



[2024] JMSC Civ.199

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA**

**CIVIL DIVISION**

**CLAIM NO. SU2021CV01902**

<b>BETWEEN</b>	<b>KRISTOPHER NATHAN</b>	<b>CLAIMANT</b>
<b>AND</b>	<b>CARLENE-MILLER NATHAN</b>	<b>DEFENDANT</b>

**Ms. Carleen McFarlane for Applicant**

**Mrs. Judith Cooper Batchelor for Respondent**

**Heard on 11<sup>th</sup> December, 2024 & 20<sup>th</sup> December 2024.**

**Notice of Application for Court Orders to bar Chambers Bunny & Steer from Acting  
in the Supreme Court of Jamaica**

**MORRISON, J.**

**[1]** By way of a notice of application filed on May 6, 2024 the applicant, Mr. Kristopher Nathan, sought the following :-

- (1) An Order barring the firm, Chambers Bunny & Steer from acting/ representing Mrs. Carlene Nathan in the instant case.
- (2) Such further and or other Orders as may be just in the circumstances.
- (3) No order as to costs.

**[2]** The grounds upon which the claimant relies are:

- (a) The Claimant has had discussions and attended meetings with two (2) Attorneys-at- law of the Firm Chambers Bunny & Steer concerning the (3)

properties involved in the claim herein, and also the Defendant /Respondent's divorce.

- (b) That at the time when the Claimant attended the offices, the said Attorneys-at Law, had full and frank discussions with the Defendant/Respondent's Attorneys-at Law concerning the purchase and ownership of the three (3) properties as the Defendant/Respondent was involved in Court proceedings with her then husband regarding property claim.
- (c) That on the occasions in which the Defendant/Respondent was present the Claimant/Applicant made full and frank disclosure regarding the parties financial arrangements with a view to ensuring that the Defendant/ Respondent then husband could not claim their properties and as consequence disclosed privilege information to the said Attorneys-at –Law, which would be detrimental to him in these circumstances.
- (d) That the Claimant/Applicant also disclosed confidential information.
- (e) That although the Claimant/Applicant was not a Client of the said firm, the said firm notified him by email of matters involving the properties and the Defendant/ Respondent's divorce among other things
- (f) That it would be conflict of interest and detrimental to the Claimant/Applicant if the said firm is able to use the information disclosed to them by the Claimant /Applicant in these Court proceedings. If it would be fair, just and in the interest of justice if the Orders prayed are granted herein.

**[3]** From his affidavit dated the 24<sup>th</sup> April 2024 the Claimant/Applicant avers that a Fixed Date Claim Form and Affidavit in Support were filed on 20<sup>th</sup> April, 2021 in respect of a Claim for Division of Property, involving three (3) properties registered at:

*Volume 1277 Folio 574 of the Register Book OF Title at Columbus Heights,  
St. Ann.*

*Bridgewater, Discovery Bay, St. Ann registered at Volume 1283 Folio 343*

*Bengal property registered at Volume 1491 Folio 268.*

- [4]** All three (3) properties were acquired during our relationship which began in or about 2012, at which time the Defendant was still married to her former husband from whom she had separated and she lived with me from about 2013 to 2019, when she went overseas to live, as I was practicing between Jamaica and Florida.
- [5]** He avers that the Claimant and I, since the beginning of our relationship, have always acted and made decisions as a couple, even before we began living together.
- [6]** That we consulted and discussed our future together, including where we would reside and the acquisition of assets for our joint benefit.
- [7]** That it was my wife who initiated the Divorce from her former husband and the settlement of matrimonial properties, in particular her interest in Runaway Bay property known as Club Jamaica Gaming, which was being operated as a Casino. This was in 2015.
- [8]** That given that we had by then acquired joint properties and were living together, I was very apprehensive because I rightly formed the view that her husband could make a claim on properties in which her name was endorsed, so it was important that I participated in discussions relating to property in which her name was endorsed.
- [9]** That based on my concerns, I went with her to either two (2) or three (3) consultations with Messrs. Chambers, Bunny and Steer. I spoke with Mr. Gordon Steer on either one (1) or two (2) occasions and once with Mr. Cooper Batchelor.
- [10]** I expressed my concerns that given that my wife was still married to Clifton Miller, he could lay Claim to the property we acquired, in particular the Columbus Heights property, which was registered in sole name, but in which I had a beneficial

