Neutral Citation Number: [2017] EWHC 246 (QB)

Case No: HQ14X03363

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 16 February 2017

Before:

MR JUSTICE JEREMY BAKER

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Between :

Pemberton Greenish LLP	**Claimant**
- and -	
Jane Margaret Henry	**Defendant**

- -
- -

Mr Alexander dos Santos (instructed by **Plexus Law**) for the **Claimant**
Mr Harry Wright (instructed by **Nick Mallet Consulting**) for the **Defendant**

Hearing dates: 24-26 January 2017

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Judgment Approved by the court for handing down (subject to editorial corrections)

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Mr Justice Jeremy Baker:

1. Pemberton Greenish LLP ("the claimant") is a limited liability partnership carrying out legal services, and is regulated by the Solicitors Regulatory Authority ("the SRA"). Jane Henry ("the defendant") was at all material times a solicitor, also regulated by the SRA, and was engaged by the claimant as a consultant solicitor under the terms of a consultancy agreement dated 9th September 2009.

2. This is a subrogated claim, on behalf of the claimant's insurers, in which damages are sought from the defendant for losses, for which the claimant has been indemnified under the terms of its insurance policy, arising out of legal services which the defendant provided, during the course of the consultancy, in relation to a financial property transaction.

3. Under the terms of the insurance policy, professional indemnity cover was provided to the claimant's employees; a term which was defined as including the defendant, as one of the claimant's consultants. Although, under clause 44 of the policy, the insurer was entitled to subrogation of the claimant's rights to recover losses arising from claims which had been indemnified by them, this was limited by clause 45, which provided,

> "The Insurer agrees not to exercise any such rights of recovery against any Employee, or former Employee, unless the claim is brought about or contributed to by the dishonest, fraudulent, intentional, criminal or malicious act or omission of such Employee……"

4. At an earlier stage of these proceedings, legal issues arose both as to the extent to which, absent *mal fides*, the claimant was entitled to seek subrogated losses arising out of the defendant's "intentional" acts and omissions, and also whether, under the principle enunciated in *Co-operative Retail Services Limited v Taylor Young Partnership Limited* [2002] Lloyd's Rep IR 555, the claimant was entitled to any rights of subrogation against those who were co-insured under the policy. However, these issues have been resolved, and it is now agreed that for the purpose of these proceedings, although the claimant is entitled to a right of subrogation against the defendant, it is limited to losses which have been caused as a result of dishonest acts and omissions by the defendant.

5. Therefore, the issue for determination in this case is whether the claimant is able to establish that its losses were caused as a result of the dishonest acts or omissions of the defendant. In this regard, the test for dishonesty is that set out by Lord Hutton in *Twinsectra Limited v Yardley* [2002] UKHL 12, namely,

> "36…..dishonesty requires knowledge by the defendant that what he was doing would be regarded as dishonest by honest people, although he should not escape a finding of dishonesty because he sets his own standards of honesty and does not regard as dishonest what he knows would offend the normally accepted standards of honest conduct."

6. Moreover, it is necessary to bear in mind that, although the applicable standard of proof is the balance of probabilities, sufficiently strong evidence is required to prove

allegations of dishonesty. As Lord Nicholls stated in *Re H and Others (Minors)*, [1996] AC 563,

> "…the more serious the allegation the less likely it is that the event occurred and, hence, the stronger should be the evidence before the court concludes that the allegation is established on the balance of probability. Fraud is usually less likely than negligence…."

Similarly, in *Foodco UK LLP v Henry Boot Developments Limited*, Lewison J. stated,

> "…. where fraud is alleged, cogent evidence is needed to prove it, because the evidence must overcome the inherent improbability that people act dishonestly rather than carelessly."

Background

7. The defendant is 64 years of age, and qualified as a solicitor in 1976. Thereafter she worked for a number of prestigious firms of solicitors, including Theodore Goddard, Freshfields, and Speechly Bircham LLP where she became a partner. Her practice during this period mainly involved corporate and commercial transactions, and she headed teams in various disciplines including, pensions, intellectual property and taxation. In 2009 the defendant was approached by one of her former professional partners, Kerry Glanville, who by then had become a partner with the claimant, who offered her a partnership with the claimant. The defendant decided that she wished to slow down her work rate, and therefore whilst she agreed to work for the claimant, she did so under the terms of the consultancy agreement, rather than as a partner.

8. Prior to the transaction which is the subject matter of these proceedings, there would not appear to have been any concerns about the defendant's work in the claimant's, relatively small, commercial department. She had undergone induction in relation to the claimant's file procedures when she commenced working for the claimant, and was also provided with anti-money laundering training on both 2nd October 2009, and again on 20th January 2011.

