

IN THE MATTER OF JAMES ALUN JAMES and JONATHAN URE, solicitors

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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Mr N Pearson (in the chair)  
Mr R J C Potter  
Lady Bonham Carter

Date of Hearing: 14th January 2010

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## **FINDINGS**

of the Solicitors Disciplinary Tribunal  
Constituted under the Solicitors Act 1974

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An application was duly made on behalf of the Solicitors Regulation Authority ("SRA") by Ian Ryan, a partner in the firm of Finers Stephens Innocent LLP, 179 Great Portland Street, London W1W 5LS on 24<sup>th</sup> February 2009 that James Alan James and Jonathan Ure both of Alan James & Co of 20 Windsor Street, Uxbridge, Middlesex UB8 1AB might be required to answer the allegations contained in the statement that accompanied the application and that such Order might be made as the Tribunal should think right.

The allegations against the Respondents were that they:

- (1) Failed to comply promptly or at all with the terms of an undertaking given to Humphrey Williams Solicitors;
- (2) Failed to comply promptly or at all with the terms of an undertaking given to Deibel & Allen Solicitors;
- (3) Failed to comply promptly or at all with the terms of an undertaking given to Cook Taylor Woodhouse Solicitors;
- (4) Failed to comply promptly or at all with the terms of an undertaking given to Property Law Partners.

By a supplementary statement dated 25<sup>th</sup> September 2009 the further allegations against the Respondents were that they:

- (5) Failed to comply promptly with an Order by the Uxbridge County Court to provide disclosure of various documents within 14 days of service of that Order.

The application was heard at The Court Room, 3<sup>rd</sup> Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 14<sup>th</sup> January 2010 when Ian Ryan appeared as the Applicant. The Respondents appeared and were represented by Mr Clive Woolliscroft of Hacking Ashton LLP solicitors.

#### The evidence before the Tribunal

The evidence before the Tribunal included a Rule 5 Statement of the Applicant dated 24<sup>th</sup> February 2009 with accompanying bundle, a Supplementary Rule 7(1) Statement dated 25<sup>th</sup> September 2009 with accompanying bundle, the statement of James Alan James dated 14<sup>th</sup> January 2010 with exhibit, the statement of Jonathan Ure dated 14<sup>th</sup> January 2010 together with exhibits and the written submissions on behalf of the First and Second Respondent. There was also before the Tribunal a testimonial written by Mr Anthony Robert Bogan, principal of Bogan James who had taken over the business of Alan James & Co Limited.

#### **At the conclusion of the hearing the Tribunal made the following Orders:**

The Tribunal Orders that the Respondent, James Alun James of 20 Windsor Street, Uxbridge, Middlesex, UB8 1AB, solicitor, be Struck Off the Roll of Solicitors and they further Order that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £12,500 (on a joint and several basis), such order for costs not to be enforced without the leave of the Tribunal.

The Tribunal Orders that the Respondent, Jonathan Ure of 20 Windsor Street, Uxbridge, Middlesex, UB8 1AB, solicitor, be Struck Off the Roll of Solicitors and they further Order that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £12,500 (on a joint and several basis), such order for costs not to be enforced without the leave of the Tribunal.

#### **The facts are set out in paragraphs 1 - 27 hereunder:**

1. The First Respondent, James Alun James, born in 1947, was admitted as a solicitor in 1995 and his name remains on the Roll of Solicitors.
2. The Second Respondent, Jonathan Ure, born in 1948, was admitted as a solicitor in 1980 and his name remains on the Roll of Solciitors.
3. At all material times the Respondents practised in partnership under the style of Alun James & Co ("the Firm") at 20 Windsor Street, Uxbridge, Middlesex, UB8 1AB.

#### Allegation 1

4. The Second Respondent acted for the vendor of a property and Humphrey Williams Solicitors acted for the purchasers.

5. The Second Respondent gave an undertaking to clear all service charge arrears, ground rent and other charges owed to the landlord at the date of completion.
6. Completion took place on 13<sup>th</sup> February 2008 and the Second Respondent had still not complied with the undertaking by 18<sup>th</sup> August 2008 when a complaint was made to the SRA.
7. The SRA wrote to the Second Respondent for an explanation on 16<sup>th</sup> September 2008. He replied on 18<sup>th</sup> October 2008 claiming that the undertaking would be complied with. The undertaking remained unsatisfied.