interest. Mrs. Cooper Bachelor assured us that, that was unlikely, given that there was the NHT loan endorsed on the title, among other things that I was copied on written communication by Messrs. Chambers, Bunny and Steer on matters involving our properties as well as the Divorce, between my wife and her ex-husband

- [11] During the Consultations, we expressed out thoughts and shared information with Mr. Steer and Mrs. Bachelors Cooper, as to how we could protect our assets from being claimed by Mr. Clifton Miller, as the assets had been acquired by the efforts of Carlene and I.
- [12] That I mark and exhibit hereto as **Exhibit KN (1)** copies of communication copied to me by Messrs. Chambers, Bunny and Steer, in relation to my wife's Divorce as well as other related matters, including the contingency arrangements, regarding legal fees.
- [13] That all times, I was part of the discussions and consultations, regarding the matrimonial property claims as well as the Divorce.
- [14] That given my level of involvement and disclosure of my personal information with Messrs. Chambers, Bunny and Steer and the efforts of Carlene Miller and I to, protect our assets, I am of the view that I would be extremely prejudice if Messrs. Chambers, Bunny and steer were allowed to represent my wife in proceedings against me.
- [15] That even in the matter of the acquisition of Sky Castle, Columbus Heights, I was the person who represented her and I revealed all the details to Messrs. Chambers, Bunny and Steer.
- [16] That I exhibit hereto as Exhibit KN (2) copy of letter enclosing Transfer for her to Execute, which refers to her as my Client.
- [17] That given my participation in the discussion and the fact there was not only Email communication but my physical attendance at the office of Messrs. Chambers,

Bunny and Steer to address matrimonial properties which had by 2017, being acquired by Carlene Miller and I, I would be extremely prejudiced if they were allowed to continue the representation of Carlene against me.

- [18]** That in fact there are external and unrelated matters that the Defendant Carlene Miller has disclosed to Mrs. Cooper Bachelor, including a Lease involving premises, neither owned or occupied by her and over which she has no Power of Attorney, that they have sought to use to bully me with a view to conceding my rights to the properties.
- [19]** It is for these and other reasons that I seek an Order that the firm of Messrs. Chambers, Bunny and Steer, be barred from acting for the Defendant in this matter, as there is a substantial conflict of interest and prejudice that is likely to befall me and that the prejudicial value outweighs any probative value and is likely to result in injustice.
- [20]** Further and by way of the supplemental affidavit, 17<sup>th</sup> May 2024, he swears that the Claimant explained that on the 4<sup>th</sup> June, 2018 the Defendant's Ex-husband filed a Notice of Application for the Court Orders seeking Orders for Discovery in relation to her income and an Order to join me as a party to claim for division of Matrimonial property.
- [21]** That a further Order was sought seeking a 50% interest in the three (3) properties, the subject of this Claim, and that both the Defendant and I held all three (3) properties on Trust for himself and for both, the Defendant and myself to account for any rental letting or income from the three (3) properties, from the date of acquisition.
- [22]** Again, he asserts in his Affidavit filed 4<sup>th</sup> June, 2018, that the Defendant Ex-husband indicated that he has not been able to locate me and my whereabouts was unknown and as such sought to effect service upon me by serving same on the Defendant c/o her Attorney-at-Law Messrs Chambers, Bunny and Steer.

