[2026] JMSC Civ 79

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. SU2020CV04100

BETWEEN	**GREGORY DUNCAN**	**CLAIMANT**
AND	**CHEN GREEN & CO**	**DEFENDANT**

IN OPEN COURT

Mr Gregory Duncan, Claimant in Person

Mr Leonard Green, Ms Sylvan Edwards & Ms Deneve Barnett instructed by Chen Green & Co for the Defendant

Heard: March 6, 7, July 6, 17, 2025 & June 25, 2026

Contract – Breach of Contract – Attorney's Lien – Multiple Representation and Conflict – Client Loan – Client Trust Account

WINT- BLAIR J

Introduction

[1] This claim arises from the deterioration of the attorney-client relationship between the parties. Mr Gregory Duncan, the claimant, sues Chen Green & Co., a law firm, over funds he alleges were received, deducted, or retained in the course of their professional relationship. He seeks repayment of $19,904,778.18, the release of the certified statement of account for Client Trust Account 36518 held at the Scotiabank Jamaica Limited, and the delivery up of the duplicate certificate of title registered at Volume 1520, Folio 494, of the Register Book of Titles.

[2] The defendant denies liability. It says that the claimant is not owed the sum claimed, or any sum. It contends that the claimant is indebted to the firm for outstanding legal fees and for monies advanced under what has been described in the evidence as the Sicard loan. It also asserts an attorney's lien over the said duplicate certificate of title.

[3] The dispute is not a general enquiry into every transaction between the claimant, his company, and the defendant, and much has been raised in the evidence, to include disciplinary proceedings in another forum, a development at 35 Sutton Street, and criminal proceedings. This court is only obliged to adjudicate upon the claim filed, the defence raised, and the relief sought. Accordingly, the evidence was assessed based on the pleadings, documents, oral testimony, and the legal issues that arose naturally therefrom.

The Issues

[4] The issues for determination are these:

a. Whether the claim is properly brought against Chen Green & Co. In the firm name;

b. The retainer and what the evidence proves about its scope;

c. Whether the claimant has proved that the defendant is indebted to him in the sum of $19,904,778.18;

d. Whether the defendant has established a debt, for fees &/or under the alleged Sicard loan, sufficient to defeat the claim or justify the retention of the title;

e. Whether the defendant is entitled to maintain an attorney's lien over the duplicate certificate of title registered at Volume 1520 Folio 494;

f. Whether the claimant is entitled to release of the certified statement for Client Trust Account 36518; and

g. What orders should be made.

Approach to the Evidence

[5] In determining the issues, the court has examined the oral and documentary evidence in the context of the case as a whole. I have not set out all of the evidence nor the submissions related thereto, only those portions which are necessary to inform this decision.

[6] Demeanour, while relevant, is not decisive, particularly in this case. The court has therefore looked beyond each witness's confidence or certainty in the witness box and assessed the oral evidence against the documentary evidence, taking into account how each case has been pleaded and advanced.

[7] In assessing the documentary evidence, the court proceeded in a structured manner. First, I considered the document's creation: when, by whom, in what circumstances, and whether it was contemporaneous with the events in question. Secondly, its purpose: why it was created and what function it was intended to serve. Thirdly, its consistency with other documents, the proven facts, and the parties' conduct. Fourthly, its reliability, including whether the document was signed, retained, acted upon, relied upon, or otherwise treated as accurate at the material time.

[8] Suspicion is not evidence and cannot prove a pleaded claim. This means that rejecting one party's evidence does not establish the other party's case. The court must return to the party bearing the burden of proof and ask whether that burden has been discharged.

[9] I therefore approach the documents in this case on these bases as part of the overall assessment in determining the issues in dispute. It is trite that documents in a party's possession may be used against that party to show knowledge of their contents, connection with the transaction, or admissions where they have been recognised, adopted, or acted upon.

[10] The Court of Appeal in **Branch Development Limited (trading as Iberostar Rose Hall Beach and Spa Resort) v Thomas (Keiron)**[1] considered the role of contemporaneous documents within the broader evidentiary framework. At paragraph [94], the court accepted that there was some merit to the complaint that the trial judge had not expressly referred to contemporaneous documentary evidence but held that the omission had to be weighed against the pleadings and the broader evidentiary context.

Whether Chen Green & Co. May Be Sued in the Firm's Name

[11] The defendant submits that the claim is without merit because Chen Green & Co. is not a juristic person and relies on **Southern Trelawny Environmental Agency and another v The Attorney General and others**.[2] I do not accept that submission. The defendant filed a defence, participated in case management, and fully participated in the trial. It was only at the conclusion of the evidence in closing submissions that this issue was raised. If the defendant had wished to object to the capacity in which it was sued, the appropriate time to do so was during the pre-trial process.

[12] However, having raised the issue at trial, the submission would not, in any event, have been on firm ground based on the Civil Procedure Rules ("CPR"). Rule 22.2(1) provides that people who claim to be entitled, or are alleged to be liable, as partners may sue or be sued in the firm name if the firm name is that of the firm in which they were partners and they carried on business in that name within the jurisdiction when the right to claim arose.

[13] In addition, the **Southern Trelawny Environmental Agency** case was concerned with whether a company had constitutional rights. It is distinguishable on both the

[1] [2025] JMCA Civ 33
[2] [2023] JMSC Civ 39

facts and the law. Therefore, the submission that the claim cannot proceed against Chen Green & Co. is without merit.

