

ENGLAND AND WALES / JUDGMENT

Samuel v Law Society

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Neutral Citation Number: [2009] EWHC 875 (Admin) IN THE HIGH COURT OF JUSTICE QUEEN'S BENCH DIVISION DIVISIONAL COURT B e f o r e: LORD JUSTICE RICHARDS MR JUSTICE TEARE

- ----- Between: SAMUEL v LAW SOCIETY CO/5348/2008 Royal Courts of Justice Strand London WC2A 2LL Thursday 2 April 2009 Appellant Respondent
 - ----- Computer-Aided Transcript of the Stenograph Notes of WordWave International Limited A Merrill Communications Company 190 Fleet Street London EC4A 2AG Tel No: 020 7404 1400 Fax No: 020 7831 8838 (Official Shorthand Writers to the Court)
 - ----- The appellant appeared in person Mr Geoffrey Williams QC (instructed by Bankside Law) appeared on behalf of the Respondent
 - ----- J U D G M E N T LORD JUSTICE RICHARDS: The appellant, Catherine Samuel, appeals against a decision of the Solicitors Disciplinary Tribunal, dated 13 May 2008, by which she was ordered to be struck off the Roll of Solicitors. The background is that she was admitted as a solicitor on 1 December 2003. At all material times she carried on practice on her own account under the style of "C Samuels, Solicitors", in Greenwich, London. Following an inspection of the firm's books of accounts and other documents in March to April 2005, proceedings were issued against her in June 2006. Further proceedings were issued in March 2007, arising in part out of a further inspection in October 2006. The substantive hearing in respect of both sets of proceedings took place in February
2008. The appellant was represented before the tribunal by an experienced solicitor, Mr David Morgan. She gave evidence in support of her case. At that hearing she faced five allegations of conduct unbecoming a solicitor: (1) she had failed to keep accounts properly written up for the purposes of Rule 32 of the Solicitors Accounts Rules 1998; (2) she failed to carry out reconciliations as required by Rule 32 of the 1998 Rules; (3) she acted in a situation where her interests conflicted with those of her client; (4) she improperly utilised clients' funds for her own purposes and, more particularly, that she had improperly utilised clients' funds to complete the purchase of her own property and that by doing so she behaved dishonestly or was grossly reckless as to whether there were sufficient funds legitimately available to complete her purchase; and (5) she failed to comply with conditions on her practising certificate for the practice year 2004/2005. The tribunal found all the allegations proved and found her not only to have been guilty of conduct unbecoming a solicitor but also to have been guilty of dishonesty. She appeals against the finding of dishonesty, the

finding of failure to comply with conditions on her practising certificate and the sanction of striking off. Although she was represented before the tribunal, she has presented the appeal in person. Allegation (4) related to her own purchase of a property at Catford on 28 January 2005 for a purchase price of £130,000. The purchase was completed by means of a transfer of £126,750 from the firm's client account to the vendor's solicitors. On the day before completion the appellant's net mortgage advance of £110,451 had been credited to the client account but no evidence was found that the balance of the purchase price had been paid into the client account by her or transferred from office account by her. When asked about this by the investigating officer she replied that she would have to look into it. Investigation of the records also showed, among other transactions, subsequent payments into the client account of £4,000 on 9 February 2005 and £16,469.75 on 21 February 2005, in each case from unidentified sources. When the investigating officer asked whether those payments were the replacement funds previously used in her own purchase transaction, she said she would have to look at the file. Subsequently in a statement lodged with the tribunal, dated 15 February 2008, she explained that the misuse of client moneys for the purpose of completing her own purchase had been entirely inadvertent. The transaction had been handled by a partner of hers, as had been required by her mortgage lender. The appellant mistakenly believed she could rely on her aunt who had agreed to arrange to advance moneys to her through a friend and that those moneys would be provided in time for completion. Her major mistake had been to pay out the completion moneys in the expectation of receipt of those funds. She had been under pressure from the vendor who wanted to move very early in the day. The estate agent had planned to gazump her so the vendor reduced the purchase price by £10,000. It was for those reasons that she completed the transaction early, very foolishly having not checked with her aunt that that would be in order. As soon as she realised what had happened - when her aunt was unable to make the payment or arrange for the funds to be made available through her friend - the appellant took steps to rectify the situation by paying £4,000 into the client account (she had borrowed that sum from a member of her church) and by borrowing the further sum of £25,001 from a commercial lender, HSBC, of which £16,469.75 had been paid into the client account on 21 February. Those matters were covered in the written statement. They and other points were also dealt with by the appellant in her oral evidence before the tribunal. The tribunal's findings in relation to this issue are at paragraphs 53 to 55 of its decision: "53 The test applied by the tribunal in considering whether or not the respondent's behaviour had been dishonest was that expressed by Lord Hutton in *Twinsectra Ltd v Yardley*. 54 The tribunal also took into account the judgment of the Administrative Court in *Bryant and Bench v The Law Society* [2007] EWHC 3043 Admin which commented that the decision of the Court of Appeal in *Bultitude v The Law Society* [2004] EWCA Civ 1853 is binding authority, namely that the test to be applied in deciding dishonesty is as formulated by the House of Lords in *Twinsectra*, namely - 'In the context of this case, first, did Mr Bultitude act dishonestly by the ordinary standards of ordinary and honest people and, if so, secondly, was he aware that by those standards he was acting dishonestly.' 55 The tribunal found that in taking money from the client account to make up the shortfall to complete