9. Unfortunately, during this period, the defendant's personal life took a turn for the worse, when her domestic partner, Peter Lloyd-Cooper, who was also a solicitor and a partner at Kennedys LLP, was the subject of an investigation into suspected financial irregularities at work. This eventually led to a hearing before the Solicitors' Disciplinary Tribunal, ("the SDT"), when the allegations were found proved, and he was struck off the Roll of Solicitors. In the meantime, Kennedys LLP had commenced proceedings for recovery of the monies from Mr Lloyd-Cooper, and in late 2011 the defendant's ability to maintain possession of their joint home was in jeopardy.

The financial property transaction

10. According to the defendant, in early December 2011 Mr Lloyd-Cooper told her that he had been approached by one of his former business associates, Brian Gilkes, who had told him that he knew of a couple, Mr and Mrs Kingston, who required legal services in relation to the provision of a mortgage on an investment property, at 88-90, Amwell Street, London, EC1R 1UU, ("the Amwell Street property"). The defendant said that

she had known Mr Gilkes for a number of years, and trusted him, and therefore agreed to undertake the necessary legal work for the Kingstons.

11. It was on the afternoon of 15th December 2011 that an individual, who introduced himself as Mr Kingston, attended the claimant's offices and spoke to the defendant. According to the defendant, he told her that he owned a printing works, and apologised that his wife had not accompanied him, but this was due to her having to undertake the care of their disabled child. He said that although their main home was in Bristol, they also had a home in London, where they were staying during the run up to Christmas, and he provided the defendant with a copy of a water bill and a council tax bill relating to 4, Kestrel Close, Kingfisher Way, London, NW10 8TL, ("the London property"). He also provided the defendant with a copy of his wife's passport, and the defendant made a photocopy of the passport before returning it to him. Mr Kingston explained that his own passport was currently with the Passport Office, awaiting renewal, and that he would bring it into the office when he received it after Christmas. He also explained that he did not have a driving licence.

12. Although the defendant agreed to undertake the necessary legal work for the Kingstons, for what she understood to be the provision of a short term loan, she said that she did not instruct her secretary, Karen Stapleton, to open a file on the Kingstons at that time, as she had not as yet met Mrs Kingston, and had no identity documentation in relation to Mr Kingston.

13. On 19th December 2011, the defendant, received an email at 17.12 from a Stuart Minikin of Stonebridge Commercial Finance Limited, ("Stonebridge"), referring to an earlier conversation between them, and attaching a copy of a draft loan agreement between the Kingstons and Stonebridge. The sum to be advanced was to be £500,000.00, and provided for its repayment together with the payment of a £50,000.00 premium by 26th January 2012, otherwise interest would thereafter be charged at 2% over LIBOR. The loan which was described as being for the purposes of the Kingstons' "…short term cash flow requirements.", was to be secured by a charge on the Amwell Street property.

14. According to the defendant, on receipt of this email, she telephoned Mr Kingston, and requested that he and his wife should attend the claimant's offices in order to sign the agreement. Mr Kingston informed the defendant that this would not be possible as they were staying with relatives at Bushey in Hertfordshire, and travelling up to London would be difficult because of the care needs of their daughter. As a result, the defendant agreed that she would visit them in Bushey.

15. Later that same evening, the defendant was driven to Bushey by Mr Lloyd-Cooper, where she met Mr and Mrs Kingston in a local public house. She was able to verify that Mrs Kingston was the same person whose image appeared on the passport which had previously been provided to her, and she explained the terms of the proposed agreement to them. In the course of the conversation, at which Mr Lloyd-Cooper was present, the Kingstons mentioned that a financial advisor, a Mr Mayweather, had assisted them with the original purchase of the Amwell Street property. Mr Lloyd-Cooper mentioned that he knew this individual, as a result of which the Kingstons told the defendant that if she had any queries about the property, Mr Lloyd-Cooper had their authority to contact Mr Mayweather in order to deal with them on their behalf.

16. On the following day, 20th December 2011, the defendant instructed her secretary to open a file in the name of Mrs Kingston. The defendant explained that the reason for

this was that at that time she had only seen an identity document relating to Mrs Kingston, and intended to add Mr Kingston's name to the file once his passport had been returned to him.

