

JERSEY / JUDGMENT

AG -v- Michel [2012] JRC 099 (14 May 2012)

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JUDGMENT

THE BAILIFF: 1. On 29th March, 2011, Advocate Justin Peter Michel ("the respondent") was convicted following an assize trial of one count of attempting to pervert the course of justice. On 6th May, 2011, he was sentenced to a term of 15 months' imprisonment and his subsequent appeal was dismissed. 2. In those circumstances, the Attorney General brings a representation seeking an order that the respondent be struck off as an advocate of this Court. The respondent has been served with the necessary proceedings but has notified the Court in advance that he does not intend to appear or to make any submissions in relation to the representation. Consistently with that approach, he has not appeared or been represented before us this morning. Nevertheless, the Court must consider whether the facts as outlined by the Attorney General justify the measure of striking off. Factual background 3. The respondent was aged 43 at the time of his conviction. His father Peter Michel ("the father") was an accountant who was convicted of money laundering offences in 2006 and 2007. 4. In July 2001, as part of the investigation into the father, the police obtained warrants to search his home and business premises. From the outset, the father was the target of the investigation and his prosecution for money laundering, together with formal freezing and confiscation of his assets, was always contemplated by the prosecuting authority. 5. Foreseeing that his wealth was at risk, the father sought to shield his personal assets from the investigation and from the risk of confiscation by transferring some of them into the names of family members. Chief amongst these was the respondent. In the course of some 20 months following the raids, the father transferred property worth some £1.1 million to the respondent. It is clear from the verdict of the jury that it accepted the prosecution case that the respondent and his father shared the common purpose of moving these assets out of the father's name with the intention of shielding them from the police investigation, from being frozen by a *saisie judiciaire* and from being counted as the father's realisable assets for the purposes of any confiscation order. Had their plan succeeded, the amount of any confiscation order against the father would have been unjustly and falsely reduced as a consequence. 6. It appears that, at the time of the transfers, the respondent and his father were not aware of the fact that gifted property could still be counted as a defendant's realisable property for the purposes of confiscation. However, the transferred property was identified by investigators and was in due course made the subject of a *saisie judiciaire* obtained by the Attorney General in November 2004 on the basis either (a) that the transfers were shams intended to disguise the father's continuing ownership of them or (b) they were gifts which were

caught by the Proceeds of Crime (Jersey) Law 1999 . They remained, on either basis, the realisable assets of the father which were liable to confiscation. 7. In response to the saisie judiciaire , and after he had been informed that gifts were still caught, the respondent asserted that the transferred assets represented contractual payments by his father to him for legal work he had performed on his father's case. In a letter to the Crown Advocate prosecuting the case, he said that he had provided "immense cause" for the transfers by the legal work he was undertaking for the father. Had that explanation been accepted as the truth by either the prosecution or the Court, those assets would have fallen outside the definition of realisable property in the 1999 Law and would not have been included as the father's realisable assets. The amount of any confiscation order against the father would have been wrongly reduced as a consequence. That version of events was supported by the father himself at the confiscation hearing which took place after his convictions for money laundering in 2006 and 2007. He claimed that the assets transferred to the respondent were no longer his (the father's) realisable assets for confiscation purposes because they were payment for legal services provided to him by his son. 8. As previously indicated, the respondent was subsequently charged with attempting to pervert the course of justice. The particulars of the offence were that he had attempted to pervert the course of justice, namely the investigation of the assets of the father, the application for a saisie judiciaire of those assets, and the confiscation of the father's proceeds of criminal conduct, by performing acts which had a tendency to pervert the said course of justice, namely (a) accepting from the father the transfer to him of assets which were subject to the investigation; (b) falsely representing to the Attorney General that the transfers to himself were payment for legal services which he provided to the father; and (c) falsely representing to the Attorney General that the transfers to himself of the shares in certain companies were payment for services provided by him in respect of those companies. 9. As already indicated, the matter came before an assize trial in March 2011 and, following an 11 day trial, the jury convicted the respondent. During the course of the trial the respondent gave evidence. He said, firstly, that between the date of the raids in 2001 and the saisie judiciaire it had never once crossed his mind that there was a risk of his father's assets being frozen, much less confiscated. He had never at any stage discussed confiscation with his father, so it never crossed his mind that there was anything wrong in receiving £1.1 million of property from his father in the aftermath of the raids. Secondly, he said that he had not intended to convey the impression that he had a contract with his father for the provision of legal services when he used the expression "immense cause" in his letter to the Crown Advocate referred to earlier. Thirdly, he said that he did not know what the phrase "immense cause" actually meant and he did not now know whether the transfers to him by his father were in fact payment for the services rendered or merely gifts. It is clear from the jury's verdict that the respondent lied on oath in respect of these three matters. 10. In summary, the respondent attempted to pervert the course of justice in the manner described above and also lied on oath during his trial. The applicable principles 11. The Attorney General was unable to refer us to any previous case where the Court has had to consider dishonest conduct on the part of an officer of this Court. The Court has not therefore previously expounded its approach. However, we see no reason to take a different approach from that which exists in England and Wales and which is conveniently summarised in the judgment of Sir Thomas Bingham MR in