- [23]** That in fact it was after the Defendant was served the Notice of Application to join me and Claim the three (3) properties, that I have further discussions with both Mr. Gordon and Mrs. Cooper Bachelor and discussed how we would respond to the Claim against all three (3) properties.
- [24]** That from my recall, I do not verily believe that the firm Chambers, Bunny and Steer accepted service on my behalf and resisted the Claim for me to be joined and for our three (3) properties to be made a part of the Claim and I attached herewith a copy of copy of Notice of Application for the Court Order, and Affidavit in support.
- [25]** That given the issues being inextricably interwoven and the type of information that I disclosed to the said Attorneys-at-Law Chambers, Bunny and Steer, to claim my interest in the properties and defend the Claim, I think it is highly prejudicial and detrimental and a conflict of interest as well as breach of confidentiality. If is the Firm Chambers Bunny and Steer is allowed to represent the Defendant against me in matter involving the said property.
- [26]** He ends by affirming that it is for these and other reasons that I seek an Order that the firm of Messrs. Chambers, Bunny and Steer, be barred from acting for the Defendant in this matter, as there is a substantial conflict of interest and prejudice that is likely to befall me and that the prejudicial value outweighs any probative value and is likely to result in injustice.
- [27]** The facts giving rise to the dispute are substantially as follows:

The Claimant and the Defendant were married on or about the 18<sup>th</sup> of May 2017 and were recently divorced.

That prior to the divorce, the parties were involved in a visiting relationship between 2012-2013, whereafter they began living together in or about 2013.

At the time the parties started living together the Defendant was still married and initially lived in her former matrimonial home until she went to live with the Claimant who was commuting between Jamaica and USA.

Both parties found a company named Caribbean Executive Management Company Limited which they owned jointly and in equal shares and were both Directors.

The parties jointly acquired properties two of which were registered in their joint names. Whilst living together the Defendant instituted Divorce proceedings against her then Husband Clifton Miller , and sometime after Clifton Miller and Carlene Miller were involved in Division of Property matter under the Property Rights of Spouses Act, in which the Husband Clifton Miller claimed an interest in the properties registered in the joint names of Kristopher Nathan and Carlene Nathan (nee Miller) plus a property located at Columbus Heights but registered in the name Carlene Nathan (nee Miller) as to where she obtained funds to purchase the properties either by herself and or with Kristopher Nathan.

That Clifton Miller's Attorneys-at -Law sought to have service effected on Messrs Chambers, Bunny and Steer and sought to join him in the proceedings with Carlene which Chambers, Bunny and Steer challenged successfully.

That Kristopher Nathan asserts that he had at least on three occasions attended the Offices with Carlene Nathan-Miller in relation to the properties they acquired met with both Judith Cooper Bachelor and Mr. Gordon Steer to discuss the matter as he was fearful that he would lose his interest in property which he purchased with the Defendant.

[28] The Claimant relied on the following authorities: -

- (a) Attorney General v Guardian Newspaper (No. 2) Lord Bingham LJ took it to be settled law that –

*Where one party (the Confidante) acquires confidential information from or during his service with another (the confider), in circumstances importing a duty of confidence, the confidante is not ordinarily at liberty to divulge that information to a third party without the consent or against the wishes*

Justice C. Morrison in the text “the Ethical Lawyer” chapter 5 stated that it has been long recognized that the courts will in a proper case, restrain the unauthorized disclosure of confidential information by way of an injunction.

- (b) Canon IV (t) of the Legal Profession (Canon of Profession ethics) Rules (the Canons ) of Jamaica states:

An Attorney shall not knowingly-

- (i) reveal a confidence or secret of his client, or
- (ii) use a confidence or secret of his client-

(1) to the Client’s disadvantage; or

(2) to his own advantage; or

(3) to the advantage of any other person

Unless in any case it is done with the consent of the client after full disclosure provided however that an Attorney may reveal confidences or secret necessary to establish or collect his fee or defend himself or his employee or associate against an accusation of wrongful conduct.