17. At 08.50 on 20th December 2011, the defendant emailed Stonebridge's solicitor, Charles Platel of CP Law, indicating that the Kingstons had signed the draft loan agreement, and that she was ready to proceed to exchange contracts. Mr Platel replied by email at 10.28, requesting that the Kingstons complete a mortgage questionnaire, which he attached to his email. He also asked the defendant to confirm that she had no concerns that the transaction would give rise to a referral under the money laundering regulations, and that the claimant would undertake to register the charge on the Amwell Street property in favour of Stonebridge on completion of the loan agreement.

18. At 10.41, the defendant emailed the mortgage questionnaire to Mr Lloyd-Cooper, and less than an hour later, at 11.30, he returned the completed questionnaire to her by email. The defendant forwarded the completed questionnaire to Mr Platel by email at 12.43, and stated that she was not aware of any circumstances, relating either to the transaction or her clients, which would give rise to a referral under the money laundering regulations, and confirmed that the claimant would register the charge on the Amwell Street property on completion of the loan agreement.

19. On 21st December 2011, the defendant emailed Mr Platel, asking him to confirm that the loan would be completed that day, to which Mr Platel replied, stating that Stonebridge had encountered a problem, and that the loan agreement may not be completed.

20. At 12.12 on 22nd December 2011, the defendant received an email from another solicitor, Nick Pentecost of Rawlison Butler LLP, stating that he was acting for Lansdown Asset Management Limited, ("Lansdown"), and that Lansdown was going to take over Stonebridge's position, and provide funding to the Kingstons. However, he indicated that the agreement under which this would be provided would be by way of a deferred sale agreement, whereby the Kingstons would sell the Amwell Street property to Lansdown for the sum of £900,000.00, but would have the ability to terminate the sale, inter alia, on repayment of the sum of £500,000.00 which was to be advanced to them by way of a deposit, together with a further sum of £50,000.00 within 2 weeks of exchange of contacts. He requested the defendant to confirm that the Kingstons were willing to proceed on that basis, following which he would forward a draft contract to her.

21. According to the defendant, she tried to telephone Mr Kingston concerning the new funding arrangement, but he didn't answer the call. Instead, she contacted Mr Lloyd-Cooper who told her that Mr Mayweather had organised the new funding arrangement with Lansdown, and had confirmed that they were willing to proceed on that basis. The defendant then emailed Mr Pentecost at 12.28, confirming that the proposed terms were agreed, and stating that it was essential that the funding should be made available that day. Later that day the defendant spoke to Mr Kingston by telephone, who confirmed that he was aware of the alteration in the nature of the transaction and, after the defendant had explained its effect, he authorised her to complete the transaction. The defendant said that she was aware that Mrs Kingston was with her husband at this time, and also confirmed her acceptance of the new agreement.

22. At 16.14 Mr Pentecost emailed a copy of the proposed sale agreement to the defendant who, after making certain alterations to it, including the insertion of the address of the

Kingstons' London property, rather than their Bristol address, signed it on their behalf, before returning the signed copy to Mr Pentecost at 16.47. At the same time, and conscious that although she had oral authority to sign the new agreement on their behalf, she had no written authority, the defendant drafted a written authority for the Kingstons to sign, and posted it to them.

23. Thereafter, the defendant said that she received a signed letter from the Kingstons, albeit dated the 20th December 2011, in which they provided instructions for the distribution of the sum of £500,000.00, when it was received by the claimant on their behalf. These instructions were to the effect that, apart from the sum of £5,000.00 by way of professional fees to which the claimant was entitled, and the sum of £50,000.00 payable to an HSBC account in the name of "H.A.I.A Al Reyaysa", the balance was to be paid to Crouch Chapman, accountants, for Mr Mayweather to "…deal with as he shall decide in his absolute discretion…" On the following day, 23rd December 2011, the sum of £500,000.00 was paid into the claimant's account, and distributed by the defendant in accordance with those instructions.

24. Early in the new year, between 4th – 9th January 2012, there was a further exchange of emails between Mr Pentecost and the defendant, with the former asking, *inter alia*, for confirmation that the Kingstons wished to terminate the sale agreement in accordance with its terms, and the latter responding that it was their intention, and she would seek to confirm it with them. According to the defendant, although she tried to contact the Kingstons, she was unable to do so. In the meantime, it would appear that the Land Registry had written to the registered owners of the Amwell Street property enquiring as to whether they objected to the registration of a charge on their property in favour of Lansdown. The registered owners replied to the Land Registry, explaining that they had no knowledge of any agreement concerning their Amwell Street property. They also contacted Mr Pentecost, stating that they believed that they had been the victims of fraud, and in turn he sought to contact the defendant about the matter on 11th January 2012.

