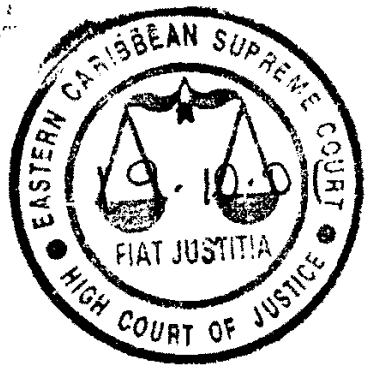


SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO. 73 OF 1999

BETWEEN:

IN THE MATTER OF THE EASTERN CARIBBEAN SUPREME COURT (SAINT VINCENT AND THE GRENADINES) ACT CHAPTER 18 OF THE REVISED EDITION OF THE LAWS OF SAINT VINCENT AND THE GRENADINES SECTION 78 AND SECTIONS 3 (f) AND 4 OF BOOKLET 4

AND

IN THE MATTER OF UNPROFESSIONAL CONDUCT BY HANSRAJ MATADIAL ALSO KNOWN AS HANSRAJ RAMSARAN A SOLICITOR AND BARRISTER

AND

IN THE MATTER OF AN APPLICATION FOR A RULE TO ISSUE TO SHOW CAUSE WHY HE THE SAID RANSRAJ MATADIAL ALSO KNOWN AS RANSRAJ RAMSARAN SHOULD NOT BE STRUCK OFF THE ROLLS OF SOLICITORS/BARRISTERS

AND

IN THE MATTER OF THE APPLICATION OF J. H. BAYLISS FREDERICK, AN AGGRIEVED PERSON

Appearances:

Mr. Bayliss Frederick, the person aggrieved, in person
Mr. Karl Hudson-Phillips QC and Mr. Parnell Campbell instructed by Mr. Graham Bollers for the respondent

---

2001:October 15, 16

:

JUDGMENT

D'AUVERGNE J.

ALLEYNE J.

[1] By summons filed the 19th February 1999, Mr. J.H.B. Frederick, a person aggrieved, applied for an order that Hansraj Matadial, a Barrister at Law and Solicitor practicing in Saint Vincent and the Grenadines, do show cause why his name should not be struck off the Rolls of Solicitors/Barristers for unprofessional conduct. The summons was supported by the affidavit of Frederick, himself a Barrister and Solicitor practicing in Saint Vincent and the Grenadines.

[2] In his affidavit Frederick alleged that he was Solicitor for the plaintiff, while Matadial was Solicitor for the defendant, in High Court Suit No 483 of 1998, and that in the course of the proceedings, while the plaintiff was a patient at the hospital, Matadial approached the plaintiff's wife, making certain requests and comments to her concerning the suit and concerning him, Frederick. In particular, it appears from the correspondence exhibited to this affidavit that Frederick is complaining that Matadial had been persistently telephoning the wife of the plaintiff requesting her to procure her ill husband to write a letter discharging him, Frederick, as his Attorney and engage another Attorney in his stead.

[3] In a further affidavit filed on March 11, 1999, Frederick alleges further that, having sought unsuccessfully to communicate with his client, the plaintiff in suit No. 483 of 1998, he searched the record of the said suit and discovered that on February 12, 1999, the said plaintiff had filed a notice removing him as his Solicitor and declaring that he was acting in person. Frederick complains that Matadial,

> "by admitting direct contact with the plaintiff on the 17th November 1998, at Union Island and negotiating a settlement with him as is admitted at paragraph 10 of the affidavit of Jutta Hartman dated 24th November 1998 and filed on the 25th November 1998"

is guilty of culpable incompetence and unprofessional conduct.

[4] Frederick, In his affidavit filed February 19, 1999, alleges further that in October 1992 he had been representing a female petitioner in a divorce petition in which Matadial represented the husband/respondent. He alleges that Matadial had discussed with him the payment to his client of the sum of $80,000.00, to which he, Frederick, said he agreed. He says Matadial demanded of him that he pay to him, Matadial, the sum of $7,000.00 out of the

money to be paid to the petitioner. He, Frederick, refused, and he says that Matadial summoned the petitioner to his Chambers and paid the money to her directly, by reason of which he, Frederick, never received his fees from the petitioner.

[5] In his affidavit filed March 11, 1999, Frederick refers to High Court suit No. 446 of 1993, in which he appeared for the plaintiff, a Martiniquan company, and Matadial appeared for the defendants. This was an action *in rem*. On an interlocutory application coming before a judge in Chambers on November 12, 1993, judgment was reserved and has never been delivered. It is alleged that thereafter the record of the case disappeared from the files of the High Court. Nevertheless Matadial offered a settlement of the claim in the sum of $45,042.00, out of which, however, Frederick was required to give Matadial $20,000.00 for his expenses. Frederick refused. The two Attorneys eventually agreed on a settlement in the sum of $20,000.00, and were to seek the recording of a consent order to that effect. When they did so Frederick claims to have been surprised and utterly dismayed when Matadial informed the judge that he was not proceeding with the consent order because "Mr. Bollers says he is the new Solicitor." However, weeks later, on January 27, 1997, the Attorneys did enter a consent order in the matter.