The Retainer

[14] It is not disputed that an attorney-client relationship existed between the claimant and the defendant. The claimant's evidence was that the defendant acted for him and for Global Designs and Builders Ltd ("GDBL") in relation to the sale and purchase of certain land transactions, including the Essex Estate development. The claimant's evidence was that he instructed the defendant, specifically Mr Leonard Green, between April 2018 and March 2020 to advise him and his company on all matters. He also said that the defendant had carriage of sale for units in the Essex Estate housing development ("Essex").

[15] I treat that evidence as establishing that the retainer extended to both the claimant and GDBL. I do not treat it as establishing, without more, that all monies received, all deductions made, or all transactions concerning the claimant and his company are to be treated as belonging personally to the claimant. That distinction is being made because the claim was made personally by the claimant, though some of the dealings and funds held on account may have concerned the company.

[16] The claimant says that no money was owed to the defendant as fees and that the defendant failed to account for funds received on his behalf. The defendant says, by way of its witness, Mr Leonard Green, that he acted for the claimant, who owed legal fees and had failed to repay a loan made to him, and, as a consequence, the firm was entitled to retain the duplicate certificate of title for unit 5.

The Essex Estate Transactions

[17] The defendant acted for GDBL in the sale of apartments in Essex. Exhibit 4 is a letter dated May 20, 2024, signed by Mr Green enclosing a statement of account addressed to GDBL, attention Gregory Duncan. The claimant's claim for $19,904,778.18 rests principally on that statement of account.

[18] The claimant asserts that units 2, 5, 8, 11, and 18 were never sold. His evidence is that, although the defendant was instructed to act, it could not have incurred fees for the carriage of sale of those units, which were not sold. His evidence regarding the instructions and retainer in this matter was set out in his affidavit filed on May 24, 2022.

[19] In Exhibit 4, dated May 20, 2020, the claimant was advised in a letter enclosing a statement of account that the total amount collected from the sale of the "Essex Matters" was $172,980,964.00. That sum was said to include deposits received for units 2, 5, 8, 11, and 18, which were not included in a previous letter, as Mr Green said he was preparing the report in two stages, one for completed matters and the other for incomplete matters.

[20] The letter further stated that, of the total amount paid by purchasers, the firm had received $166,531,214.00. Further, the claimant's former attorneys, Yulande Christopher & Associates, had collected $6,449,750.00, and the defendant had paid the claimant a total of $146,626,435.82 in periodic instalments.

[21] The statement of account for units 2, 5, 8, 11, and 18 stated that deposits totalled $8,980,864.00. It detailed that the vendor took advances of $6,957,332.80; stamp duty and transfer tax were $390,000.00; registration fees were $292,500.00; legal fees were $2,987,000.00; and the balance was $1,644,868.80. The letter requested payment of $1,402,488.12 for outstanding legal fees for the said units. These figures are important because they stem from the defendant's own accounting records.

Whether the Claimant Proved the Sum of $19,904,778.18 Claimed

[22] The claimant bears the burden of proving that the defendant is indebted to him in the sum of $19,904,778.18, which is what he claims is owed to him by the defendant out of the proceeds of sale. The difficulty with the claimant's case is that the sum claimed is not supported by the arithmetic he relies on.

[23] The total collected for Essex was $172,980,964.00. Yulande Christopher & Associates collected and paid over $6,449,750.00 to the defendant, and the defendant collected $166,531,214.00 from purchasers. The total paid out by the defendant to the claimant was $146,626,435.82.

[24] The sum of $19,904,778.18 being claimed is the difference between $166,531,214.00 and $146,626,435.82. That calculation assumes three things:

1. That every dollar received by the defendant, less the sums paid periodically by the firm, was payable to the claimant, while the evidence does not support that conclusion. It can be inferred that fees and disbursements would have been incurred up to the point of the termination of the retainer.

2. The statement of account shows advances were paid out to the vendor; these advances total $6,957,332.80, with additional deductions for stamp duty, transfer tax, registration fees, and legal fees. The claimant disputes the deductions and the fees, but he has not proved, by evidence which the court can safely accept, that each deduction was unauthorised or that the full balance claimed was payable to him. Most importantly, he has neither disputed nor refuted any of the payments advanced to him from the proceeds of sale.

3. The claimant's calculation fails to account for the fact that $6,449,750.00 was collected by Yulande Christopher & Associates and paid over to the defendant. This means that the total sum collected by the defendant for Essex includes the sum of $6,449,750.00, bringing the total to $172,980,964.00, less $146,626,435.82 paid out periodically. The difference is $26,354,528.18.

4. There is a distinction between the claimant and GDBL. The evidence indicates that the defendant acted on behalf of both the claimant and the company. While the calculations demonstrate that neither is owed $19,904,778.18, the evidence does not clearly differentiate between

amounts payable to the claimant personally and those payable to or held for the company.

[25] This means that the claimant has not proved the precise sum pleaded as owed. It is not the role of the court to recreate the defendant's statements of account in order to help the claimant to arrive at the correct figure. I therefore find that the claimant has not proved, on a balance of probabilities, that the defendant is indebted to him in the sum of $19,904,778.18.