the purchase of the property at Catford, the respondent's conduct was dishonest by the standards of reasonable and honest people. Having heard and seen the respondent give evidence and heard her explanation for the utilisation of client funds and her assertions that she expected to be placed in funds by an aunt - whose name she said she did not know - the tribunal was satisfied so that it was sure that the respondent did not have an honest belief that her use of clients' money for her own purposes in these circumstances was justifiable and therefore that she knew that what she was doing was dishonest by those same standards. In particular the tribunal noted that when asked about the use of client SMITH BERNAL WORDWAVE funds in her own purchase the respondent indicated that before answering the [investigating officer's] questions she would have to look at the file. It was not plausible that the respondent who said that she had anxiously sought to borrow money to replace clients' funds used by her would not have a clear recollection of what had happened in her own personal transaction. The tribunal considered also that it was not plausible that the respondent did not know the name of her aunt. The tribunal concluded that the respondent was not a credible witness." The first three grounds of appeal relate to that finding of dishonesty. It is contended that the tribunal was wrong in law to find the appellant guilty of dishonesty; that the combined test of dishonesty was not correctly applied; and that the tribunal did not consider all of the facts of the case, and dishonesty was not proved beyond reasonable doubt. In her submissions today the appellant has made clear that she does not contend that the tribunal adopted the wrong legal test. She is right not to have advanced any such contention. The relevant authorities are examined at length at paragraphs 131 to 156 of the judgment of the court given by me in *Bryant v The Law Society* [2009] 1 WLR

163. I am satisfied that the tribunal in this case gave effect to the conclusion reached in that judgment. It rightly asked itself, first, whether the appellant's conduct was dishonest by the standards of reasonable and honest people and, secondly, whether she was aware that by those standards she was acting dishonestly. It is the tribunal's factual findings rather than the legal test applied with which the appellant seeks to take issue. She says the tribunal made errors in its findings. She refers in that respect to the weight placed on the fact that she did not know her aunt's name. She explained that when giving evidence she forgot the surname, but after the tribunal retired to consider the case she remembered the name and told the solicitor. She said that she would like to call her aunt as a witness to show that the aunt did promise to pay her the balance of the completion funds. She asserts that she honestly believed that her aunt would pay certain funds to complete the purchase. The appellant states that when the investigating officer asked her about the purchase she could not remember the exact figures, and because she believed he wanted her to be specific she told him she would have to look at the file. She has also explained that she was concerned about any answers she gave him being used against her. She goes on to state that the relevant circumstances were then explained in detail by her solicitor in a letter to the Law Society which, in her submission, was the more appropriate course. The appellant has told us she was shocked at the finding that she was not a credible witness. She asserts vehemently that