It is a breach of the General Law and of confidentiality and Canons for an Attorney, without the consent of his client given after full disclosure, to disclose confidential information belonging to the client. A breach of canon iv (t) by the Attorney



constitutes misconduct in a professional respect which makes the Attorney liable to those sanctions in section 12 (4) of the Legal Professional Act.

- (c) The Standard of **Professional Etiquette and Professional Conduct** for the Attorney-at-Law require that generally: -

*“An Attorney shall act in the best interest of his client and represent him honestly, competently and zealously with the bounds of the law. He shall preserve the confidence of his client and avoid conflict of interest.*

- [29] **Canon v Rule q (iv)** require that Attorney withdraws forthwith from employment or a matter pending before tribunal.

*“Where his continued employment will involve him in the violation of a rule of law of a Disciplinary rule”*

- [30] He further submitted that by continuing to act in a matter in which there is a serious, substantial and impending conflict of interest his actions will not only constitute a breach of a disciplinary rule but his action would also be a violation of the Standard and Professional etiquette and professional conduct for Attorney-at Law.

- [31] The locus Classicus on Conflict of interest is the case of **Jeffri Bolkiah v KPMG (A FIRM) 2 A.C. 222**. In this case,

*The Defendant firm of Accountants were employed as auditors of the core assets of the investment agency (the BIA) established to hold and manage the general reserve fund of the Government Brunei and its external assets and provide the government with money management services. The plaintiff had been the chairman of the BIA until his removal in 1998. For a period of 18 months between 1996 and d 1998 the plaintiff, acting in his personal capacity, retained the defendants to act for him or one of his companies in private litigation in which he was then engaged. In the course of acting for the plaintiff in that litigation the Defendant firm provided extensive litigation support services of the sort usually undertaken by solicitors. In so doing the Defendants were entrusted with or acquired extensive confidential information about the plaintiff's assets and financial affairs. The Defendant firm employed 168 personnel on the plaintiff's litigation, which was settled in March 1998 and were paid approximately \$ 4.436m for that work. The Plaintiff was subsequently dismissed from the position as chairman of the BIA and in June 1998 the Brunei government commenced an investigation into the conduct of the affairs of the BIA, including the destination and present location of money which had been transferred from the BIA's funds while the plaintiff was the chairman. The*

*Government wished to retain the Defendant firm to assist the investigation. The Defendants took the view that they could accept the instructions because they had ceased to act for the plaintiff more than two months previously and he was no longer a client but, aware of the possibility of a conflict of interest because the investigation was likely to be adverse to the plaintiff's interests and they possessed confidential information relating to his financial affairs, the firm erected an information barrier (a-so-called Chinese wall) around the department carrying out the BIA investigation on behalf of the Brunei government. The plaintiff, who had not been informed by the Defendants of their instructions nor had his consent been sought, was granted an injunction to restrain the Defendants. Successfully Appealed to the Court of Appeal, which discharged the injunction on the grounds that the Defendants were only obliged to make reasonable efforts to protect the plaintiff's confidential information and that, balancing the competing interests, the precautions taken by the Defendants mean that there was no real or appreciable risk that the confidential information would be disclosed. The plaintiff Appealed to the House of Lords*

