

IN THE MATTER OF GEOFFREY ROYSTON EVANS, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Miss N Lucking (in the chair)
Mrs E Stanley
Mrs N Chavda

Date of Hearing: 19th May 2009

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of the Solicitors Regulation Authority (“SRA”) by Michael Robin Havard, solicitor and partner in the firm of Morgan Cole Solicitors, Bradley Court, Park Place, Cardiff CF10 3DP on 13th November 2008 that Geoffrey Royston Evans of Evans & Greaves Limited, 5 Piccadilly Square, Caerphilly, CF83 1PB, a solicitor, might be required to answer the allegations contained in the statement that accompanied the application and that such Order might be made as the Tribunal should think right.

The allegations against the Respondent were that he:-

1. Acted in a way which was likely to compromise or impair his independence or integrity contrary to Rule 1(a) of the Solicitors’ Practice Rules 1990.
2. Acted in a way which was likely to compromise or impair his duty to act in the best interests of the client contrary to Rule 1(c) of the Solicitors’ Practice Rules 1990.
3. Acted where then existed a conflict of interest or the potential for a conflict of interest.

4. Acted for both seller and buyer without having obtained the written consent of both clients in breach of Rule 6(2) of the Solicitors' Practice Rules 1990.
5. Acted in conveyancing transactions for the seller, buyer and lender in the same transaction without notifying the lender of his intention to do so, in breach of Rule 6 of the Solicitors' Practice Rules 1990.
6. Provided a Certificate of Title to his lender clients which he knew, or ought to have known, was incorrect.
7. Failed to disclose all relevant information to a client, namely the lender, in certain conveyancing transaction which was material to the lender's business.
8. [Withdrawn]
9. Failed to comply with the instructions from lender clients.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 19th May 2009 when Michael Robin Havard appeared as the Applicant and the Respondent appeared and was represented by Richard Nelson.

The evidence before the Tribunal included the Respondent's admissions to allegations 3, 4, 5, 6, 7 and 9 together with a number of references concerning the Respondent's character.

At the commencement of the hearing the Applicant made an application to withdraw allegation 8 against the Respondent. The Tribunal granted the application.

At the conclusion of the hearing the Tribunal made the following Order:-

The Tribunal Orders that the Respondent, GEOFFREY ROYSTON EVANS of Evans & Greaves Limited, 5 Piccadilly Square, Caerphilly, CF83 1PB, solicitor, do pay a fine of £3,000.00, such penalty to be forfeit to Her Majesty the Queen, and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £16,000.00.

The facts are set out in paragraphs 1 – 15 hereunder:-

1. The Respondent, who was born in 1957, was admitted to the Roll on 1st September 1981. At all material times the Respondent was a member and director of Evans & Greaves Limited of 5 Piccadilly Square, Caerphilly, Mid Glamorgan, CF83 1PB.
2. On 7th March 2007 and on various dates thereafter, an Investigation Officer ("IO") from the SRA attended the offices of the Respondent's firm in order to carry out an inspection. The redacted Forensic Investigation Report ("FIR") dated 28th January 2008 was before the Tribunal.
3. The Respondent had conduct of a number of property transactions and the IO discovered numerous irregularities, primarily relating to acting for the seller and buyer without obtaining their written consent, and failing to notify lender clients of

information which would be material to their decision on whether to lend money to the Respondent's clients.

Acting for seller and buyer – Allegations 2, 3, 4

4. The IO reviewed two conveyancing files where the firm had acted for the seller and buyer in conveyancing transactions without the written consent of both parties. The Tribunal were provided with details.

Failure to inform lender client of relevant information – Allegations 1, 2, 3, 5, 6, 7, 9

5. In direct contravention of Rule 6(3) (b) of the Solicitors' Practice Rules 1990, on three files reviewed by the IO, it was discovered that the Respondent acted for both buyer and seller as well as the lender in conveyancing transactions. However, the lender was not informed of that fact. The Tribunal were provided with examples.

Failure to follow lender clients' instructions and failure to provide lender clients with relevant information – Allegations 1 – 9

6. In particular, the IO reviewed five files where the Respondent was instructed to act for the lender clients in line with the Council for Mortgage Lenders Handbook for England and Wales (CML Handbook).

Sale and purchase of 50 A Road

7. This was a case where the Respondent had failed to notify his lender clients of the fact that he was acting for both seller and buyer.
8. The Respondent acted for the seller, Mr O B and the purchaser, Ms B, (who it was understood were in a relationship) in the sale and purchase of a property for £118,000. The lender client was Monmouthshire Building Society which instructed the firm to act for them in line with the CML Handbook.
9. The client ledger showed how the purchase was funded and it was apparent that:-
 - (a) by means of cash and inter-ledger transfer from the proceeds of sale of another property owned by Mr O B, Ms B was able to afford to purchase the property;
 - (b) despite the fact that Mr O B provided £37,916.25 towards the purchase price, this sum, plus the mortgage advance, making up the payment of £117,583.13, was then paid on 30th April 2003 back to Mr O B.
10. The Respondent should have provided this material information to his lender clients or, alternatively, if his client Ms B refused to allow the Respondent to provide such information, he should have returned the documentation to his lender client and declined to act.
11. In his interview with the IO the Respondent explained his conduct by saying that he would not necessarily distinguish between money provided by a husband and wife in a transaction, although at this time Mr O B and Ms B were not married.