25. In her evidence, the defendant explained that on 11th January 2012 she was appearing at court in a personal capacity in relation to possession proceedings concerning her own home, arising out of Kennedys LLP's attempt to recover monies from Mr Lloyd-Cooper. She said that as a result of this, she was somewhat distracted from dealing with Mr Pentecost's enquiries. However, she did seek to contact Mr Kingston, but he was unavailable.

The investigations

26. On 12th January 2012 the defendant was contacted by the claimant's senior partner, Robert Barham, who asked her to attend at their offices on the following day in order to prepare a written account of her dealings with Mr Kingston. She said that she spent most of Friday 13th January 2012 drafting her account, but had been unable to complete it. Therefore, she obtained Mr Barham's permission to take the file home with her in order to complete her account over the weekend. She said that it was whilst she was looking through the file, that she realised that the written authorisation, permitting her to complete the transaction on behalf of the Kingstons, had not been returned by them. As a result of this, and fearing that she would be held responsible for having completed

the transaction without written authority, she decided to forge the Kingstons' signatures on the copy which she had retained on the file.

27. Having prepared her written account, she emailed it to Mr Barham, apologising for what had occurred, and explaining that she appeared to have been unwittingly involved in a fraud. On 17th January 2012 she attended at the claimant's offices for a meeting about the matter with Mr Barham and another of the claimant's partners. It is apparent from both the written account, and the minutes of the meeting, that the defendant failed to refer to the part which Mr Lloyd-Cooper had played in the transaction. Moreover, since then, it has become apparent that the defendant has deleted all of the emails, between herself and Mr Lloyd-Cooper relating to the transaction, which had been retained on the claimant's computer system. In due course, and despite their deletion from both the inbox and the deleted items folders, the claimant has been able to retrieve them.

28. In the course of reviewing the defendant's work with the claimant, it was ascertained that; in October 2010 the defendant was acting for a client called Indonor Consultants Limited, ("Indonor"), of which Mr Lloyd-Cooper was a director, when the sum of £97,119.17 was transferred from Indonor's previous solicitors, Kennedys LLP, to the claimant's client account, and, thereafter, between 6th October 2010 and 29th March 2011, sums between £16,307.00 and £38,400.00 were paid out to either "Miss M Henry" or "Hamad Al Reyaysa", in respect of outstanding fees, or by way of short term loans. In the meantime, the defendant had rendered an invoice in the sum of £960.00 to Indonor in respect of the claimant's legal services.

29. As a result of their initial investigations, the claimant reported what had occurred, both to the SRA and to the police, and also terminated the defendant's consultancy agreement.

30. In so far as the police investigation is concerned, it concluded on 20th November 2012, with the defendant accepting a caution, on 20th November 2012, for an offence under the Forgery and Counterfeiting Act 1981, arising from the production of the false written authorisation.

31. The SRA commenced disciplinary proceedings against the defendant, which were determined by the SDT, in a written judgment dated 12th June 2015. Although the defendant had provided a written explanation to the SDT, she declined to attend the hearing.

32. The SDT found four of the allegations proved, namely:

> i. failing adequately, or at all, to carry out personal identity checks and the required anti-money laundering checks on a client(s) (Mr and Mrs K), in breach of Principles 6, 8 and 10 of the SRA Principles 2011 and/or Regulations 5, 7, 8 and 9 of The Money Laundering Regulations 2007;
>
> ii. creating and improperly signing a false letter of authority dated 22nd December 2011, purporting the same to have been signed by Mr and Mrs K, in breach of Principles 2 and 6 of SRA Principles 2011;
>
> iii.being cautioned for an offence contrary to the Forgery and Counterfeiting Act 1981, thereby breaching Principles 1, 2 and 6 of SRA Principles 2011;

iv. facilitating, permitting or acquiescing in money being paid into and out of the firm's client account when there was no underlying legal transaction(s) in breach of note (ix) to Rule 15 of the Solicitors Accounts Rules 1998 and Rules 1.02 and 1.06 of the Solicitors Code of Conduct 2007.

33. In relation to the first disciplinary offence, the SDT concluded that the defendant had failed to carry out any identity checks upon Mr Kingston, and that her collective failure to notice various discrepancies in the passport and bills provided in relation to Mrs Kingston amounted, *inter alia*, to breaches of the Money Laundering Regulations 2007. Although, the SDT was critical of the fact that the client risk assessment stated that the client had been seen at home, rather than at a public house, it, "…. did not consider that anything turned on this in respect of the allegation as a whole."