she is an honest person. She prays in aid the character references that were before the tribunal attesting to her honesty. She acknowledges that her judgment was clouded in relation to the transaction, but it went no further than that and the tribunal should have believed she was telling the truth. Submissions of that kind face grave difficulty. Contrary to the approach adopted at times by the appellant, it is not for this court - the appeal court - to reach our own SMITH BERNAL WORDWAVE separate conclusions on issues of fact, including the issue of honesty or dishonesty. Our function is to review the findings of the tribunal. It is well established that an appeal court will be slow to interfere with findings of primary fact made by a first-instance court, especially where those findings are based, in part, on oral evidence and the tribunal or lower court therefore has had the advantage of having seen and heard the witness or witnesses give evidence. In the present case I can see no basis whatsoever for interfering with the finding of dishonesty made by the tribunal on the basis of the evidence before it. Having regard to the undisputed facts, the appellant's reaction to the questions about them by the investigating officer and the explanation subsequently given by her, the tribunal was in my judgment amply justified in making an adverse credibility finding and, in the light of that finding, in going on to make a finding of dishonesty. As part of her submissions the appellant has made clear that she wishes to place other additional evidence before this court by calling her aunt and also possibly a pastor of her church. She has failed to make out any case that could begin to justify that course. First, nothing concrete is put forward by way of the additional evidence that it is sought to have admitted. There are no witness statements from the witnesses concerned (though it is right to note that the reference from the pastor is one of the documents in the papers). Secondly, the admission of fresh evidence on an appeal is an exceptional course for which special grounds have to be shown. No such grounds have been established here. None of the conditions laid down in *Ladd v Marshall* - which remains a powerful, persuasive authority even though it does not formally govern the admission of new evidence under the Civil Procedure Rules - has been shown to be met. The appellant appears to have thought that she could simply wait until she obtained permission from this court before addressing those points and revealing what specific further evidence was to be called. But, as the written submissions on behalf of the respondent ought to have made clear to her, she had to satisfy this court in the first place that the criteria for the admission of fresh evidence were met in order to get permission. She has failed completely to persuade me that there is any justification for allowing in fresh evidence in respect of this issue. Accordingly I am satisfied that there is no substance to the appeal against the tribunal's finding of dishonesty. I turn to consider the finding that the appellant failed to comply with a condition of her practising certificate. The facts relevant to that matter are as follows. On 3 October 2005 an adjudicator at the Law Society granted her a practising certificate for the year 2004/2005 subject to conditions, one of which was that she might act as a solicitor only in employment which had first been approved by the Law Society and she should not be the sole principal partner or salaried partner of any solicitor's practice. The conditions took effect from 3 April 2006. An application for approval of the appellant's employment with C Samuels, Solicitors, was refused by an adjudicator at the Law Society on 11 July 2006. A review of that decision was

refused, and the appellant was informed of the result by letter dated 15 September 2006. SMITH BERNAL WORDWAVE In the inspection carried out by the investigating officer in October 2006 it was discovered that the appellant was still working at the firm of C Samuels, Solicitors. The case against her was that she had worked in breach of the conditions on her practising certificate from 17 September 2006 (the date of receipt of the letter of 15 September) to 4 October 2006 (when the investigating officer began his inspection). A number of documents were relied on to demonstrate that she had worked as a solicitor at the firm during the period of the alleged breach. They included letters bearing the initials CS at the start of the firm's reference, a letter and fax from another firm of solicitors addressed for the appellant's attention, and a letter sent to a client in which the appellant was described as the supervisor. The appellant's case was that she was working at the firm but was not working there as a solicitor. She said that when Mr R became a partner in the firm in December 2005 she disclosed the conditions of her practising certificate that were to take effect on 3 April 2006, and he was made aware that he would be supervising her and other members of staff from that date. Owing to family difficulties he resigned and left on 14 March 2006, but she persuaded him to stay on for some time thereafter. The appellant said that she sought the Law Society's approval to work as an employed solicitor for the firm and did not work as a solicitor while waiting for that approval. She worked in the firm as a cashier. She trained staff in a new computerised case management system. She was also involved in marketing the business and recruiting staff. The appellant said that following the Law Society's letter refusing approval she employed Mrs W-L to be a supervising partner and that Mrs W-L commenced work on 20 September, though the appellant had expected her to start on an earlier date. Prior to Mrs W-L joining the firm, the appellant had been involved in assisting the firm's then accountant with replies to his inquiries with a view to the accountant's report being filed with the Law Society on time, the latest date being 30 September 2006. She said in oral evidence that she had continued with this work without being instructed to do so by the partners in the firm. She had also been involved with processing the firm's professional indemnity insurance for the year 2006/2007. She denied that the documents relied on against her indicated that she had been practising as a solicitor through the period of the alleged breach. She said that the appearance of the initials CS on the letters had an historical explanation and did not mean that she was currently in charge of the files, and that the reference to her as a supervisor was an error resulting from use of an old form of letter. The tribunal found as follows in relation to this issue at paragraphs 56 to 58 of its decision: "56 The tribunal did not accept the explanations given by the respondent that she was working in the firm of C Samuels, Solicitors, in a capacity other than that of a solicitor. On her own evidence she was undertaking work that would lead to the timeous filing of an accountant's report. The tribunal did not accept her evidence that letters had been written to clients and others bearing her initials at the beginning at the firm's reference SMITH BERNAL WORDWAVE because those initials related to the name of the firm and not the fee earner having conduct of the relevant matter. The tribunal noted that letters had been addressed to the respondent personally and she had been referred to in one letter addressed to a client as being the supervisor of the fee earner. 57 On the