#### Allegation 2

8. The First Respondent acted for the vendors of a property and Deibel & Allen Solicitors acted for the purchasers. Completion took place on 23<sup>rd</sup> March 2007.
9. The First Respondent gave an undertaking to discharge all existing mortgages and charges on the property.
10. The First Respondent failed to comply with the terms of that undertaking and on 17<sup>th</sup> October 2007 the purchaser's solicitors complained to the SRA.
11. The SRA wrote to the Second Respondent on 22<sup>nd</sup> February 2008.
12. They replied by letters dated 18<sup>th</sup> February 2008, 21<sup>st</sup> March 2008 and 11<sup>th</sup> September 2008. The undertaking remained unsatisfied.

#### Allegation 3

13. The Firm acted for the vendors of a property and Cook Taylor Woodhouse Solicitors acted for the purchaser. An undertaking was given to discharge a mortgage in favour of the Bank of Scotland and to provide evidence of that discharge. Completion took place on 14<sup>th</sup> September 2007 and the Firm had not complied with the undertaking by 16<sup>th</sup> January 2008 when a complaint was made to the SRA.
14. The SRA wrote to the Second Respondent for an explanation on 7<sup>th</sup> February and 7<sup>th</sup> March 2008. He replied on 25<sup>th</sup> February 2008 and 28<sup>th</sup> March 2008.
15. The mortgage was eventually discharged on or around 29<sup>th</sup> March 2008 and registration of the purchase was completed.
16. However, the purchaser's solicitors then became aware that the Firm had failed to discharge the service charge arrears and ground rent on the property despite having given an undertaking to that effect.
17. The matter was reported to the SRA and the SRA wrote to the Respondents for an explanation on 28<sup>th</sup> May 2008. The Respondents replied on 29<sup>th</sup> June 2008 and had still not complied with the undertaking by that date. The undertaking remained unsatisfied.

Allegation 4

18. The First Respondent acted for the vendor of a property and Property Law Partners acted for the purchasers. The First Respondent gave an undertaking on 10<sup>th</sup> August 2006 to discharge the amount payable under the charging order and arranged for its removal.
19. The undertaking had not been complied with by 16<sup>th</sup> May 2008 when a complaint was made to the SRA.
20. The SRA wrote to the Respondents for an explanation on 14<sup>th</sup> July 2008 and replied by letter dated 8<sup>th</sup> August 2008. The undertaking was eventually complied with on or around 13<sup>th</sup> July 2008.

Allegation 5

21. The Respondents acted for the purchaser of three apartments in Byfleet and a flat in Woking ("the transactions").
22. On 11<sup>th</sup> July 2007 Cobbetts LLP Solicitors ("Cobbetts") wrote to the Respondents on behalf of Mortgage Express Limited requiring disclosure of various files relating to the transactions. Further correspondence took place between Cobbetts and the Firm but the files were not disclosed.
23. On 11<sup>th</sup> February 2008 Cobbetts obtained an Order from Uxbridge County Court (dated 19<sup>th</sup> February 2008) requiring pre-action disclosure within 14 days of the conveyancing file and various other documents.
24. Cobbetts wrote to the Firm on 14<sup>th</sup> February 2008 confirming the content of the Order and thereafter requesting their compliance with the Order.
25. The Respondents failed to comply with the Order and consequently were reported to the SRA by Cobbetts on 3<sup>rd</sup> October 2008.
26. The Respondents wrote to the Legal Complaints Service on 26<sup>th</sup> November 2008 confirming that the files had by then been sent to Cobbetts.
27. An explanation was sought from the Respondents on 20<sup>th</sup> February 2009 and 12<sup>th</sup> March 2009. They responded by letter dated 24<sup>th</sup> March 2009.

**The submissions of the Applicant**

28. It was common ground that the allegations were all admitted by both of the Respondents.
29. No evidence had been supplied to the Applicant that the undertaking, the subject of allegation (1) had been satisfied and from the Applicant's point of view it therefore remained unsatisfied. Similarly, the undertakings the subjects of allegations (2) and (3) appeared to be unsatisfied. The undertaking the subject of allegation (4) had now

been satisfied some two years after it had been given. It was the SRA's case that these allegations represented very serious misconduct by the Respondents, indeed it was at the top end of the scale. The giving and receiving of undertakings was the bedrock of a conveyancing practice and any failure by a solicitor to perform his obligations under an undertaking led to difficulties for the profession and the public. There had been a nine month delay in providing disclosure under the Court Order which should have happened within 14 days of the Order. This breach was also a very serious matter as it should have been dealt with in an expeditious and professional manner and, from the evidence, it was clear that that had not happened.