34. In relation to the fourth disciplinary offence, this in part related to the defendant's handling of the Indonor matter. The SDT considered that the defendant had failed to act with integrity, and that her conduct undermined public confidence in the legal profession, in that there was no evidence that there was any underlying legal work to justify the receipt or payment out of Indonor's funds.

35. In relation to the remaining allegations concerning the forged written authority, the SDT found dishonesty proved, and by way of sanction ordered that the defendant be struck off the Roll of Solicitors.

Claimant's case

36. In the original action brought by Lansdown, damages for losses caused as a result of breach of warranty arising out of alleged breaches of the Money Laundering Regulations 2007 had been sought from the claimant. Lansdown having recovered part of the £500,000.00 in the course of the police investigation, the proceedings were settled by the claimant paying Lansdown the sum of £370,000.00. In the present action the claimant now seeks to recover the sum of £370,000.00 against the defendant, on the basis that she was the individual who was responsible for having breached the relevant Money Laundering Regulations 2007.

37. The alleged breaches are set out in paragraph 36 of the Particulars of Claim, albeit they have become more refined, and are now limited to the following allegations, namely that the defendant:

i. failed to obtain identification documentation in relation to Mr Kingston;

ii. failed to notice the discrepancies in the council tax bill and the passport provided in relation to Mrs Kingston;

iii. failed to open a file in the names of Mr and Mrs Kingston;

iv. failed to verify that Mrs Kingston was the individual depicted on the passport by taking a copy of the passport to the meeting with her;

v. entered or failed to correct the entry in the claimant's Anti-Money Laundering, ("AML"), system, that the client had been visited in her own home;

vi. entered or failed to correct the entry in the claimant's Matter Risk Assessment, ("MRA"), system, that the transaction did not involve a complicated financial transaction;

vii. entered or failed to correct the entry in the claimant's MRA system, that the transaction did not involve payments that were to be made to third parties.

38. The claimant appreciates that it can only succeed against the defendant in the event that it not only establishes that one or more of these breaches was causative of its loss, but that when acting in this manner, the defendant did so dishonestly. However, the claimant submits that when considering the issue of dishonesty, the court is entitled to have regard, not only to the nature of the transaction itself, but to the defendant's conduct after the fraud came to light. In that regard, the claimant submits that both the circumstances in which the transaction took place, and the defendant's conduct after the fraud was detected, support its case that the defendant's breaches of the Money Laundering Regulations 2007 were dishonest, in that they were designed to ensure that the fraudulent nature of the transaction would not be detected, prior to the money being paid out under it. Moreover, the claimant submits that further concerns arise from the defendant's previous handling of Indonor's affairs, in which Mr Lloyd-Cooper also appears to have had a close connection.

Defendant's case

39. The defendant contends that, prior to the detection of the fraud, she had no reason to be suspicious about either the nature of the transaction or the circumstances giving rise to it. Mr and Mrs Kingston had been recommended to her by individuals whom she knew and trusted, and, initially at least, this was a simple loan agreement, secured upon an investment property, in order to provide a short term loan for business purposes. She admits that she didn't open the file in the clients' joint names, but states that this was because she only had identification from one of them, and intended to add the other's name upon receipt of appropriate documentation. In hindsight she agrees that some of the information on the council tax bill should have alerted her to make further enquiries, but states that she did not notice this at the time.

40. She states that she did take the copy of Mrs Kingston's passport with her when she went to see her in Bushey, and that she had instructed her secretary, Karen Stapleton, that she had seen the Kingstons in a public house, rather than in their own home. She accepts that the nature of the transaction altered from being a secured loan, to a deferred sale agreement. However, at the time she didn't consider that it had become a complicated financial transaction. Moreover, by the time she received the payment instructions relating to third parties, there was such pressure of time, that she did not consider the need to alter the information on the claimant's MRA system. Indeed, this was also the reason why she overlooked the fact that she had still not obtained identification documentation for Mr Kingston.

41. The defendant stated that to the extent that there are any inconsistencies between the minutes of the meeting with Mr Barham on 17th January 2012, and her evidence at trial, she never received the minutes to enable her to check them, and disagrees with some of the entries. In any event, the fraud having only recently come to light, she was completely devastated and in no fit state to be interviewed. Indeed, this was also the reason why she forged the signatures on the written authority, because she believed that at the time, as she had only obtained verbal authority from the Kingstons, the claimant would seek to hold her responsible, and so she acted out of fear. She said that the reason why she failed to mention Mr Lloyd-Cooper's role in the transaction, and also deleted the emails between them, was because her partner's mental health was very fragile at the time, as a result of the difficulties he was facing with Kennedys LLP and the SRA,

and she did not want to cause him any further stress by disclosing that he had been involved in the transaction.