respondent's own evidence she was assisting the firm's accountant in connection with the firm's annual accountant's report even when she had not been instructed by the partners in the firm to do so. 58 The tribunal found that the respondent continued to act as a solicitor and indeed continued to act as she had when she was the sole principal at a time when the condition of her practising certificate preventing her from acting as a solicitor in the firm had come into force." The appellant challenges those findings. The relevant ground of appeal is that the tribunal was wrong to find a breach of the conditions on the practising certificate. She says that she wants to call as witnesses three of the people at the firm during the relevant period. She has explained what she says is the true significance of the letters and other documents relied on against her. She complains that the tribunal was wrong not to believe her explanations. She goes so far as to submit that she has been made a scapegoat for others and that others have said things adverse to her in order to protect their own positions. The appellant says that she assisted the firm's accountant in preparing the annual report because the period covered was up to 31 March 2006 when she was working as a solicitor. She did not expressly obtain instructions to act in this way but those concerned were aware of what she was doing. Nor could she leave the accounts and the issue of indemnity insurance to new people who did not understand the affairs of the firm as completely as did the appellant. On this issue, too, my judgment is that the appellant faces an impossible task. There is no suggestion of any relevant legal misdirection by the tribunal. It seems to me that the tribunal's findings were reasonably open to them on the evidence, and the contrary is indeed unarguable. No proper basis had been established for the admission of fresh evidence on the appeal. Indeed, nothing put forward by the appellant lends even the faintest glimmer of hope that if fresh evidence were admitted it would enable her to overturn the tribunal's findings. There is simply no basis for interfering with the tribunal's findings on this issue. It follows that the tribunal was entitled to find in respect of all the allegations against her that the appellant was guilty of conduct unbefitting a solicitor. Given that conclusion and the express finding of dishonesty in relation to allegation (4), there can in my view be no doubt that the tribunal's decision to order the appellant to be struck off the Roll of Solicitors was properly open to it. Paragraph 65 of the tribunal's decision makes it clear that in reaching its conclusion the tribunal had proper regard to all the circumstances - including the mitigation advanced (mitigation again touched on SMITH BERNAL WORDWAVE today by the appellant in the course of her submissions) - and that the tribunal took the view that in order to protect the public and the good reputation of the solicitors' profession it was both appropriate and proportionate to order the appellant to be struck off. That view was fully in line with the decided cases. I can see no basis upon which this court could interfere with the decision reached. Accordingly I would dismiss the appeal. MR JUSTICE TEARE: I agree. MR WILLIAMS: Mr Lord, I have an application to make for costs on behalf of the Law Society. The tribunal made no order on the basis of the principles emerging from the judgment in Merrick which, I apprehend, is not before you. I can produce two copies. LORD JUSTICE RICHARDS: Has Miss Samuel got a copy? MR WILLIAMS: I will hand her mine; I do not think she has. You need to start on the penultimate page at paragraph 61. The point I made there is that these principles apply to