Irregularities in the Defendant's Statements of Accounts

[26] The refusal of the claim for the sum sought for want of proof, does not resolve the accounting issue in the defendant's favour. The accounts show that from the deposit on unit 5, funds were withdrawn to make two advance payments to the claimant and a third payment to cover the overdraft on unit 14. The payments were listed as made by BNS cheques #8996 and #9028, dated February 11, 2020 and March 18, 2020.

[27] Mr Leonard Green gave evidence on behalf of the defendant and admitted that an agreement to sell unit 5 had been entered into with Mr Matthew Ricketts, an associate of his firm. Cheque #8907 dated November 1, 2019, was exhibited. It had been signed by Leonard Green and Sylvan Edwards and was for $500,000.00.

[28] For units 11 and 18, the statements of account show deductions for two separate sums. For unit 11, a deduction of $500,000.00 is payable by BNS cheque #8907. For unit 18, a deduction of $156,500.00 is attributed to the same cheque #8907. The cheque exhibited as #8907 is for $500,000.00, not $156,500.00. The cover letter to which the photocopy of the cheque is attached states that the sum of $500,000.00 was being advanced as requested by the claimant.

[29] Mr Green admitted that the same cheque #8907, for $500,000.00, was used as the basis for two separate deductions: $500,000.00 on unit 11 and $156,500.00 on unit 18. That produced an attributed deduction of $656,500.00 from a single cheque for $500,000.00. He admitted in cross-examination that the accounting for that cheque had been misrepresented. Neither party explained the advances to the claimant on the statement of account for each unit.

[30] There were other unexplained deductions appearing on the statements of account, including a loan repayment totalling $646,500.00 that appeared twice, as well as payments to Surgix Jamaica Ltd and Andrews Memorial. Mr Green said that he “guessed” those payments were for the firm’s obligations. He could not specify whose obligations they were nor why they appeared on the Essex accounting records.

[31] The evidence shows material weaknesses in the defendant’s accounting. Those weaknesses are relevant to whether the defendant has discharged its duty to account and whether it may rely on an asserted debt to retain the claimant’s title based on those accounting records.

[32] The claimant’s evidence was that he terminated the firm's retainer by letter in May 2020. Mr Green’s evidence was that the retainer was terminated by the order of Palmer-Hamilton J, who granted his application filed on April 6, 2020, to be removed as counsel of record.

[33] On April 21, 2020, Palmer-Hamilton J ordered that the duplicate certificates of title for Volume 1520 Folios 491, 497, 500, 501, 502, 508, and 512 be surrendered by Chen Green & Co. to the Registrar of the Commercial Division of the Supreme Court on or before Friday, April 24, 2020. These were the titles for units 2, 8, 11, and 18.

[34] Exhibit 5 is a consent order made by Batts J on May 20, 2021, that units 2 and 11, Volume 1520 Folio 491 and Volume 1520 Folio 500 respectively, were to be transferred to settle another matter.

[35] Mr Green does not dispute that he retained the disputed title to unit 5, Volume 1520 Folio 494. On May 21, 2020, Mr Green wrote to the claimant's then attorney-at-law, Annette Henry, stating that he would not release the title to unit 5.

[36] Mr Green did not disclose the title for unit 5 to the court, so it was excluded from Palmer-Hamilton J.'s order. Only the titles for units 2, 8, 11, 12, 13, 19, and 23 were disclosed. Mr Green argued that a court order was necessary before he would release the title for unit 5. However, he did not inform the court that he had retained the title to unit 5 in his application to be removed as counsel. There is no evidence before this court of any other application for court orders in relation to the title to unit 5.

[37] The orders of Palmer-Hamilton J and Batts J are important in that they demonstrate the context within which the titles were to be surrendered or transferred, and they aid in assessing the claimant's evidence that the defendant cannot support its retention of title to unit 5 pursuant to a lien. The absence of disclosure of the title to unit 5 to Palmer-Hamilton J indicates that the defendant must raise a legal justification for the attorney's lien in this trial.

[38] The claimant testified that he paid fees to the defendant and relied on the letter dated May 20, 2020, in which the defendant listed five incomplete sales, two of which resulted in purchasers subsequently requesting refunds of deposits paid to the defendant, without success.

[39] The claimant also contended that the total claimed as owed and the amount deducted for attorneys' fees related to the alleged transfers were inconsistent. He pointed out that the letter stated he owed $1,402,488.12, while the legal fees for those same transfers totalled $2,987,000.00.

[40] Although the defendant's conflicting accounts do not confirm that the claimant is entitled to the sum claimed of $19,904,778.18, they do show that the defendant has not offered a clear or reliable accounting of the sums received, deducted, transferred, or paid out in relation to the Essex Estate project. This is significant because the defendant relies upon these same accounting records to substantiate their claim to retain the title to unit 5 for outstanding legal fees.

[41] An attorney who asserts a lien must be able to identify the debt supporting it. On this issue, the accounting is manifestly unreliable; Mr Green admitted that the deductions identified in the evidence had been misrepresented, and the attorney cannot explain which obligation was discharged by particular payments. More on this will be set out below. The court, therefore, cannot safely find that a debt existed in the asserted sum for legal fees based on the evidence.

The Sicard Loan

[42] The alleged Sicard loan lies at the heart of the defendant's response to the claim and its justification for retaining the title. The main body of documentary evidence came from the letters set out below.