Bolton-v-Law Society

[1994] 1WLR 512 at 518:- "Any solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon him by the Solicitor's Disciplinary Tribunal. Lapses from the required high standard may, of course, take different forms and be of varying degrees. The most serious involves proven dishonesty, whether or not leading to criminal proceedings and criminal penalties. In such cases the Tribunal has almost invariably, no matter how strong the mitigation advanced for the solicitor, ordered that he be struck off the Roll of Solicitors. Only infrequently, particularly in recent years, has it been willing to order the restoration to the Roll of a solicitor against whom serious dishonesty had been established, even after a passage of years, and even where the solicitor had made every effort to re-establish himself and redeem his reputation. ... It is important that there should be full understanding of the reasons why the tribunal makes orders which might otherwise seem harsh. There is, in some of these orders, a punitive element: a penalty may be visited on a solicitor who has fallen below the standards required of his profession in order to punish him for what he has done and to deter any other solicitor tempted to behave in the same way. Those are traditional objects of punishment. But often the order is not punitive in intention. Particularly is this so where a criminal penalty has been imposed and satisfied. The solicitor has paid his debt to society. There is no need, and it would be unjust, to punish him again. In most cases the order of the tribunal will be primarily directed to one or other or both of two other purposes. One is to be sure that the offender does not have the opportunity to repeat the offence. This purpose is achieved for a limited period by an order of suspension; plainly it is hoped that experience of suspension will make the offender meticulous in his future compliance with the required standards. The purpose is achieved for a longer period, and quite possibly indefinitely, by an order of striking off. The second purpose is the most fundamental of all: to maintain the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth. To maintain this reputation and sustain public confidence in the integrity of the profession it is often necessary that those guilty of serious lapses are not only expelled but denied re-admission. If a member of the public sells his house, very often his largest asset, and entrusts the proceeds to his solicitor pending reinvestment in another house, he is ordinarily entitled to expect that the solicitor will be a person whose trustworthiness is not, and never has been, seriously in question. Otherwise, the whole profession, and the public as a whole, is injured. A profession's most valuable asset is its collective reputation and the confidence which that inspires." 12. Although Bingham MR's comments referred to solicitors, he had made it clear earlier in the judgment that the requirement of integrity, probity and complete trustworthiness applied equally to barristers. In our judgment these principles are equally applicable to advocates and *écrivains* of the Royal Court. It is true also that his remarks refer to dishonesty in the discharge of a solicitor's professional duties, but in our judgment they are equally applicable where the dishonesty does not relate directly to the individual's

legal practice. As Bailhache Commissioner pointed out when sentencing the respondent

[2011] JRC 093 :- "2. At the very core of the relationship between an advocate and this Court is the virtue of truthfulness and her first cousin trust. If an advocate cannot be truthful with the Court there cannot be trust, and without trust between counsel and the Bench, the process of justice is undermined." Decision 13. In this case, the respondent has been convicted of the serious offence of attempting to pervert the course of justice. It is hard to envisage any instance where conviction for such an offence would not require the offender to be struck off, as it goes to the heart of the integrity of the administration of justice, of which advocates and solicitors are an essential part. In this case the respondent conspired with his father to try to defeat any confiscation order which might subsequently be made against his father. Even making allowance for any misplaced sense of loyalty, this was a serious case which involved lying to the investigatory and prosecution authorities about the circumstances in which he came into possession of his father's assets. It was exacerbated by the fact that the respondent did not admit his guilt but lied to the jury during the course of his assize trial. The dishonesty was over a prolonged period. 14. In all the circumstances the Court has no hesitation in concluding that the only appropriate outcome in this case is that the respondent should be struck off as an advocate and that is the order which the Court makes. Authorities Proceeds of Crime (Jersey) Law 1999. Bolton-v-Law Society

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Prepared on 25 October 2026 · Esheria