal right to the money, but the Court has a right to see that its own officer does not act contrary to his duty. ...the conduct of the solicitor has not been altered [by the fact that the client has obtained a money judgment against the solicitor]. Anything, that may have been a breach of his duty as a solicitor on his part before the judgment, remains a breach of duty after it."

"[52]...The solicitor in this case is in a situation which presents two aspects, involving a double responsibility. He was a debtor, who owed a legal debt. He also owed a duty to his profession, and the Court of Justice whose officer he was, to pay over the money which belonged to his client, and of which he had possession through the confidence placed in him in his professional capacity, and as an officer of the Court. There are in such a case two wholly distinct rights, the right of the client at law to be paid his debt, and his right to apply to the Court as a person whose confidence has been abused by a person who is an officer of the Court, and whom he would not have trusted unless he had been such an officer."

[50] The Claimant contends that in an application to strike off from the Roll, the critical consideration is the issue of good character of the Attorney/Solicitor, as stated in ***Christian Jideofe vs the Law Society*** [2007] WL, 5116865:

- "(i) that the test of character and suitability is a necessarily high test;*
- (ii) that the character and suitability test is not concerned with "punishment", "reward" or "redemption", but with whether there is a risk to the public or a risk that there may be damage to the reputation of the profession; and*
- (iii) that no one has the right to be admitted as a solicitor and it is for the applicant to discharge the burden of satisfying the test of character and suitability."*

[51] That case concerned an application to be admitted to practice, not suspense or striking off, but, the Claimant suggests, the principles readily extend to that domain.

[52] In the context of a possible risk to the public, the Claimant asks the Court to take judicial notice of allegations of a similar nature in the earlier matter referred to above, in Claim No. GDAHCV 2002/0101 – ***Cecilia Yvonne James vs Brenda Wardally-Beaumont***, of which the present matter appears, if the Claimant here is right, to be a troubling and even more financially significant recurrence.

The Defendant's Submissions

- [53] The Defendant, by her Learned Counsel Ms. Winnifred Duncan-Phillip, submits that the Court's jurisdiction to deal with the application for suspension or striking from the Roll, pursuant to section 82 of the West Indies Associated States Supreme Court (Grenada) Act, Cap 336, is as a disciplinary tribunal comprising two judges.
- [54] The Defendant further submits that the Applicant has used the incorrect procedure for attempting to place his **compliant** before the tribunal.
- [55] The Defendant submits that the Legal Profession Act, by sections 34, 35 and 37 in particular, lays down the procedure to be followed.
- [56] This procedure, contends the Defendant, entails that a complainant, or the Supreme Court, must refer the matter to the General Legal Council, which can then forward a copy of the proceedings before it and its findings to the Supreme Court, which can then consider it further in accordance with section 82 of the West Indies Associated States Supreme Court (Grenada) Act, Cap 336.
- [57] The Defendant argues that whilst section 40 of the Legal Profession Act preserves the common law jurisdiction of the Court to discipline Attorneys-at-Law, an applicant cannot make an application to strike from the Roll as part of judgment enforcement proceedings, because the methods of enforcing a judgment are provided for by Part 45 of the Eastern Caribbean Civil Procedure Rules 2000, and these do not include an application to have an attorney-at-law struck off the Roll.
- [58] The Defendant argues that the Applicant should have brought fresh proceedings to make the complaint, and, if the Court understands the conclusion to the Defendant's written submissions correctly, directly to a disciplinary tribunal constituted pursuant to section 82 of the West Indies Associated States Supreme Court (Grenada) Act, Cap 336.

- [59] The Defendant prays in aid of these propositions the **Othneil Sylvester** case, which commented upon the distinct nature of disciplinary proceedings from those that are compensatory.
- [60] The Defendant argues that suspension of an Attorney-at-Law from practicing is governed by statute, as section 37 of the Legal Profession Act gives power to the General Legal Council to order suspension of a practicing certificate under section 37(2)(b) of the Legal Profession Act, or the General Legal Council may forward to the Supreme Court proceedings in a complaint of professional misconduct, and any two judges may order suspension of the Attorney-at-Law, under section 37(2)(a) and (3) of the Legal Profession Act.
- [61] The Defendant also argues that Parliament has prescribed procedures for striking off from the Roll, by sections 34 to 36 of the Legal Profession Act. She submits that where Parliament provides recourse and prescribes the procedure for invoking it, other procedures may not be resorted to, following **Grenada Co-operative Nutmeg Association vs W & W Spices Grenada Ltd**, Claim No. GDAHCV 2000/0223, 17th December 2002, HC-Grenada.