Letter of October 16, 2018

[43] The letter dated October 16, 2018, addressed to Mr Hugh Sicard, stated:

> *"Re: Lot 8. 121-122 Barbican Road Essex Estates Apartment Homes*
>
> *We act on behalf of Mr Gregory Duncan T/A Global Designs and Builders Limited in respect of an application for splinter titles to be issued in respect of ALL THAT parcel of land registered at Volume 1342 Folio 698 of the Register Book of Titles.*
>
> *The units are complete and are presently being marketed and it is for this reason that we are requesting that you make payment to the office of the Registrar of Titles in the amount of Two Million Five Hundred and Fifty Thousand Seven Hundred Dollars ($2,550,700.00).*
>
> *Our client has instructed us to make repayment to you of the full amount of Two Million Five Hundred and Fifty Thousand Seven Hundred Dollars ($2,550,700.00) plus interest on that amount to be calculated on the basis of a rate of 15% per month from the date of disbursement up until the time of repayment.*
>
> *This request is made upon our Irrevocable Undertaking to make payments to you from the proceeds received from the sale of the Essex Estates*

properties and upon our further Undertaking not to in any way dispose of or transfer the properties without ensuring that the liability contained in this Undertaking is fully discharged.

Our client has indicated his agreement to the terms contained in this letter by signing same and assure you that my undertaking to make repayment is solid proof of my intention to ensure that payment to you is made first.

We look forward to having that payment during the course of this day as the matter is of utmost urgency.

We will come to you to collect the cheque as soon as it is available in exchange for this our undertaking."

[44] The letter was signed by the defendant, per Mr Green. The claimant then signed below these words:

"I Gregory Duncan trading as Global Designs and Builders Limited do herby [sic] consent and authorize Leonard S. Green and/or Chen Green and Company to make payment from the proceeds of sale derived from the herein Essex Apartment Homes Sales to Hugh Sicard in settlement of the obligations contained in this undertaking."

The Letter of January 14, 2020

[45] The letter of January 14, 2020, addressed to the claimant by the defendant, per Mr Green, referred to a $4,000,000.00 loan from Hugh Sicard to Gregory Duncan. It stated:

"The short-term loan for Four Million Dollars (S4M) the caption payment to you is referenced herein.

The monies issued to you on November 15 2019.

We had indicated to you that the lender has told us that he would like to receive payment on the loan as soon as possible and we would be grateful if you could let us know when this might be done and from what source.

In any event it is in your best interest to get rid of it early as the rate is far above market.

Additionally you are seeking to retrieve the security document and have suggested that a Certificate of Title from the Essex subdivision is to be used to secure the indebtedness.

This requires of course that you would have to sign a transfer to that effect so that the lender is protected to the extent of the indebtedness in the event of default.

Please therefore let us have the Apartment number for the substitute security so that the instrument can be done.

We therefore enclose the Duplicate Certificate of Title registered at Volume 1580 Folio 573, along with your Valuation Report and copy Transfer for Lot numbered 19 registered at Volume 1520 Folio 508.

N.B. The Transfer is to be cancelled when the payment is made in discharge of the indebtedness.

Kindly therefore indicate your agreement to the terms enclosed in this letter by signing and returning the enclosed copy letter.

Thanking you for your cooperation and understanding."

The Letter of May 14, 2020

[46] The letter of May 14, 2020, from the defendant to the claimant, per Leonard Green, was captioned "Sale of Apartments Essex Apartment Homes, 121-123 Barbican Road Kingston 8". It stated:

"Reference is made to the matter at caption.

We must first apolgise [sic] for the delay in responding to your request for a Statement of Accounts with regards to same.

Please find enclosed in the interim, the Vendor's Statement of Accounts for Units 1, 3,4,6,7,9,10,14 & 15 which has been completed. Please also find enclosed a Summary of Statement of Account for the said completed matters for your attention. After the deduction of the amount of $5,037,632.50 due on account of the Sicard loan of October 16, 2018 the amount of $243,480.68 is the balance due to you from sale proceeds of these lots.

We enclose for your records our undertaking to make payment on terms set out in the letter to Mr. Hugh Sicard dated October 16, 2018. Additionally, we remind you that there is an outstanding loan in the amount of $4,000,000.00 by way of bank transfer and cheques, copies of the cheques are enclosed for your records. The balance due on that loan as at May 15, 2020 is $6,400,000.00. We would be obliged if you could seek to the payment of that amount immediately.

> *During the coming week we shall commence preparation of the outstanding fees and charges due from you in respect of the litigation matters that the firm has been handling for you.*
>
> *In the event that we have no response from you within seven days of the date of this letter, regarding what is due to us, our lawyers have instructions to commence litigation to recover the debt."*

The Claimant's evidence concerning the Sicard Loan

[47] There were two transactions under the rubric of the Sicard loan. The claimant denied each. Regarding the first transaction, the claimant denied authorising the defendant to make the proceeds of sale available to Hugh Sicard in exchange for a payment of $2,550,700.00 to the Office of the Registrar of Titles. He said that the defendant did not write to Hugh Sicard on his behalf regarding payment of that sum to the Office of the Registrar of Titles.

[48] All the letters set out above bore the claimant's signature. When confronted with the letter dated October 16, 2018, he acknowledged that the signature on it was his. He admitted that the words authorising payment to Hugh Sicard by Leonard S. Green and/or the defendant appeared above his signature. Nonetheless, he contended that the document was prepared by Mr Green, who instructed him to sign it, and therefore, he could not confirm its authenticity.