*It was held that like a solicitor, an Accountant providing litigation support services owed a continuing professional duty to a former client following the termination of the client relationship to preserve the confidentiality of information imparted during the subsistence of that relationship. That duty was unqualified and required the Accountant to keep the information confidential, not merely to take all reasonable steps to do so, and also not misuses it. Where, therefore, a former client established that the Defendant firm was in possession of information which had been imparted in confidence, that he had consented to its disclosure, and that the firm was proposing to act for another client with an interest adverse to his in a matter to which the information was or might be relevant, the Court would intervene to restrain the firm from acting for that other client, unless the firm satisfied it, on the basis of clear and convincing evidencing, that effective measures had been taken to ensure that no disclosure would occur and that basis of clear and convincing evidence, that effective measure had been taken to ensure that no disclosure would occur and that there was no risk of the information coming into the possession of those acting for the other client. Although there was no rule of law that Chinese walls or other arrangements of a similar kind were insufficient to eliminate the risk, the presumption was that unless special measures were taken, information moved within a firm and to be effective, those measures had to be an established part of the organizational structure of the firm, not created ad hoc. In the instant case, on the evidence, the Defendant firm had not discharged the heavy burden of showing that there was no risk that information in their possession which was confidential to the plaintiff and which they had obtained in the course of a former client relationship with him might unwittingly or inadvertently come into the notice of those working for the BIA Accordingly the Appeal would be allowed*

**[32] In Kotch Shipping Inc. v Richards Butter** (A firm) Price Jefri was applied and the principles stated as follows:

*That Courts jurisdiction to intervene is founded on the right of the former client to the protection of confidential information.*

*The Attorney's only duty to the former client which survives the termination of the client relationship is a continuing duty to preserve the confidentiality of information imparted during its subsistence.*

*The Attorney's duty to preserve confidentiality is unqualified. It is a duty to keep the information confidential not merely to take all reasonable steps to do so.*

*The former client cannot be protected from accident of inadvertent disclosure but he is entitled to prevent his former Attorney from exposing him to avoid any avoidable risk. This included the increased risk of the use of information to his prejudice arising from the acceptance of instruction to act for another client with an adverse interest in a matter to which the information may be relevant.*

*It is wrong in principle to conduct a balancing exercise. If the former client establishes that the former Attorney is in possession of any confidential information the former client is entitled to an injunction unless the Attorney show that there is no risk of disclosure.*

- [33] That the principles as outlined was the basis for the English Court of Appeal decision in **Davies v Davies 1999 EWCA Civ.890** in that case the facts were that:

*In 1991 Mrs. Davies had a lengthy one off consultation with a Solicitor Mr. Tooth, about problems she was having with with her marriage. When she issued divorce proceedings in 1998 she discovered that her husband had instructed Mr. Tooth to act for him. Mr. Tooth refused to withdraw stating that he had no recollection of the consultation with Mrs. Davies and that there was no conflict of interest. And further, there was no support for the contention that there was a likelihood of prejudice to Mrs. Davies.*

*Thereafter, Mrs. Davies issued a summons for an Order that Mr. Tooth should be barred from representing her husband. Mrs. Davies Attorney*

*The offer was refused by her husband. The court gave leave for the summons to be withdrawn and ordered cost against the husband on the grounds that the Application had been properly brought and that there was a risk that Mrs. Davies would be prejudiced by Mr. Tooth if continued representation of her husband.*

- [34] In arriving at this decision the learned Trial Judge said,

*"the question I have asked myself is not whether a wife petitioner in the emotionally context of what seemed likely to be a bitterly contested proceeding should perceive is as being unfair that a Solicitor previously consulted by her seven years ago should now be acting against her.*

*The question is whether looked at objectively, there is or may be an actual likelihood that knowledge acquired by the Solicitor in 1992 may in some way be to the advantage of the respondent husband now in 1998”.*

- [35] Mr. Tooth Appealed this decision; the Court of Appeal dismissed the Appeal and held that the Lower Court had been right to find that Mrs. Davies Application was proper as the interest of justice required that Solicitors who had been confidential information should not be seen in any way, to risk its disclosure to opposing parties. The Court of Appeal found that there was a real risk that information in the mind of Mr. Tooth would have some impact on his conduct of the case.

The Court of Appeal held that the act that Mr. Tooth was no in possession of a file or had any recollection of his consultation with Mrs. Davies did not remove the risk that confidential and privileged information imparted to Mr. Tooth would at some later date perhaps even during the course of the trial could recalled and used to the detriment of Mrs. Davis's case.