orders made by the Disciplinary Tribunal where people of limited means are being deprived of their livelihood, and the question has to be asked, is that sufficient? That would be answered in the affirmative in this case. We have no complaint about that. LORD JUSTICE RICHARDS: You say it is confined to the position before the tribunal. MR WILLIAMS: That would be my submission. The basis on which I say it does not apply in the same way in this court is that of course in the tribunal Mrs Samuel had no choice. She had to be there as a respondent. It was entirely her choice to issue an appeal which, in my submission, was, with respect, hopeless from the start. The Law Society has been put to not inconsiderable costs in resisting it successfully. One recognises the realities of the situation and sympathises with Mrs Samuel's financial and family position. The order I would seek is that the appellant should pay the costs of the Society but not to be enforced without leave of this court which will ensure that Mrs Samuel would only actually have to pay them if she were in a position to do so. LORD JUSTICE RICHARDS: That is the old fashioned legal aid order - not to be enforced without leave of the court. There is the more subtle form of wording now for those against whom costs orders are made and who are in receipt of public funds. It is all to do with the determination that liability is postponed, I think. (Judge conferred with court associate) I am told two formulations: the one that you put to us and the one that I countered with are both in use. And pending some guidance from I am not sure whom as to what the correct version is - I do not intend to give that judgment today - we can use either. SMITH BERNAL WORDWAVE MR WILLIAMS: You can use either. It is purely anecdotal, but I can tell my Lords that the Administrative Court makes an order in the terms for which I submitted in that case. LORD JUSTICE RICHARDS: I am sure that on many occasions I have made an order in those terms but it does not follow it was correctly made. MR WILLIAMS: I will ask for such an order and - coupled with the fact that as and when leave is given - those costs will have to be subject to detailed assessment. LORD JUSTICE RICHARDS: There is no schedule? MR WILLIAMS: We have a schedule but it has not been served on Mrs Samuel. The schedule is in the region of £14,000. LORD JUSTICE RICHARDS: That sounds very high for opposition to an appeal of this nature. One of the issues that I think it is right to raise and to get on the transcript should there be a question of detailed assessment is whether - with great respect to you Mr Williams - this was a case that called for leading counsel, leading solicitor advocate. MR WILLIAMS: I hear what you say and note it. That is my application. LORD JUSTICE RICHARDS: Mrs Samuel, what do you say about the principle of you being asked to pay the costs of the Law Society? I just want to decide quantification for a moment. What they are saying is that you should pay the costs of the appeal because you had a choice whether to bring this appeal. You brought the appeal. It was an appeal that the court has dismissed without even needing to call on the Law Society. You have put the Law Society to unnecessary costs and, in principle, you should be required to pay subject to the question of your means. The order would not be enforced against you unless the court was satisfied that you had the means to meet it. Is there anything you want to say to us? THE APPELLANT: I was trying to - - the issue - - - - (Appellant became upset) LORD JUSTICE RICHARDS: We will rise. (Court adjourned) LORD JUSTICE RICHARDS: Mrs Samuel, is there anything you want to say to us in relation to the application for costs? THE APPELLANT: As to the case, I did not

have money. LORD JUSTICE RICHARDS: You are referring to your lack of means. THE APPELLANT: I did not have means to instruct a barrister in this case. There are things I did not do - like the witness statements and getting people to testify - which I SMITH BERNAL WORDWAVE did not do and I did not have money to instruct, like, a barrister or someone to help me with the case. With respect to what I have done, they want to make me homeless. They were sending me bills of 70,000 or 80,000 and the defendant issued - - with this case, if you look at the bundles, most of the bundles that were being done by the defendant, tribunal - - and there are other bundles. This is repetition of what I had submitted although they kindly gave it descriptions. There are two bundles - file 1 and file 2. Those are my bundles which were passed on to me. This bundle was the authorities which I do not know - - it is March 2009, these submissions. This is the outline submissions on behalf of the respondent which is a transcript. If you look at all these you are saying they want to claim, I do not know what, it was 14,000. LORD JUSTICE RICHARDS: We are concerned with the principle whether you should be required to pay costs. If you are required to pay costs there are two further questions: what is a reasonable amount of costs (and that is something that would be left for detailed assessment)? More importantly, no action would be taken without the leave of the court which would depend upon the court being satisfied that you were in a position to meet any order. THE APPELLANT: The tribunal was told what I was getting which was - - I have my income support letter here. LORD JUSTICE RICHARDS: We have read what the tribunal say about costs. THE APPELLANT: I am on income support since 2006 when the Law Society went in. I have not worked to date. I do not have any money. I do not have any assets. They intervened. And the people who helped me to carry on the business - I had to borrow (?) money - resigned. That is what the Law Society did. At the same time they are asking me to pay money. I do not see any justification for that. I do not see any justification for them asking for the money. LORD JUSTICE RICHARDS: We have that point. THE APPELLANT: Not only that. They keep sending me bills. I do not have any money to pay them. Even though I was told I was not going to pay them. From what he was saying it was my choice to come here. LORD JUSTICE RICHARDS: We understand your submission about you not having any money. THE APPELLANT: If I had money I would instruct a barrister myself to handle my case. LORD JUSTICE RICHARDS: We will take into account that point that you have not. THE APPELLANT: I do not know what else they want me to do - to commit suicide, kill myself? Because I do not see how I find (Inaudible) 30,000, 50,000. What can I do? Where can I go? Every time I get these letters coming in from my door. SMITH BERNAL WORDWAVE LORD JUSTICE RICHARDS: We will order the appellant to pay the respondent's costs, subject to detailed assessment if not agreed, and, very importantly, not to be enforced without leave of the court. We take the view that the appellant had a choice whether to bring this appeal and chose to bring it. It was an appeal doomed to failure and there is no reason why, in principle, a costs order should not be made against her. We have very much in mind what she said about her lack of means. That makes it appropriate for the "not to be enforced without leave of the court" proviso to be attached to the order made. SMITH BERNAL WORDWAVE

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