Purchase of 12-16 G Square

12. This was a transaction in which the Respondent again acted for Ms B in the purchase of property which completed on 16th April 2002 where the purchase price was £247,500. The Respondent was instructed by the lender, the Monmouthshire Building Society, in connection with an advance of £185,605.00. This was at a time when Mr OB and Ms B were not married. The Respondent had also acted for Mr O B in a number of other matters.
13. The client ledger card indicated that on 22nd April 2002 Mr O B provided two payments totalling £7,178.34 towards the purchase price of the property. The Respondent confirmed that this information in breach of his obligations was not provided to his lender clients.

Purchase of land adjacent to 86 H Street

14. The chronology was as follows:-

28th May 2004

This was the date of completion of a transaction where the Respondent acted for Mr D in the purchase of the land for £439,000 with the assistance of a loan of £220,000 from R Limited.

28th June 2004

Having been instructed to act for Self Build Investments Limited, Barclays Bank also instructed the Respondent by their letter of 28th June 2004 to act on the Bank's behalf in lending £330,000 to Self Build Investments Limited which, in turn, was purchasing the land from Mr D for £465,000. Mr D owned Self Build Investments Limited with his brother-in-law Mr A and his accountant Mr JD being minority shareholders.

The letter from Barclays of 28th June 2004 specifically stated: "Where appropriate you are required to advise the Bank how the borrower says the purchase price is to be provided and advise if you will not have control over the payment of all the purchase money (other than a deposit paid to an estate agent or a reservation fee paid to a building developer)".

18th July 2004

A fax was sent to the Respondent from Mr D indicating that the balance of the purchase price, namely £135,000, would be paid directly by Self Build Investments Limited to Mr D "...at a later date".

August 2004

Completion took place of the sale of the land by Mr D to Self Build Investments Limited.

15. The following points were of relevance.
 - (a) Barclays Bank general instructions state "Please advise us immediately if the property purchase is in relation to a "back to back" sale or if the seller has not

owned or been a registered owner of the property for at least six months”. There was no indication that Barclays Bank had been informed that Mr D had owned the property for less than six months.

- (b) The Certificate of Title would have incorporated a clause that the Respondent confirmed there had been compliance with Rule 6(3) of the SPR to include confirmation that the seller had owned or been a registered owner of the property for not less than six months and that the Respondent did not act on behalf of the seller.
- (c) At no stage were Barclays Bank informed that the Respondent’s firm did not have control of all the purchase monies.
- (d) A substantial proportion of the purchase monies would be paid on an unspecified future date, such monies not being in the control of the Respondent. This, highly relevant, information was not communicated to Barclays Bank.

The Submissions of the Applicant

- 16. The Applicant confirmed allegations 1 and 2 were disputed but that the remaining allegations were all admitted. There was no allegation of dishonesty against the Respondent and indeed he had been co-operative throughout the course of the investigation. The Applicant submitted that particularly taking into account the relationship between Mr OB and Ms B, the flow of funds in the course of the transactions would have been of material relevance to the lender clients and the Respondent should have declined to act as a result of a clear conflict of interest.
- 17. The Applicant submitted that the Solicitors’ Practice Rules were there for a purpose and should have been complied with. Whilst it was accepted that there may be oversights from time to time, this was a case where there had been a number of serious breaches. The Rules were there to protect the best interests of clients and to protect those clients when things went wrong. It was not suggested that the conduct was taking place on a vast scale and the Tribunal was only referred to the transactions put before them.
- 18. The Applicant requested an Order for his costs which had been agreed at £16,000.

The Submissions of the Respondent

- 19. The Respondent confirmed that allegations 1 and 2 were disputed but that the remaining allegations were admitted.
- 20. There had been five transactions which had taken place over a period from April 2002 until December 2006. There had been no established pattern of conduct and the denial of allegations 1 and 2 arose from technical breaches.
- 21. One of the transactions involved an auction where established clients were the purchaser and seller respectively. The Respondent was acting for the seller at the time and both purchaser and seller were traders who regularly bought and sold

properties having refurbished them. In this case the Respondent had acted for the seller whilst a legal executive in his office had acted for the purchasers. The Respondent accepted that he should have declined to act and advised one of the parties to go elsewhere.