[6] Frederick claims that every three days he inquired of Matadial about payment, but had no success in his efforts until March 5, 1997, when Frederick's Managing Clerk collected a payment voucher for the sum of $50,000.00 held on Bond in that action to the account of the defendants. On Frederick's instructions he took the voucher to Matadial with the expectation on the part of Frederick that payment of the judgment would be made to him. Instead, Matadial called Frederick later the same day to inform him that he paid the money to "Bollers", who by that time was on record as Solicitor for the plaintiff, in place of Frederick. As a result, Frederick claims, he never received his fees which he had agreed with his client at 30% of the amount collected plus $2342.00 disbursements.

[7] The affidavits filed by Frederick contained a number of other allegations. On July 1, 1999, a judge in Chambers ordered that a rule do issue to Hansraj Matadial to show cause why he should not be suspended or struck off the Court Roll. On January 23, 2001, the judge

further ordered that the said order be amended by limiting the enquiry to "the charges set out in the schedule to this order." The schedule is in the following terms:

> "A3 i- Applicant's reputation is now tarnished by a general maligning of his professional character specifically to Vulgina Alexander
>
> ii- Conduct of the offending person is unbecoming of a legal practitioner by
>
> (a) demanding unlawful payment out of funds due Helen Bacchus and causing the person aggrieved person to lose his fees.
>
> (b) demanding unlawful payment out of funds due Gestion du Bassin of Martinique and causing the aggrieved person to lose his fees.
>
> (c) failing to reply to request for explanation to Vulgina Alexander's affidavit.
>
> A5: Fraudulently compromising Suit No. 483 of 1998 behind the back of Solicitor and Plaintiff; and causing the aggrieved person to lose his fees AND for divers other good and sufficient reasons."

[8] At the hearing, in the face of opposition by Frederick, who, however, had not appealed the said order, we directed that the scope of inquiry be limited as directed by the judge in Chambers, and the hearing proceeded on that basis, Frederick being restrained on several occasions in his attempts to go beyond the defined boundaries.

[9] The respondent had filed a Notice to cross examine Frederick on his affidavit, as well as one Valgina Alexander, on her statement in a purported sworn statement exhibited to Frederick's affidavit filed on February 19, 1999. Frederick, of course, was available for cross examination, but Alexander was not, as a consequence of which we ruled that we could place no reliance on her statement.

[10] In cross examination a number of facts became clear. We will deal with these facts as they relate to each of the issues forming the basis of the charges against the respondent.

[11] In relation to the issue at A3 i, having decided that the statement of Valgina Alexander should be given no weight in relation to this inquiry, and there being no other evidence in support of this charge, we rule that there is no ground for calling on the respondent to show cause.

[12] In relation to A3 ii (a), the respondent produced a letter dated 21st April 1992, from him to Frederick, in relation to the divorce petition between Helen Bacchus and her husband Bertram Bacchus, and the bankruptcy proceedings emanating therefrom, which letter was admitted by Frederick. In it, Matadial claims that he and Frederick had discussed Bertram Bacchus' matter and Frederick had been formally retained in the matter. Frederick denies this allegation and we make no finding in that regard. The letter intimates to Frederick that Bacchus' children are trying to make arrangements for the payment of the judgment debt arising out of the proceedings, the judgment debt being for the sum of $202,882.09, and a monthly sum for the maintenance of the child of the family.

[13] On 2nd October 1992 Helen Bacchus, Frederick's client in the divorce and bankruptcy proceedings, signed an agreement, witnessed by Frederick and indorsed as having been prepared by him, which recites the full particulars of the aforementioned order on the divorce petition, and also refers to the bankruptcy proceedings resulting therefrom, recites the fact that the respondent has no means of meeting his obligations under the order in the divorce proceedings, and accepts the sum of $115,000.00 "in full and final satisfaction and discharge" of the order in the divorce proceedings, and whereby the petitioner/maker of the agreement, Helen Bacchus, undertakes to discontinue the bankruptcy proceedings.

[14] It appears that the sum agreed was paid to Helen Bacchus, and by memorandum dated 2nd October, 1992, the same date as the agreement, and filed in court on October 7, 1992, Frederick, as Solicitor for the petitioner, gave notice of full and final satisfaction. Further, both Helen Bacchus, Petitioner, and Frederick, her Solicitor in the bankruptcy proceedings, signed a document on that same day, October 2, wholly discontinuing the bankruptcy petition.