Discussion

- [62] It is not difficult to see why both sides take the positions they do. As far as the Defendant is concerned, if the interpretation of the law she advances is correct, the fact that there is no properly constituted or functioning General Legal Council would prevent the matter reaching the Court.
- [63] The Defendant is also well aware that there is no standing disciplinary tribunal consisting of two judges to which a complainant could direct a complaint.
- [64] The cumulative effect would be that the complaint would languish in abeyance whilst the Defendant could continue to practice untouched – and untouchable.

[65] As far as the Claimant is concerned, the absence of the General Legal Council obviously blocks that complaint channel, at least currently. He would also be blocked by the limitation provision in section 34(4) of the Legal Profession Act.

[66] The only route left to the Claimant is to invoke the Court's residual common law jurisdiction, which has been expressly saved by section 40 of the Legal Profession Act, and which the limitation provision does not fetter.

[67] I agree with the Claimant that he can do so.

[68] I am of the view that the limitation provision does not fetter the Court's common law powers of discipline over its officers because

(a) the limitation provision restricts the time within which a member of the public can bring a complaint. If the Court perceives that one of its officers has misconducted him or herself, its referral of the matter to a disciplinary tribunal comprising at least two judges is not a complaint, it is an investigation into that Attorney-at-Law's suitability to continue as an officer of the Court; and

(b) it can readily be seen that a line should, as a matter of public policy, be drawn as to when complainants are deemed have had enough time to complain, but it would be illogical if the Court were forced to maintain an Attorney-at-Law on the Roll whose misconduct in failing to render to his client what is due to him continues, as **Othneil Sylvester** (supra) holds it does.¹¹

[69] I am satisfied by the authorities cited by the Claimant, and in particular ***In re H.A. Grey*** [1892] 2 QB 440, ***per Lord Esher M.R.***, at p 443, and ***Civil Appeal No. 23 of 2001, Hansraj Matadial vs John Bayliss Frederick*** that the Court has an inherent punitive and

¹¹ See paragraph [51] of the judgment.

disciplinary jurisdiction over solicitors, as being officers of the Court, which is a common law jurisdiction.

- [70] **Brendon vs Spiro** [1937] 2 All ER 496, per Scott LJ at page 500, holds this to be a summary jurisdiction.
- [71] Following **Hansraj Matadial vs John Bayliss Frederick**, citing Lord Denning in the **Attorney General of the Gambia vs N'Jie** [1961] 2 All ER 504 at 509, it is clear that the Court can exercise the power to suspend or to strike off from the Roll on its own initiative, *ex mero motu*, on information which has come to its notice. It is true that Lord Denning qualified this heavily to exceptional cases in **R & T Thew Ltd vs Reeves (No.2)** [1982] 3 All ER 1086, but he did so in circumstances where a Solicitors Disciplinary Tribunal had been established, and he left it open for a Court to do so. The General Legal Council would, when properly constituted and functioning, take on the role of the Solicitors Disciplinary Tribunal. Absent such a body, the Court should surely be less reluctant to exercise the power on its own initiative.
- [72] The main importance of this power, in the present context, as I perceive it, is to remove the technical objection raised by the Defendant that the Claimant has brought his complaint and request for suspension or striking off in a procedurally incorrect manner.
- [73] Even if he did so incorrectly (on which I make no ruling), this is an exceptional case for many reasons, not least because it involves blatant and admitted misappropriation of significant client funds, apparently for a second time, with the double breach of duty continuing, and these warrant the Court exercising its discretion to use its inherent powers on the information that has come to its notice, to have the apparent misconduct investigated and appropriate disciplinary measures, if any, applied.
- [74] It must also be right that the Court should not be prevented by the absence of a properly constituted and functioning General Legal Council from exercising discipline over its officers. The effect of the interpretation urged by the Defendant is for the absence of a

General Legal Council to reduce the Court to a toothless, supine invertebrate, helplessly spectating as its own officers unscrupulously divert and consume the money their clients have entrusted to them. That cannot have been the legislature's intent.