[49] The claimant relied on the defendant's letter dated May 14, 2020, which enclosed a statement of account which showed that the defendant had deducted more than $5,000,000.00 from funds held on account for Essex and that a balance of over $200,000.00 was still owed to him in 2020. He argued that the defendant must have had at least $4,000,000.00 in his client account from which to make that deduction.

[50] The claimant also relied on paragraph 19 of Mr Green's affidavit filed on July 22, 2022. In which Mr Green described the Sicard loan as an internal arrangement between the claimant and the defendant, and that the source of funding for it was

Hugh Sicard. Mr Green admitted in his evidence that Hugh Sicard was another client.

[51] The claimant also admitted that his former attorneys, Zavia Mayne & Co., wrote letters acknowledging an outstanding balance of legal fees of $1,402,488.12 and offered their undertaking to pay it in exchange for title to unit 5, which was being sold.

[52] In respect of the second transaction, the claimant denies borrowing $4,000,000.00, which was designated as the Sicard loan. His evidence was that Hugh Sicard was someone whom he did not know and had never met. The claimant's evidence was that he repeatedly requested proof of the purported Sicard loan from Mr Green. He admitted receiving three cheques and signing letters on account of the Sicard loan, but said the money he received was not a loan but his own funds from the Essex development.

[53] At trial, the claimant denied signing his name in receipt of three cheques which amounted to $600,000.00, he denied that the sum comprised in those cheques were made as a disbursement forming part of the purported $4,000,000.00 loan from Hugh Sicard on November 15, 2019.

[54] The claimant said that he had signed the three manager's cheques given to him by Mr Green and that, as there was no wire transfer, as alleged, or at all, for $2,000,000.00, the sum of $600,000.00 he received did not add up to the purported $4,000,000.00 loan from Hugh Sicard.

[55] When shown the three manager's cheques, the claimant admitted that the signatures on them were his, however, the handwritten notation on the cheques referring to a "Hugh Sicard loan" had been written on them by Mr Green. He admitted to receiving, signing for, and negotiating these three cheques, but explained that the funds were held on account by Essex.

Mr Green's evidence concerning the Sicard Loan

[56] In cross-examination, Mr Green admitted that the claimant never met Hugh Sicard, had borrowed no money directly from him, no funds were transferred from an account in Hugh Sicard's name to the claimant, and that the $4,000,000.00 loan came from a personal account, not the firm's account. Mr Green did not say that the funds came from his personal account; however, that is the evidence.

[57] When it was put to him that he should prove the source of funds for the Sicard loan, Mr Green could not produce evidence of a bank transfer from Hugh Sicard to the claimant. He admitted that in his affidavit, he had described what he termed the Sicard loan as an internal arrangement between the defendant and the claimant. He said the claimant had merely been advised that a client of the firm, Hugh Sicard, was the source of funds.

[58] At trial, Mr Green relied on cheques totalling $2,000,000.00, namely the three manager's cheques in evidence, to support the claim that $4,000,000.00 had been paid to the claimant. He had no proof of a wire transfer on 15 November 2019 for the remaining $2,000,000.00, which he had said was paid as part of the loan. Mr Green maintained that he did not have the documents to account for the full $4,000,000.00 at trial.

[59] Mr Green admitted that there was a correlation between the letter of May 14, 2020, and the statement of account enclosed in the letter of May 20, 2020. When it was suggested to him that the deduction of $5,000,000.00 represented an unauthorised or improper use of the claimant's funds, he disagreed. He said that all accounts and deductions had been set out openly and transparently and had never been challenged by the claimant.

[60] Mr Green reminded the court that he has been an attorney for over 40 years. He admitted that, as an attorney, he is entrusted with client funds and is required to account for them. He said that he had neither misused nor misappropriated the claimant's funds, and that if there had been any misuse in 2020, it would not have taken the claimant four to five years to discover it, given that the claimant was an astute businessman.

[61] When asked whether he could produce evidence that the sum of $5,037,632.50 deducted as indicated in the statement of accounts was used for the claimant's benefit, Mr Green said he did not understand what was meant by "benefit". When it was suggested that his letter referred to the satisfaction of a loan which the claimant contended did not exist, he disagreed.

Assessment of the Oral Evidence

[62] I did not find either the claimant or Mr Green, who were the only witnesses, entirely credible. The claimant's testimony was selective. He admitted that although his signatures appeared on documents put to him, he was entitled to dispute their contents. At the same time, he disputed their provenance. The claimant nonetheless sought to distance himself from them. He accepted receipt of the funds but contested the nature of the transactions. Furthermore, he sought to minimise correspondence from Zavia Mayne & Co., his attorneys, asserting that he had not instructed them to write on his behalf, while they were acting on his instructions. In these respects, his evidence was neither credible nor cogent.

[63] Mr Green's evidence also required scrutiny. He was unable to explain the firm's accounting entries with the precision expected of an attorney entrusted with client funds. His evidence on the Sicard loan was fraught with difficulty. He maintained the loan's existence while overlooking the inconsistencies in the statements of account for the first transaction and providing no evidence that the second transaction was connected to Hugh Sicard other than by way of his designation. He did not satisfy the elements of a loan between Hugh Sicard and the claimant by his evidence. The case must therefore be decided by what the documents prove and, equally, by what they do not prove.

Multiple Representation and Conflict

[64] The evidence also raises the matter of the position Mr Green placed himself in. He was acting for the claimant and for GDBL. On the evidence before the court, for the second transaction, he said he acted as an agent for the lender and designated the disbursement of his personal funds as the Sicard loan.