42. In relation to Indonor, the defendant contends that she had no reason to suspect, nor has it been established, that there was anything untoward about the company, and that she was entitled to carry out the instructions which had been given to her.

Discussion

43. The public expect and are entitled to expect high standards of care and integrity to be exercised by those who are privileged to act in a professional capacity. Undoubtedly, as a result of the defendant's action of forging the written authority, she failed to act with integrity, a matter which has been recognised by the SDT, which has struck her off the Roll of Solicitors. However, in considering the issues which require determination in this case, I consider that it is necessary to have regard to a number of matters.

44. Firstly, that although of potential relevance to the overall assessment of the defendant's state of mind during the course of the transaction, both the forgery of the written authorisation and the deletion of the emails, took place after the detection of the fraud, and requires to be considered in the context of her explanation for having committed these thoroughly dishonest actions. Secondly, at the time when the transaction took place, the defendant possessed an unblemished professional record in excess of 30 years' duration. Thirdly, it is necessary to bear in mind that matters which may now, with the benefit of hindsight, appear to be of more significance or concern, may not necessarily have appeared that way at the relevant time. Fourthly, it is important to appreciate that the claimant does not seek to suggest that there is sufficient evidence available in this case, upon which they could establish that the defendant was a knowing participant in the fraud. Fifthly, although, as found by the SDT, there were clear breaches of both, the Solicitors Accounts Rules 1998, and the Solicitors Code of Conduct 2007, arising from the defendant's conduct in relation to Indonor, there is insufficient evidence that the payments were for fraudulent purposes, and again the claimant does not seek to suggest that the defendant was a knowing participant in any such fraud.

45. Apart from the fact that it appears that Brian Gilkes also had a role in the Indonor matter, there is no evidence that he was not an individual both known to the defendant, and one in whom she was entitled to reside some trust. Therefore, when he introduced the Kingstons as potential clients, I do not consider that there was any reason why, at that time, the defendant should have considered them to be anything but legitimate clients who required a short term loan for business purposes. It may well be that some criticism can be made of the defendant's lack of exploration of the details of the purpose for which the loan was required, and their ability to repay it, especially when the nature of the transaction altered. However, by then the defendant had been informed that the Kingstons had their own financial advisor, Mr Mayweather, and may have been entitled to a degree of reassurance from his involvement in the matter.

46. It is clear that from the commencement of the defendant's dealings with the Kingstons, the claimant had two clients, rather than one. This being especially so, given the defendant's understanding that the Amwell Street property was held in the joint names of Mr and Mrs Kingston. In these circumstances, I am satisfied that what the defendant ought to have done, was to have instructed her secretary to open a file in their joint

names, and to enter both of their names into the AML system. If this had been done, then the lack of documentary identification evidence available for Mr Kingston would have become apparent, and would have been likely to have led to the matter being referred within the AML system.

47. Although the defendant's explanation for this omission, namely that she was awaiting the receipt of Mr Kingston's identification documentation, has some superficial attraction, it fails to explain why it was that she thereafter proceeded to complete the transaction in the absence of any such documentation; albeit by then I appreciate that she was under some pressure of time. In these circumstances, I am satisfied that these omissions by the defendant did amount to breaches of regulation 5 of the Money Laundering Regulations 2007.

48. The documentary evidence with which the defendant was provided by Mr Kingston at their first meeting on 15th December 2011, included his wife's passport and two bills relating to the London property. If one accepts the defendant's evidence on this point, as I am inclined to do, the fact the bills related to Kingstons' property in London, rather than their main home, does not appear to me to be of particular concern. Ironically, although it is no part of the claimant's case against the defendant, if such documentary evidence had been required in respect of the Amwell Street property, which was the subject matter of both of the proposed transactions, then it is likely that this fraud may not have been so readily achievable.

49. I have seen copies of the documents which were provided to the defendant, and I consider that it would be overly harsh to criticise the defendant for not having noticed that there was a single digit difference between the two numbers appearing on the passport. However, in relation to the council tax bill, I am inclined to agree with the SDT that the anomalies on the face of the document ought to have been evident to a solicitor taking reasonable care to consider its sufficiency for the purposes of verifying the Kingston's connection with the property. These being not only the provision of a single person's discount, but also the payment of instalments in cash relating to a different time period. Once again, I am satisfied that this amounted to a breach of regulation 5 of the Money Laundering Regulations 2007.