[75] On the contrary, the Court has a virile and vigorous common law jurisdiction, expressly preserved and recognized by section 40 of the Legal Profession Act, which Parliament clearly intended the Court to use, as it considers appropriate, where the procedures involving the General Legal Council appear to the Court to be un- or less suitable, or unavailable.

[76] The Defendant relies upon ***Grenada Co-operative Nutmeg Association vs W & W Spices Grenada Ltd***, Claim No. GDAHCV 2000/0223, 17th December 2002, HC-Grenada in an attempt to persuade the Court that only one prescribed procedure should be treated as open to the Claimant. That was not however a case concerning discipline of Attorneys-at-Law, but restrictions upon the sale of nutmegs, an entirely different proposition. Nor does that case address the manner in which section 40 of the Legal Profession Act and section 82 of the West Indies Associated States Supreme Court (Grenada) Act, Cap 336, operate.

[77] Section 82 of the West Indies Associated States Supreme Court (Grenada) Act, Cap 336, makes provision for the manner in which the Court's common law jurisdiction to discipline by way of suspension or striking off from the Roll are to operate, that is, by any two judges.

[78] I am strengthened in this view by the fact that prior to the Legal Profession Act it stood alone, with no legislated procedure or regulations for its operation.

[79] Section 82 does not stand entirely alone, however. Its provisions follow immediately from those in section 81, which deem every person practicing as a solicitor, and who is enrolled either as a barrister or solicitor, to be an officer of the Court. This indicates that it was that special position in particular that section 82 was intended to address.

[80] Whilst the act of suspension or striking off from the Roll requires two judges by section 82, statute is silent on how the Court, acting on information that has come to its attention, should direct the matter to two such judges. Lord Wright however stated in **Myers v Elman** [1940] AC 282 that “*The summary jurisdiction thus involved a discretion both as to procedure and as to substantive relief.*”

[81] The act of a Court in referring a matter to two such judges is distinct from the act of suspending from practice or striking from the Roll. There is no statutory requirement that such a referral must also be done by two judges. Such a referral appears to fall squarely within the procedural discretion included in the summary jurisdiction mentioned by Lord Wright.

[82] Thus, in the exercise of this procedural discretion, and for the reasons stated, the Order of the Court is as follows:

1. The whole conduct of the Defendant relating to this matter shall be considered by a disciplinary tribunal comprising at least two judges of the Supreme Court for the purpose of determining whether the Defendant shall be suspended from practicing for a specified period or be struck off from the Roll, pursuant to section 82 of the West Indies Associated States Supreme Court (Grenada) Act, Cap 336;
2. There shall be established such a disciplinary tribunal by the Registrar, in consultation with the Judicial and Legal Services Commission;
3. A notice of first hearing of the matter before the disciplinary tribunal shall be given to the Defendant and the Claimant via their respective solicitors of record in this Claim.
4. At such first hearing the disciplinary tribunal shall give directions as to the further hearing of the matter, including as to granting any other interested parties an opportunity to be heard;

5. The disciplinary tribunal shall take into account all the circumstances of the Defendant's conduct, such as it may be found by the disciplinary tribunal, including whether the said conduct concerns a single event, or a repetition of previous conduct, and the degree of responsibility that ought properly be ascribed to the Defendant;
6. The disciplinary tribunal shall be entitled to instruct Counsel to act as amicus to the tribunal, the reasonable cost thereof to be met in the first instance by the public purse of Grenada;
7. The Defendant shall bear the Claimant's cost of this application in the sum of \$5,000 to be paid to the Claimant by the end of February 2015;
8. The date of this decision, for the purposes of any application for leave to appeal, shall be the date the written reasons are delivered.

[83] Finally, I thank both sides' Learned Counsel for their assistance. A particular commendation must go to the Claimant's Attorneys-at-Law, for the high standard of Mr. Alban John's presentation and for the thoroughness of his and Ms. Thandiwe Lyle's research and preparation.



Gerhard Wallbank
High Court Judge (Ag)