- [36] It is admitted that Mr. Nathan was not strictly speaking a Client he did have consultation with the chambers regarding properties which are now being disputed between the parties.

- [37] Mr. Nathan and Mrs. Nathan lives were inextricably interwoven and so much so that information concerning her divorce from her former husband was sent to his email. He contends more than once, she assets only once.

- [38] Further it is our submission that it would not be in the interest of justice to allow Mr. Nathan to be subjected to cross examination by Mr. Gordon Steer; the said Attorney-at-Law to whom he has divulged the details of his matrimonial affairs with Mrs. Nathan as Mr. Steer would be vested with information that only his counsel would in the normal course of things possess. It is inconceivable that Mr. Nathan not only having accompanied Mrs. Nathan to discuss her divorce and property matters including property jointly owned by him, would not have expressed his views in relation to the likelihood of losing his property, that he was at risk of losing based on the claim by Clifton Miller would not have had discussions with Messrs

Chambers, Bunny and Steer particularly in light of the fact that he employed no other Attorneys-at-Law, despite the fact that a claim was made in relation to his property.

**[39]** It therefore submitted that the Court ought to find that there is a risk that privileged information given to Mr. Steer or Mrs. Cooper-Bachelor by Mr. Nathan during their consultations will be disclosed to his wife and ultimately used to his detriment since their current matter concerns their three properties

**[40]** Accordingly, in the interest of Justice and for the effective operation of the principle of Legal Professional privilege, Chambers Bunny & Steer should be barred from acting for Mrs. Nathan in instance case, despite the fact that Mr. Nathan was not a Client in the true sense of the word.

**[41]** It is a truism that justice must not only be done but seem to be done, Mrs. Nathan should not be represented by Attorneys to whom Mr. Nathan had consulted and or discussed the very properties which are the subject of dispute herein.

#### **Submission by the Defendant / Respondent**

**[42]** The Fixed Data Claim Form that brought the substantive claim before this court was filed in 2021. The Claimant/Applicant filed the application currently being heard on May 6, 2024. Consideration can be given to the fact that the parties were in negotiations with a view to trying to settle the matter. This could be promulgated as a reason for the late filing of the application. However, the issue of conflict ought to be raised at the earliest possible time and the Claimant/Applicant did not do so. Thus she asks this court to say that this application tactical delay

**[43]** She asks that this court consider the fact that the matter was set down to be tried on the 23<sup>rd</sup> and 24<sup>th</sup> of October 2023. The Defendant/Respondent was ready for trial and in fact it was the Claimant/Applicant who asked that the matter be adjourned. At that point no application to restrain had been filed.

[44] The matter was set for trial on May 29 and 30, 2024. It was at that time, at the last minute, the application was filed and served. The issue of conflict was raised as a tactical maneuver to frustrate the Defendant/Respondent and delay the matter.

[45] Just here the Defendant/Respondent relies on the Australian case of Sexton and Barton [2015] FCWA 38 on the issue of delay the court stated at paragraph 21 of his judgment that:

*“The issue of delay, as raised by counsel for the husband, was referred to in the decision of McGillivray v Mitchell [1998] Fam CA 96; (1998) FLC 92-818 where it was said at [36]:*

*It is our opinion that if a family; aw litigant has a genuine concern about a former legal adviser acting against him or her in later family law litigation, the litigant must take the point at least in correspondence with the other side at the earliest possible opportunity. If he or she does not do so, then he or she is possessed of a weapon which can later be used as a delaying tactic at some point in the proceedings convenient to his or her position. Furthermore, a failure to take the point initially must also cast doubt on the bona fides of any later complaint concerning the existence of confidential information in the practitioner in question, and on the bona fides of any alleged apprehension regarding the possible mis-use of such confidential information”.*

[46] Now, as to the matter of confidential information, the Defendant /Respondent says that the Claimant/Applicant alleges he had consultations with the attorneys for the Defendant/Respondent. The alleged “confidential information” would have been disclosed in the presence of the Defendant at these meetings.