50. The original transaction which was envisaged between the Kingstons and Stonebridge was a secured loan agreement, and it is not suggested by the claimant that this was anything but a straightforward financial transaction for the purposes of its MRA system. However, what is suggested is that when it became evident, on 22nd December 2011, that this transaction was not proceeding, and that the alternative proposed transaction was a deferred sale agreement, not only ought this to have been transferred to the claimant's property department, but it should have been re-registered as a complicated financial transaction for the purposes of the MRA system.

51. A similar suggestion is made in relation to the fact that, although initially there is no evidence that the sum of £500,000.00 was to be paid to anyone else apart from the Kingstons, when the defendant received the Kingstons' instructions, on 22nd December 2011, that the monies were to be paid to third parties, this should have been re-registered on the claimant's MRA system.

52. In relation to the first of these matters, I accept that the nature of the transaction altered in a significant manner, in that it ceased to become a secured loan agreement, and, although the alternative proposed transaction included terms of deferral, at the very least it placed the ownership of the Amwell Street property at risk of being transferred

to Lansdown at a substantial undervalue. However, although this may well have triggered the need to ensure that the Kingstons appreciated the significance of the alteration in the effect of the transaction, I do not consider that this would necessarily be regarded as a complicated financial transaction. Moreover, although by then it did have the hallmarks of a residential sale, given the pressure of time within which the defendant was acting, I do not consider that in reality she can be criticised for not having transferred the undertaking of the transaction to the claimant's property sale department. In this regard, not only had the defendant appropriate conveyancing experience, but the underlying purpose of the transaction, to provide what was understood to be short term business finance, had not altered.

53. In relation to the second of these matters, it is evident that originally the defendant had appropriately completed the relevant part of the claimant's MRA system, by ticking the box which indicated that the transaction was not going to involve, "Payments that are made to or received by third parties." However, once the defendant received the written instructions to distribute the sum of £500,000.00, otherwise than directly to the Kingstons, the original input into the MRA system was inappropriate, and required rectification. If it had been the case that the defendant did not receive these new instructions until 22nd December 2011, then, as I have already observed, there may well have been pressure of time on the defendant to complete the transaction, and the lack of rectification may have been mere oversight. However, I note that the sum of £500,000.00 was not in fact received into the claimant's bank account until the following day. Moreover, it seems to me that, as the risk involved in payments to unknown third parties is one which lies at the heart of the anti-money laundering provisions, the defendant's failure to re-register this matter amounted to a breach of regulation 8 of the Money Laundering Regulations 2007.

54. It was on the 19th December 2011 that the defendant travelled to Bushey and, according to her, saw both Mr and Mrs Kingston in order to discuss the proposed secured loan agreement with Stonebridge. Although in her evidence the defendant stated that she had taken the copy of Mrs Kingston's passport with her, I note that according to the minutes of the meeting with Mr Barham on 17th January 2012, she admitted that she did not have the copy of the passport with her. Moreover, this accords with the written account which she had already produced over the course of the previous weekend. In these circumstances, I have little hesitation in rejecting this aspect of the defendant's evidence, and am satisfied that she did not have the copy of Mrs Kingston's passport with her during her visit to Bushey. On the other hand, although this seems to me evidence of poor practice, I am not persuaded that in itself it amounts to a breach of the Money Laundering Regulations 2007. It seems to me that having only recently taken possession of the passport, the defendant may well have been able to have the facial characteristics evident from the photograph sufficiently in mind so as to have been in a position to verify that the person she was talking to was one and the same individual.

55. It was on her return from this visit, on the following day 20th December 2011, that the defendant requested her secretary to open the file in the name of Mrs Kingston. Once again there is a dispute as to how it came to be recorded that the defendant had met the client at home, rather than in the public house. I am not assisted by the fact that I have not heard from Karen Stapleton, and the defendant in her evidence stated that she didn't tell her that she had seen the client in her own home; a matter which, on this occasion, accords with her explanation contained in the minutes of the meeting with Mr Barham on 17th January 2012. In deciding this point, it seems to me of significance that the first

that anyone at the claimant's office was aware that the defendant had apparently seen the Kingstons, otherwise than at their home, was when the defendant disclosed this matter after the fraud had been detected. In these circumstances, it may be considered to be unlikely that the defendant would have made this disclosure, if she was aware that the AMS system reflected a contrary, and indeed preferable state of affairs.