[65] The first transaction was repaid by way of a deduction set out in the May 14, 2020, letter, which specified that $5,037,632.50 had been deducted for the Sicard loan made on October 16, 2018, concerning payment to the office of the Registrar of Titles in the sum of $2,550,700.00.

[66] For the second transaction, funds were connected to Hugh Sicard only by designation in a letter, as no funds came from Hugh Sicard or any account associated with that name.

[67] In **Minett Lawrence v The General Legal Council**,[3] the Court of Appeal considered the professional consequences of an attorney acting for more than one client where the clients' interests were likely to conflict. The Court referred to canons IV(k) and IV(l), which provide:

> *"(k) Subject to the provisions of Canon IV (l), an Attorney shall not accept or continue his retainer or employment on behalf of two or more clients if their interests are likely to conflict or if the independent professional judgment of the Attorney is likely to be impaired.*
>
> *(l) Notwithstanding the provisions of Canon IV (k), an Attorney may represent multiple clients if he can adequately represent the interests of each and if each consent to such representation after full disclosure of the possible effects of such multiple representation*."

[68] The Court of Appeal stated that, where the interests of the clients being represented by an attorney-at-law are likely to conflict, or where the independent

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[3] [2022] JMCA Misc 1

professional judgment of the attorney-at-law is likely to be impaired, it will amount to a breach of the Canons if the attorney-at-law proceeds with such representation. An attorney-at-law may only properly represent multiple clients if he is in a position to adequately represent the interests of each and has obtained the prior consent of each following full disclosure of the possible effects of the multiple representation.

[69] The Court of Appeal in **Minett Lawrence** considered **Dean v Allin and Watts**,[4] where Lightman J stated that an implied retainer could only arise where, on an objective consideration of all the circumstances, an intention to enter into such a contractual relationship ought fairly and properly to be imputed to the parties:

> *"No such retainer should be implied for convenience, but only where an objective consideration of all the circumstances makes it so clear an implication that [the solicitor himself] ought to have appreciated it."*

[70] The significance of these principles in this matter is not disciplinary, as this Court is not engaged in nor concerned with any disciplinary proceedings raised in the evidence; the importance of the principles to the case at bar is evidential. In my view, these principles, as expounded by the Court of Appeal, are useful in assisting this court in examining the implications and effect of an attorney's conduct related to the nature of the transactions between the parties and the record-keeping related thereto.

[71] There is no evidence showing that the interests of the claimant, the firm, the purported lender, and the source of funds were clearly separated in the accounting records for the several transactions being managed by the attorney with carriage of sale for Essex. This evidence, or rather, the lack thereof, is important to the assessment of whether the defendant has satisfied its burden of proving that legal fees are outstanding.

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[4] [2001] EWCA Civ 758

[72] In the present case, if the defendant's evidence is to be accepted, neither the claimant nor Hugh Sicard was advised to seek independent legal advice. This means that the multiple representations did not create a conflict for the defendant.

[73] Mr Green said in his affidavit that he was acting as an agent for the lender, who is purportedly Hugh Sicard, however there is no evidence of his consent to make the $4,000,000.00 before this court. Whereas the October 16, 2018, letter stated that the defendant acted on behalf of the claimant and GDBL, it was addressed to Hugh Sicard, and the claimant consented to it by signing.

[74] The Court of Appeal in **Minett Lawrence** also treated the attorney's deduction of fees from monies connected to the loan transaction as a clear manifestation of conflict where the attorney was acting for clients with opposing interests. The court observed that the attorney placed herself in a position of conflict by taking payment for herself from money which ought properly to have belonged to another client's company, and that her independent professional judgment was seriously impaired.

[75] The court is obliged to examine carefully the evidence presented in this case to establish the existence, nature, and enforceability of the debt being alleged. This is particularly so where the attorney, on this evidence, relies on the alleged debt to validate the retention of a client's title.

Whether the Sicard Loan was Proven

[76] In reviewing all documentation, the court considered the parties' intentions. Whether the language used in the letters was clear or ambiguous, what was the origin, purpose, and context of the transaction, and choosing the interpretation that makes the most sense commercially and logically, given the overall circumstances of the case. The court also assessed the parties' actions and communications to determine whether they relied on, accepted, or treated the documents as binding, particularly with respect to the Sicard loan.

[77] The evidence must be approached in two stages. First, the court must determine what the evidence proves. Secondly, the court must determine whether what it proves is an enforceable debt in favour of the defendant sufficient to defeat the claim or justify the lien.

[78] To determine whether a contract was created through correspondence, documents, discussions, and/or conduct, the court must consider all the evidence cumulatively and make an objective assessment to decide whether the parties intended to enter into an agreement.

[79] The letters in evidence establish that the claimant signed the October 16, 2018, letter acknowledging that he had authorised Leonard Green and/or the defendant to pay the sale proceeds to Hugh Sicard in the first transaction.

[80] The manager's cheques, in evidence on their face, also establish that the claimant acknowledged signing in receipt of the manager's cheques and negotiating them. He signed receipts designated as the "Sicard loan". The claimant maintained throughout that the monies received were his own funds from the Essex sale proceeds and not a loan.