22. In another example put before the Tribunal the Respondent had acted for both seller and purchaser where the purchaser was in fact the seller's son. The bank was fully aware of the background and indeed, had orchestrated matters as the mother had wanted to leave the area due to her husband having multiple sclerosis. They had decided to move somewhere warmer but as their son wanted to stay local, it had been agreed that he would stay at the property. The family had gone to see the bank and the bank had decided it would be much easier to redeem the original mortgage and grant a new mortgage to the son. The husband of the seller had previously been a solicitor and was trying to maximise the benefits available. The whole matter was a joint enterprise orchestrated by the bank with the Respondent closely involved and the bank was fully aware of the background to the case. The Respondent's failure had been to obtain written consent from all the parties and to write appropriate letters confirming everything in writing.
23. Regarding the matter of the purchase of land adjacent to 86 H Street, Mr D was a property developer and had acquired the property in his own name not in the name of the company. He had then realised that in order to develop the property and build further houses he would need more funding and again approached the bank who suggested the company should be set up to hold the property long term. The Respondent submitted that the circumstances were fully within the knowledge of the lender client and indeed had been orchestrated by the lender client.
24. Mr Nelson, on behalf of the Respondent submitted that he had simply failed, under the pressure of work, to "cross the T's" and "dot the I's" in failing to get signatures and confirm matters in writing. He had not been manipulated by any third parties or clients and had bent over backwards to look after his clients.
25. The Respondent had agreed the Applicant's costs in the sum of £16,000.00. This would place a huge burden on him. He was a well regarded member of the legal community having been in the profession for 28 years and these proceedings had affected him substantially. He had not been sleeping due to stress and for some months he had had the threat of criminal proceedings hanging over him although these had not been pursued.
26. The Tribunal was referred to the references provided in which the Respondent's honesty and integrity shone through. There were letters of gratitude, unsolicited cards from clients and positive feedback forms. The Tribunal was asked to take all these into account and accept that this was one of those instances where technical breaches of the Rules did not amount to a breach of Rule 1.

The Findings of the Tribunal

27. The Tribunal found allegations 3, 4, 5, 6, 7 and 9 to have been substantiated, indeed they were not disputed. The Tribunal had been asked to make a decision on

allegations 1 and 2 which were disputed. Rule 1 of the Solicitors Practice Rules 1990 stated as follows:-

“A solicitor shall not do anything in the course of practising as a solicitor, or permit another person to do anything on his or her behalf, which compromises or impairs or is likely to compromise or impair any of the following:-

- (a) The solicitor’s independence or integrity
- (c) The solicitor’s duty to act in the best interests of the client

28. The facts had essentially been agreed between the parties and indeed, the Respondent accepted he should have obtained the written consent of all parties but failed to do so.
29. Regarding the transaction involving the mother seller and son purchaser it was clear to the Tribunal that the bank was fully aware of the situation as they themselves had suggested the son should take out a new mortgage in order to pay off the mother’s existing mortgage. However, the Tribunal was concerned to note the Respondent had signed a Certificate of Title which contained the following undertaking:-

“We, the conveyancers named above, give the Certificate of Title set out in the appendix to Rule 6 (3) of the Solicitors’ Practice Rules 1990 as if the same were set out in full, subject to the limitations contained in it”

The Tribunal was of the view that the Respondent should have formally informed the lender that the firm was representing the buyer, seller and the lender and in failing to do so, he had breached Rule 1.

30. Again, in relation to the transaction involving 50 A Road, the Respondent had signed a Certificate of Title and had not informed the lender client that the buyer was not providing all the purchase monies, or that the buyer and seller were connected and had a family arrangement. Regarding the purchase of 12-16 G Square, again the Respondent had failed to advise the lender client that the purchase monies had not been provided in their entirety by the purchaser. Finally, in relation to the purchase of land adjacent to 86 H Street, the Respondent had failed to inform his lender client that Mr D had owned the property for less than six months. In failing to provide this information, the Respondent had breached Rule 1. Accordingly, the Tribunal found allegations 1 and 2 to have been substantiated.

Mitigation

31. Mr Nelson asked the Tribunal to consider the previous submissions as mitigation. The Tribunal was also asked to take into account the references provided.

The Tribunal’s Decision

32. The Tribunal had considered all the submissions and documents provided together with the references relating to the Respondent’s character.
33. The Tribunal felt that although some of the facts proved amounted to technical breaches of the Rules, nevertheless any breach of Rule 1 of the Solicitors’ Practice

Rules must be regarded as serious particularly as the purpose of the Rule was specifically to protect clients and to protect the reputation of the profession. The Tribunal had been referred to a number of transactions and this was not simply a case where there had only been a one off transaction involved. Important Rules had been breached which were there for a purpose and incorrect Certificates of Title had been provided which lenders were entitled to rely upon. In the circumstances the Tribunal considered the appropriate sanction was a fine of £3,000.00.

34. The Tribunal ordered that the Respondent, Geoffrey Royston Evans of Evans & Greaves Limited, 5 Piccadilly Square, Caerphilly, CF83 1PB, solicitor, do pay a fine of £3,000.00, such penalty to be forfeit to Her Majesty the Queen, and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £16,000.00.

Dated this 10th day of December 2009
On behalf of the Tribunal

N Lucking
Chairman