Dishonesty

56. As I have already observed, it is a feature of this case that it is not suggested by the claimant that there is sufficient evidence, upon which it could establish that the defendant was a knowing participant in the fraud perpetrated by those posing as Mr and Mrs Kingston. Indeed, had the claimant sought to do so, there would have been considerable merit in the submission made by the defendant that, had this been the case, then she would have ensured that her part in it would not be discovered by complying with all of the claimant's AML and MRA systems. In this manner she could have entirely obviated the finger of suspicion pointing at her, which some of her acts and omissions, including those which I consider amount to breaches of the Money Laundering Regulations 2007, have done in the present case.

57. I am of course aware that the claimant is under no duty to provide any motive for dishonesty, albeit its absence may make it more difficult to prove. Moreover, on a number of matters in issue in this case, the defendant's explanations have been far from satisfactory. However, although my views are entitled to be informed by the patent dishonesty which the defendant has exhibited since the fraud has been detected, my task is to determine whether there is sufficiently cogent evidence arising from her conduct at the time, so as to satisfy me that the defendant's breaches of the Money Laundering Regulations 2007 were of a dishonest nature, rather than merely exhibiting lack of appropriate professional care.

58. As I have set out above, I consider that the defendant's breaches of the Money Laundering Regulations 2007 comprise the lack of appropriate scrutiny of the Council Tax bill, and, in particular, the lack of reference to, and the identification of, Mr Kingston within the claimant's systems, together with her omission to correct the entry in the claimant's MRA system concerning the distribution of the funds. As I have already observed, when Mr Kingston first visited the claimant's offices, I consider that the defendant was entitled to treat him as a legitimate client, who was apparently in need of a short term loan for business purposes. Furthermore, it is clear that from the outset, there was a considerable degree of urgency concerning the completion of the loan, and then sale agreement. Although, as I have already determined, this latter factor was not a sufficient excuse to avoid liability under the Money Laundering Regulations 2007, I do consider that it is of relevance when considering whether these were dishonest omissions by the defendant.

59. I have of course taken into account the role played by Mr Lloyd-Cooper in this transaction which, in view of his recent history, may have caused an objective observer to scrutinise it with more care. However, I am very conscious that, due to her long standing and intimate relationship with Mr Lloyd-Cooper, the defendant was unlikely to have shared the same viewpoint. I have no doubt that in relation to the vast majority of her professional dealings, the defendant possessed the same rational powers of insight and analysis as anyone else in her profession. Indeed, it was no doubt those qualities which, amongst others, persuaded the claimant to offer her a consultancy in the first place. However, it became apparent, during the course of her evidence, that the

defendant's objectivity has become overborne by her sympathies for Mr Lloyd-Cooper's predicament, and that she believed that he had been the victim of injustice. In these circumstances, I am satisfied that the defendant had genuinely convinced herself, not only of the lack of need to scrutinise Mr Lloyd-Cooper's role with more care, but also that, on the contrary, his involvement provided considerable assurance to her about the probity of others involved in both the earlier transaction involving Indonor, and the later transaction involving the Kingstons.

60. I am also satisfied that it was this lack of objectivity, coupled with a misguided wish to protect Mr Lloyd-Cooper from what she perceived as further unjustified investigations, which led the defendant, once the fraud had been uncovered, to expunge his role in the transaction, by deliberately failing to disclose his role, and deleting the email correspondence with him. Just as she sought to protect her own failure to obtain prior written authority for the transaction from the Kingstons, by forging their signatures on the blank copy of the document which she had retained, in the misguided belief, as it transpired, that their oral authorisation would be insufficient.

61. I have no doubt that the various breaches of the Money Laundering Regulations 2007, are evidence of a serious lack of professional care by the defendant. Moreover, the defendant's conduct, once the fraud had been uncovered, was, on any view, dishonest; a matter of which I am satisfied she was aware, but foolishly decided to pursue. However, despite these matters, I am not persuaded that the defendant's actions and omissions leading up to the fraud being uncovered were dishonest. As I have already observed, I consider that at the outset the defendant was entitled to assume that the Kingstons were legitimate clients who required a short term loan for business purposes. Moreover, that in the defendant's mind, the role played by Mr Lloyd-Cooper had the effect of enhancing, rather than detracting from the genuineness of the transaction. It was clear from the outset that there was a significant desire to complete the transaction as swiftly as possible, and I am satisfied that it was this imperative which caused the defendant to overlook the requirements of the Money Laundering Regulations 2007, and that the breaches are not evidence of any dishonesty on her part.

Conclusion

62. In these circumstances, although the claimant has satisfied me that the defendant committed various breaches of the Money Laundering Regulations 2007, I am not satisfied that there is sufficiently cogent evidence that its losses were caused as a result of the dishonest acts or omissions of the defendant.