[81] This is evidence that the claimant had knowledge and was aware that Mr Green had described the first and second transactions as connected to Hugh Sicard. They also provide support for Mr Green's evidence that monies were advanced to, or for the benefit of, the claimant.

[82] However, the documentary evidence does not establish the defendant's case. The defendant could not merely assert that documents bore the words "*on account of the Sicard loan*". The defendant had to prove the alleged debt it asserted. It was not enough to show that the claimant signed documents using the words "on account of the Sicard loan". The defendant had to show that the firm, rather than Hugh Sicard, was entitled to enforce the purported debt and therefore retain the title. It had to establish that the elements of a loan agreement were satisfied for the transactions designated as a loan.

[83] The first transaction concerned the request that Hugh Sicard pay $2,550,700.00 to the Office of the Registrar of Titles, with interest at 15% per month. The May 14, 2020, letter stated that $5,037,632.50 was deducted on account of that transaction and that, after the deduction, $243,480.68 remained due to the claimant.

[84] On the defendant's case, that deduction had been made from the sale proceeds, therefore the claimant could not have owed any debt on this transaction. It follows that the first transaction cannot justify the continued retention of the title unless the defendant proves that some further sum remains due.

[85] The second transaction, concerning the purported $4,000,000.00 loan, is said to be based on the three managers' cheques in evidence, totalling $2,000,000.00. They were all drawn on Mr Green's personal account. The alleged balance was said to have been paid by bank transfer, but no bank record proving that transfer was produced.

[86] Mr Green's evidence created further difficulty for the defendant. He accepted that the claimant never met Hugh Sicard. He accepted that the claimant did not borrow directly from Hugh Sicard. He accepted that no transfer was made from an account in Hugh Sicard's name, nor from the firm. He described the arrangement as internal and, at trial, could account for only $2,000,000.00 of the $4,000,000.00. He did not explain why funds had been transferred from his personal account to the claimant, not that he had been asked.

[87] Further, the statements of account in evidence do not show any cash inflow or outflow relating to the purported $4,000,000.00 Sicard loan. It is also unclear how any fees or interest associated with this internal arrangement, designated as the Sicard loan, are said to have been accrued. Additionally, it remains uncertain to whom the alleged loan was to be repaid, and whether it was to be by way of deductions from the sale proceeds, given that the funds came directly from Mr Green.

[88] The documentary evidence paints a mixed picture. The defendant's letters, along with the claimant's signatures and acknowledgements, support the view that the claimant knew about the transactions said to be connected to Hugh Sicard, as described by Mr Green. Additionally, these documents demonstrate that the claimant received and negotiated cheques, and that the defendant regarded these transactions as loans. Therefore, these documents are relevant and must be considered.

[89] However, these same documents do not prove the defendant's case. They do not establish the legal basis on which the defendant, rather than Hugh Sicard, became entitled to enforce the alleged debt. In particular, since the letter of May 14, 2020, states that $5,037,632.50 had already been deducted in respect of the October 16, 2018 (the first transaction), the defendant did not prove what further sum, if any, remained in credit towards the second transaction.

[90] The letter dated May 20, 2020, along with the statement of account, demonstrates that substantial funds passed through the hands of the defendant and that the defendant's own financial records contained balances, deductions, and fees that required proper accounting. Additionally, the state of the documents provides some support for the claimant by demonstrating that the defendant's accounting was unclear, particularly in cases where the same cheque number was misrepresented as having been entered into the accounts for more than one deduction, and where Mr Green was unable to provide cogent explanations for certain entries.

[91] I have not rejected the evidence of the claimant's signatures or acknowledgement merely because he now challenges the validity of the documents. However, I do not consider them proof of the debt or lien claimed by the defendant. The documents related to the Sicard loan are relevant and have been assessed alongside all the other evidence, such as the source of funds, the absence of proof of the alleged transfer, Mr Green's description of the arrangement as internal, the state of the accounts, and the burden on the defendant to prove the debt and lien.

[92] The evidence I have outlined could not be relied upon to support a finding that a $4,000,000.00 loan was made to the claimant, however designated, without more. It is also not evidence upon which the court could rely to safely find that there is an outstanding debt for fees, enforceable by the defendant, sufficient to support the lien or to justify the continued retention of the certificate of title.

[93] I therefore find that the defendant has not established that the alleged Sicard loan is an enforceable debt sufficient to defeat the claim or justify the continued retention of the duplicate certificate of title registered at Volume 1520 Folio 494 for unit 5, Essex Estate.

The Correspondence from the Claimant's Former Attorneys

[94] The defendant relied on correspondence from Zavia Mayne & Co. and Orville C Morgan & Co to assert that the claimant admitted owing legal fees. It was submitted that attorneys acting for the claimant offered undertakings in relation to the sum of $1,402,488.12 and that this confirmed the claimant's indebtedness.

[95] The correspondence is relevant to the parameters within which the court should consider the dispute between the parties. It shows that attempts were made to secure the release of the title and to resolve the problem created by its retention in order to complete the sale of unit 5.

[96] It is also evidence that may be interpreted as indicating that the claimant's new attorneys were prepared to give an undertaking to facilitate the completion of the transaction. The undertaking, in the context of the completion of the sale of land, cannot be equated with an admission that the amount claimed as a debt is owed. Particularly in the absence of any authority for the proposition, I do not treat the correspondence as proof of a debt sufficient to justify the continued retention of the title.