[15] By letter dated 5th October 1992 to Matadial, Frederick claimed that he had done all this "in error". In cross examination Frederick claimed that he had not prepared the agreement, which he said he had signed under pressure from his client, who was desperate to leave St. Vincent. He also claimed that all transactions took place in his absence, that the money, if paid, was paid to his client direct, and as a result he had been deprived of his fees, which his client had not paid him. We find that there is no credible evidence that the respondent demanded unlawful payments out of funds due Helen Bacchus, and there is no ground under this head to call on the respondent to show cause.

[16] In relation to ii (b), demanding unlawful payment out of funds due to Gestion du Bassin, it appears from exhibit "B.F.7" admitted in the course of cross examination that Frederick, Solicitor for Gestion du Bassin, had received instructions from his client to seek to recover the sum claimed, and in an effort to arrive at an early settlement, to forego any claim for interest. He was to "see to (his) costs". He consequently put a proposal to Matadial for a settlement on that basis and added "Give me something by way of costs." This letter is dated 22 July 1994.

[17] It seems that Frederick and Matadial, Solicitor for the defendants in that action, agreed a settlement and went before the judge to record a consent order, but before the judge Matadial declined to record a consent order, on the ground that he had been informed that Frederick had been replaced by Graham Bollers as the Solicitor for the plaintiff.

[18] On November 27, 1996, Fredrick's client sent him a FAX, which he claimed never to have received, by which his authority to act in the matter was withdrawn. Notwithstanding his claim not to have received this communication, on the following day, November 28, Frederick wrote to the judge in the following terms:

> "I have been advised by the plaintiffs, my client, that they intend to appoint, Mr. Grahame Bollers in my stead, as Solicitor, with instructions to settle the suit."

Frederick, in the same letter, appealed to the judge to refrain from recording any settlement "unless and until I am paid the contracted fee of 30% Fees plus the compulsory expenses of initiating the suit." He attached a bill in his letter to the judge.

[19] Notwithstanding the acknowledged withdrawal of instructions and authority to act for the plaintiffs in that suit, on January 24, 1997, Frederick, with Matadial for the defendants, entered before the court a consent order in favour of his former client, the plaintiffs, in the sum of $32,000.00. The order made no provision for costs.

[20] On February 21, 1997, Bollers filed a notice of change of Solicitor, and some time thereafter Matadial paid him, on behalf of his new clients, the amount of the judgment debt. Frederick claims that as a result he was deprived of his fees.

[21] There is no evidence of unlawful or unprofessional conduct on the part of Matadial in this transaction, and we hold that there is no basis on which he should be called upon to show cause.

[22] The complaint at ii (c) is without merit.

[23] As regards A5: fraudulently compromising suit No. 483 of 1998 behind the back of Solicitor for the plaintiff (Frederick), it appears that Matadial initiated moves towards a settlement on behalf of his client, the defendant in that action. Frederick proposed a money settlement in the sum of $300,000.00 US, which, not surprisingly, was rejected. In circumstances that are not clear, the plaintiff filed a notice in the court removing Frederick as his Solicitor and giving notice that he was acting in person. This document was filed on February 12, 1999.

[24] By Indenture dated !0th February 1999, the plaintiff in that action had compromised the suit by selling the subject matter thereof to a company apparently associated with the defendant in the action for the sum of $12, 750.00 E.C. currency. This agreement was prepared by H. Matadial, who acted in the suit for the defendant.

[25] The Code of Ethics which we are advised has been adopted by the OECS Bar Association, at paragraph 46, declares as follows:

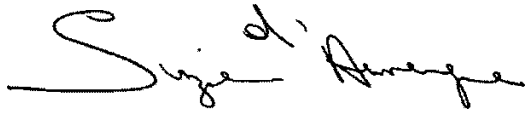
> "An Attorney-at-law shall not in any way communicate upon a subject in controversy or attempt to negotiate or compromise a matter directly with any party represented

by another attorney-at-law except through such other attorney-at-law or with his prior consent."

[26] Even if, contrary to our information, this Code of Ethics has not been adopted, this is a fair and acceptable statement, in our view, of the traditional rule governing relations between Solicitors acting on opposite sides in contested actions, and should be held to govern the conduct of Attorneys-at-Law in this jurisdiction.

[27] In the present case, the evidence is that, while Frederick continued on the record as Solicitor for the plaintiff, and two days before he was removed therefrom as Solicitor for the plaintiff, the respondent intervened in the matter, and communicated to effect with the plaintiff, otherwise than through and with the consent of the Solicitor for the plaintiff.

[28] Notwithstanding that we find Frederick's claim for monetary compensation, in the sum of $300,000.00 US, wholly unconscionable, we hold that the respondent has been guilty of professional misconduct in relation to this matter. He has failed to show cause in that regard and we hold that as a consequence he be suspended from practice as a Barrister and Solicitor for the term of one month. This term of suspension will commence forthwith and expire on November 15, 2001.



Suzie d'Auvergne
High Court Judge

Brian G.K. Alleyne
High Court Judge