[47] The case of Winters v Mishcon de Reya [2008] EWHC 2419 (Ch) is helpful with the particular situation now put before the court for adjudication. The learned judge said at paragraph 81;

*‘It is my judgment clear that in circumstances where there is a joint retainer, or where the same solicitors act for two clients in related matters in which they have a common interest, neither client can claim legal professional privilege against the other in relation to documents which come into existence, or communications which pass between them and the solicitors, within the scope of the joint retainer or matter of common interest concerned. The principle was stated as follows by Bridge LJ in CIA Barka de Panama SA v George Wimpey & Co Ltd [1980] 1 Lloyd’s Rep 598 at 615:*

*“As regards the claim for legal professional privilege, it seems to me that the general principle underlying several authorities to which our attention has been called by Mr. Lincoln, can be accurately stated in quite broad terms, and I would put it in this way. If A and B have a common interest in litigation against C and if at that point there is no dispute between A and B then if subsequently A and B fall out and litigate between themselves and the litigation against C is relevant to the disputes between A and B then in the litigation between A and B neither A nor B can claim legal professional privilege for documents which came into existence in relation to the earlier litigation against C”.*

So, even if there was a joint retainer, the Claimant/Applicant is not allowed to assert that there is confidential information that was disclosed and by that means deprive the Defendant of her choice of attorneys at law.

- [48] As to the general principles the Defendant/Respondent asks question specifically, Does the firm owe any duty of confidentiality to the Claimant?
- [49] The firm never acted for the Claimant/Applicant therefore there was never any attorney/client relationship and no duty is owed.
- [50] If there was confidential information disclosed was there consent for its disclosure? If there was disclosure of confidential information this would have been disclosed to the attorneys and to the Defendant/Respondent by the Claimant/Applicant. It is therefore unclear what information the Claimant/Applicant is seeking to protect and from whom.
- [51] A Jamaican first instant decision that thoroughly analyzed the factors and underlying principles upon which the court acts is; (NO3) *JMMB Merchant Bank Limited v Winston Finzi and Mahoe Bay Company Limited* [2015] JMCCD 16.
- [52] The Learned Judge, Sykes J, as he then was, set out several factors in paragraph 38;
- [53] From the cases cited above the following is established:
- (a) *there is no absolute or automatic rule preventing an attorney at law from acting for a subsequent client against a former client;*

- (b) the Supreme Court has an inherent power over attorneys at law and on that basis, in a proper case, can restrain an attorney, by an injunction, from representing a current client against a former client;*
- (c) before making such an order barring the attorney from representing the current client, the court must be mindful of that such an order has the consequence of depriving a litigant of his right to choose the attorney he or she wishes to represent him or her;*
- (d) if a court shows itself to ready to grant such an order it may encourage attorneys to withdraw from cases where it was not necessary for them to do so and undermine the “cab-rank rule” which was developed to ensure that unpopular persons or persons representing unpopular causes were able to secure legal representation;*
- (e) the burden is on the applicant to show that (a) the attorney is in possession of confidential information and that he or she has not consented to its disclosure and (b) the information is or may be relevant to the current matter;*
- (f) the burden on the applicant is not heavy while the burden on the attorney once the applicant crosses the threshold is heavy;*
- (g) the exercise of the power requires the court to consider all the facts and circumstances including the nature of the case and the nature of the evidence;*
- (h) The applicant should inform the other side, without delay, as soon as applicant has the information that would give rise to application;*
- (i) It is irrelevant how long before the representation of the former client ceased because once confidential information is given then the attorney is under an obligation to maintain the confidence to his or her grave unless the client gives consent for the disclosure;*



