

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV 2008-03738

IN THE MATTER OF THE LEGAL PROCESSION ACT CHAP 90:03

AND

**IN THE MATTER OF THE ORDERS MADE BY THE DISCIPLINARY
COMMITTEE OF THE LAW ASSOCIATION OF TRINIDAD AND TOBAGO
CONSTITUTED BY S.36 OF THE LEGAL PROCESSION ACT CHAP 90:03,
AGAINST MR. WILLIAM GREENE, AN ATTORNEY-AT-LAW**

AND

**IN THE MATTER OF THE FAILURE OF SAID MR WILLIAM GREENE TO
COMPLY WITH THE SAID ORDERS IN WHOLE AND/OR IN PART**

AND

**IN THE MATTER OF AN APPLICATION BY THE LAW ASSOCIATION OF
TRINIDAD AND TOBAGO IN THE DISCHARGE OF ITS PURPOSES
PRESCRIBED FOR BY S,5 OF THE LEGAL PROFESSION ACT CHAP 90:3**

BETWEEN

LAW ASSOCIATION OF TRINIDAD AND TOBAGO

CLAIMANT

AND

WILLIAM GREENE

DEFENDANT

Before the Honourable Justice G. Smith

Appearances:

Mr. Fitzpatrick S,C., and Ms. L. Lucky Samaroo for the Law Association

Mr. W. Greene in person

REASONS

1. The Law Association of Trinidad and Tobago made an application for a declaration that the Defendant was suspended from practicing as an Attorney-at-Law. The application was by way of a Fixed Date Claim Form and it also asked for other consequential relief. The application was filed on the 25th September 2008 and served on the Defendant on the 6th October 2008. The returnable date of hearing of this Fixed Date Claim Form was 11th December 2008.

On the 11th December 2008 the Law Association was ready to proceed with the application. The Defendant was not ready. He requested an adjournment of the application. I granted this adjournment upon certain conditions. The Defendant has appealed this order.

2. The Defendant advanced insubstantial and tenuous reasons for the adjournment. He claimed that he thought that this was merely a Case Management Conference where I would only give directions on how to proceed with the case.

The Law Association vehemently opposed the Defendant's request for an adjournment. They had briefed Senior Counsel and he was ready. Senior Counsel also informed me that he was prepared to argue that I should strike out the Defendant's Defence filed on the 12th November 2008.

I found that the Defendant's request for an adjournment was insubstantial and tenuous for the following three reasons. Firstly, the Defendant is an Attorney-at-Law and must be aware that even the Fixed Date Claim Form (Form 2 to the Appendix to the Civil Proceedings Rules 1998) states that I could deal with the claim on the return date. Secondly, the Defendant gave no reason why he could not prepare himself to deal with

this matter after having been served more than two months earlier. Thirdly, given the seriousness of the allegations, and the sanctions sought against him, his lack of preparedness, was unacceptable; a fortiori, he is an Attorney-at-Law in Trinidad and Tobago and must be familiar with the requirement of early preparation that applies under new dispensation of the Civil Proceedings Rules.

3. In spite of this, I allowed the Defendant an adjournment to the 16th January, 2008. However, because this request for the adjournment was insubstantial and tenuous, I imposed stringent conditions upon the grant of the adjournment. These were, that he pay into Court, the sum of \$117,860.00 on or before 15th January 2009. This sum of \$117,860.00 was the total of the fines and compensation imposed upon him by the Disciplinary Committee of the Law Association. These fines and compensation provided the basis of the Law Association's claim against the Defendant for the declaration of suspension.

I also ordered that in default of the payment in to court there would be (i) A Declaration that the Defendant was suspended from practice (ii) an order for the Registrar of the Supreme Court is to publish a notice to that effect in the Gazette (iii) an order that the Defendant pay the costs of the Law Association assessed in the sum of \$14,000.00.

4. The Defendant failed to pay the sum of \$117,860.00 in to Court on or before 15th January 2009. As a result, the default provisions applied to him. (See paragraph 3 above).

The adjourned hearing date of this matter was the 16th January 2009. At that hearing, the Defendant made an oral submission that I was bound by an “undertaking” that the Law Association had given to him. I found that this submission was without merit.

5. The alleged “undertaking” of the Law Association was an agreement by the Law Association to an extension of time. The extension of time was to allow the Defendant to “settle his indebtedness in respect of the fines and compensation” I had ordered him to pay into Court. The agreement was by way of a letter from the Law Association addressed to my Judicial Support Officer. The letter was dated 14th January 2009, but I did not receive this letter till the morning of the 16th January 2009; the adjourned hearing date.

The Defendant’s submission that I was bound by this alleged undertaking was without merit for the following two reasons.

6. Firstly, by virtue of Part 26.6 of the Civil Proceedings Rules (CPR) once the Court imposes a sanction for non-compliance with an order, the sanction has effect until the party in default applies for and obtains relief from the sanction. As stated before, I had ordered the Defendant to pay the sum of \$117,860.00 into court by the 15th January 2009. I had also imposed sanctions for non-compliance with this order. By virtue of Part 26.6 of the CPR these sanctions came into effect on the 15th January 2009. The Defendant never applied to the Court for nor did he obtain relief from the sanctions imposed. The automatic provisions of Part 26.6 of the CPR took precedence over any

letter or “undertaking” between the parties. The “undertaking” or letter did not bind me, nor did it have any effect on the sanctions imposed on the Defendant.

7. Secondly, the Defendant cited no rule or authority to show why the automatic provisions of Part 26.6 would not take precedence over any “undertaking” given by the Law Association. The Defendant did not even have a draft or any consent order for me to consider (see Part 43.7(6) of the CPR).

8. The submission that I was bound by an alleged undertaking given to the Defendant by the Law Association was without merit.

Further, by the course of the proceedings before me on the 16th January 2009, the Defendant waived any objection he had to any order or decision I made.

9. Before the hearing on the 16th January, 2009, the Defendant had filed two applications. The first application was for me to vacate the orders I had made on the 11th December 2008. These orders included the sanctions for non-compliance. The second application was for declarations that this entire claim by the Law Association was unconstitutional, illegal and invalid.

The Defendant withdrew both of these application at the substantive hearing of this matter on the 16th January 2009.

By withdrawing the first application to vacate the orders made on the 11th December 2008, the Defendant withdrew any challenge he had to the orders I made on the 11th December 2008. These orders included the sanctions I had imposed on him. The

Defendant now accepted the validity of the orders and the sanctions imposed on him. His prior objections were now waived.

By withdrawing the second application to nullify the Law Association's claim, the Defendant withdrew any challenge he had to the Law Association's Claim. The Defendant now had no objection to the Law Association's application for a declaration of his suspension and other consequential relief. Therefore, the sanctions which imposed this declaration and consequential orders on the Defendant were now affirmed. The Defendant had waived any objections he had to these orders. Further, the prior "undertaking" of the Law Association to grant an extension of time for compliance with the orders I made on the 11th December 2008 was now rendered nugatory.

In all the circumstances the orders I made on the 11th December 2008 are to stand.

Dated this 8th day of April, 2009

Mr. Justice G. Smith
JUDGE