The Attorney's Lien

[97] The defendant asserts an attorney's lien over the duplicate certificate of title registered at Volume 1520 Folio 494. The issue is not whether an attorney may ever assert a lien over client property; it is whether this defendant has proved a debt sufficiently identified and quantified to assert the lien in this case. The defendant has not done so. The accounting relied on by the defendant to establish the debt asserted sufficient to retain the title is unreliable and rejected. I therefore find that the defendant has not established a lawful basis for continuing to retain the duplicate certificate of title registered at Volume 1520 Folio 494.

The Outstanding Legal Fees

[98] The defendant also relies on outstanding legal fees. Mr Green said that the claimant owed legal fees totalling $1,402,488.12. The claimant disputes that any such amount is owed.

[99] I accept that the defendant performed legal work for the claimant and his company. Mr Green gave evidence of several matters in which he said he represented the claimant, including matters involving Ms Jade Hollis, proceedings before the General Legal Council, criminal court matters, claims brought by banks and a credit union, negotiations for the removal of caveats, and a matter involving Justin O'Gilvie.

[100] While the evidence confirms that legal services were rendered, it does not demonstrate the specific debt underlying the retention of title. The defendant failed to adduce evidence with sufficient clarity to satisfy the court as to the nature of the work performed, the fee structure, the calculation method, the deductions made, and the remaining balance.

[101] The court must differentiate between the potential obligation to pay fees and proof of a quantifiable debt sufficient to substantiate the attorney's lien. A solicitor's lien cannot be upheld solely on the premise that fees might be owed. The debt must be demonstrated with sufficient clarity by cogent and reliable evidence.

[102] Therefore, I find that the defendant has not demonstrated on the evidence presented that the sum of $1,402,488.12, or any other quantified sum, is presently due as legal fees capable of supporting the continued retention of the certificate of title.

[103] Further, where attorneys' fees are in dispute, the Legal Profession Act provides the proper mechanism for their recovery and taxation. The defendant remains at liberty, if so advised, to render a proper bill and to pursue any fee claim in accordance with section 22 of the Legal Profession Act. That liberty does not assist the defendant in this claim because the debt relied on to support the lien has not been proved.

Client Trust Account 36518

[104] The claimant seeks the release of the certified statement of account for Client Trust Account 36518, held at Scotiabank Jamaica Limited. That relief is overbroad. The firm's client trust account contains information relating to other clients. The claimant is not entitled to a roving inspection of the firm's client trust account, which would have the effect of exposing confidential or privileged information belonging to clients of the defendant firm.

[105] That does not mean that the defendant is relieved of its duty to account to the claimant. That duty to account is directed only to the claimant's transactions. There is a distinction between producing the firm's client trust account and producing the claimant's client account.

[106] The claimant is entitled to know what money was received for him or his company, what was paid out, what was deducted, what was transferred, and why. He is entitled to supporting documents sufficient to verify those matters.

[107] The appropriate order is for the defendant to provide an account of the claimant's and GDBL's client account for the Essex Estate development, supported by documents that clearly explain receipts, deductions, payments, or transfers. Redactions of these documents are allowed if needed to protect other clients, where their information appears, as long as the redacted parts do not conceal essential information needed to understand the claimant's transactions. The orders for an accounting are made so that there is finality in litigation pursuant to section 48(g) of the Judicature (Supreme Court) Act.[5]

Orders:

[108] The claim succeeds in part.

1. The claim for payment of $19,904,778.18 is refused.

2. The request for production of the certified statement of the entirety of Client Trust Account 36518 held at Scotiabank Jamaica Limited is refused.

3. The defendant shall, within 7 days of this order, deliver up the duplicate certificate of title registered at Volume 1520 Folio 494 of the Register Book of Titles to the Registrar of the Supreme Court, Commercial Division, or to such attorney-at-law as the court may direct.

4. The defendant shall, within 21 days of this order, provide to the claimant a client-specific account of all monies received, held, deducted, transferred, or paid out on behalf of the claimant and/or Global Designs and Builders Ltd in relation to the Essex Estate transactions, unit 5, and the matters relied

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[5] Section 48(g): The Supreme Court in the exercise of the jurisdiction vested in it by this Act in every cause or matter pending before it shall grant either absolutely or on such reasonable terms and conditions as to it seems just, all such remedies as any of the parties thereto appear to be entitled to in respect of any legal or equitable claim properly brought forward by them respectively in such cause or matter; **so that as far as possible, all matters so in controversy between the said parties respectively may be completely and finally determined, and multiplicity of proceedings avoided."**

on in the defendant's statement of account dated May 20, 2020. The account shall be supported, so far as available and relevant, by statements of account, receipts, cheque records, bank entries, vouchers, correspondence, and any other document necessary to show the basis for each receipt, deduction, payment, or transfer.

5. The defendant is at liberty to redact from any supporting document information which relates solely to other clients and is not necessary to explain the claimant's transactions.

6. The defendant is at liberty, if so advised, to pursue any claim for unpaid legal fees by rendering a proper bill of costs and proceeding in accordance with section 22 of the Legal Profession Act.

7. The defendant is at liberty, if so advised, to pursue a claim in respect of the issue of an alleged indebtedness related to outstanding legal fees. No finding in this judgment is to be treated as a judgment in favour of the defendant on that issue.

8. Costs shall be awarded to the claimant at eighty per cent for the issues on which he has succeeded against the defendant, to be taxed if not agreed.

Wint-Blair, J