- (j) *The power to remove an attorney in a case is a special power which should not be exercised lightly;*
- (k) *Once the applicant makes the case for disclosure and the attorney has not rebutted the evidence or has not demonstrated that the risk is non-existent or very, very remote then it appears that the order should be made.*

**[54]** The Learned Judge had said prior, in paragraph 14;

*However, as can be seen from the second passage, his Lordship was not keen on that position. The Master of the Rolls indicated that before the special jurisdiction of the court to remove an attorney is exercised the court must be satisfied that "real mischief and real prejudice will in all human probability result if the solicitor is allowed to act "so the absolute rule advocated was not adopted.*

**[55]** Our conclusion is there was no fiduciary relationship between the attorneys and the Claimant. The Claimant did not make this application with all alacrity as he was obliged to do. Anything disclosed in the fictional meeting would have been disclosed in the presence of the Defendant so there can be no confidentiality.

### **Analysis of Facts and Law**

**[56]** In these competing presentations the Defendant/Respondent's argument is preferred as being sounder and coherent. It is consonant with the Law in this area as to the Defendant/Respondent's argument that the Claimant /Applicant's treatment of this matter as a tactical delay, I am to say that the Claimant/Applicant action is either unambiguously ingenuous or uniquely ingenious. After all, The Claimant/ Applicant is an attorney-at law who well knew that the firm of lawyers, Chambers Bunny and Steer were handling the suit brought by him against the Defendant/Respondents through his lawyers McNeil McFarlane. Upon learning of the suit initiated by the Defendant/Respondent's former husband, he with that knowledge went with the Defendant/Respondents to meetings at Chambers, Bunny and Steer in which he claims to have divulged confidential information to Mr. Gordon Steer and Mrs. Judith Bachelor Cooper. Thereafter, the

Claimant/Applicant returned to Mc Neil and McFarlane who then filed this suit now under consideration.

- [57] Just here the law is clear. If a Family law litigant has a genuine concern about a former legal advisor acting against him/her in later Family law litigation, the litigant, the Claimant/Applicant here, must take the point, at least in correspondence with the other side at the earliest possible opportunity. If he does not do so, then he is possessed of a weapon which can be later used as a delaying tactic at some point in the proceedings convenient to his position. The Fixed Date Claim Form brought by Claimant /Applicant before this Court is dated 20<sup>th</sup> April 2021 subsequently amended on the 11<sup>th</sup> February 2022. The said Fixed Date Claim Form had to be adjourned twice at the Claimant's request.
- [58] The Claimant /Applicant brought this application, now under consideration some years later on May 6, 2024. Clearly this was not done expeditiously. Here, the Defendant/Respondent succeeds. As to the claim that confidential information was divulged to Mr. Gordon Steer and Mrs. Cooper Bachelor, the tenuity of that claim has been given its quietus in this manner by the judgment in **Winters v Mishcon de Reya (2008) EWHC 2419**. "If A and B have a common interest in litigation against C and if at that point there is no dispute between A and B, then in the litigation between A and B then if subsequently A and B fall out and litigate between themselves and the litigation against C is relevant to the dispute between A and B then in the litigation between A and B neither A nor B can claim legal professional privilege for documents which came into existence in relation to the earlier litigation against C." The suffices to dispose of this aspect of the application.
- [59] It is to be particularly noted that the firm Chambers Bunny and Steer never acted for the Claimant /Applicant and therefore there never arose an attorney/client relationship and thus no duty was owed to the Claimant /Applicant by the firm Chambers Bunny and Steer. Further, even if there was disclosure of confidential information this would have been disclosed to the Defendant/Respondent and to her attorneys so that there can be no violation of the principle of confidentiality:

see the authority of Davies v Davies 1999 [EWCA Civ 890] ;JEFFRI BOLKIAH V KPMG (A Firm) 2 A.C.222.

**[60]** It is for these reasons the application for Court Orders is refused. The Defendant/Respondent is to have her costs, which is hereby ordered, to be agreed or taxed.