30. Costs were requested in the sum of £12,500.

### **The submissions of the Respondents**

31. Only one undertaking had not now been discharged and this was being dealt with by insurers.
32. It was submitted that the root cause of these allegations and the earlier allegations were the increased financial pressures that both the First and Second Respondents were under. Their business had suffered severe financial problems caused by a downturn in the conveyancing market and the Firm had gone into liquidation and was now being transferred to the business of Bogan James. They had made mistakes which they had admitted. They were deeply ashamed and apologised to the Tribunal that they found themselves before it again.
33. In relation to the first undertaking, the subject of allegation (1), they had made a mistake and had not held back sufficient from the proceeds of sale to comply with the undertaking to clear all service charge arrears, ground rent and any outgoings due to the landlord and owing by the seller up to and including the date of completion. They had had to raise the funds to comply with the undertaking from their own resources and this had proved difficult and had meant there was some delay before they had found themselves able to comply with the undertaking given.
34. In relation to allegation (2), it transpired that the information provided by the mortgagee had been incorrect as the mortgagee had overlooked a sum of just over £9,000 relating to a personal loan when giving the redemption figure. They had subsequently been unable to recover these funds from their client and were accordingly left with the responsibility for clearing the third charge on the property. It had proved extremely difficult to raise the finance required and the matter was reported to the Respondents' insurers who were dealing with the claim.
35. Allegation (3) related to an undertaking given to redeem a mortgage and a further undertaking to discharge arrears of ground rent and service charges. This further undertaking was given by a former employee of the Firm who had also made an error when calculating the settlement funds to redeem the mortgage. The Respondents had made strenuous but unsuccessful attempts to recover the shortfall from the client and as a consequence had had to make the payment themselves. They had been informed by their client that the service charges were being dealt with directly between him and the buyer of the property. Despite the fact that they had been left out of funds by

their client they had recognised their obligations and had experienced considerable financial difficulties whilst raising the money and complying with the undertaking.

36. Again, in relation to allegation (4) the Respondents had found themselves in difficulties complying with the undertakings given and had attempted to correspond with the SRA in a timely fashion concerning the undertaking.
37. The Respondents had requested a meeting with the SRA so that matters could be discussed and resolved. However, no help had been forthcoming from the SRA and it was respectfully suggested that, in regard to these matters, the SRA had not fulfilled its role so far as the Respondents were concerned. It was the Respondents' belief that they would not have found themselves before the Tribunal today had the SRA provided them with the help and guidance that was clearly necessary.
38. The Tribunal was asked to exercise clemency towards the Respondents and that they be allowed to continue in practice, albeit subject to appropriate conditions, particularly now that they were the subject of supervision by Mr Bogan and given that there was a role they could play in helping Mr Bogan to consolidate and then grow the business of his new firm. Mr Bogan had provided a testimonial to the Tribunal speaking well of both of the Respondents and indicating the support and supervision he could offer to them in his new firm.
39. Both Respondents were deeply ashamed of what had occurred in this case. It was admittedly the second time in a short period that they had appeared before the Tribunal for similar offences. However, between them they had some 75 years of legal experience and it was submitted on their behalf that there was one overwhelming operating factor in this case and that was the financial difficulty in which they had found themselves.
40. The Respondents were not and had not been dishonest, indeed no dishonesty had been alleged against them. Neither had they been wilfully negligent. They had made mistakes and had admitted them. They accepted that when considering sanction only part of the Tribunal's function was to penalise or deter, the fundamental purpose being to maintain the reputation of the profession (Bolton v the Law Society [1994] 2 AU ER 486). However in this case, there were mitigating factors surrounding the allegations and the Tribunal was asked respectfully to allow the Respondents to continue in practise.

### **The decision of the Tribunal**

41. The Tribunal found all of the allegations before it proved, indeed they had not been contested.

### **Previous Findings of the Tribunal**

42. The Respondents had appeared before the Tribunal on two previous occasions. On 7<sup>th</sup> February 2002 they had appeared for accounting breaches and a conflict of interest contrary to Principle 15.04 of the Guide to the Professional Conduct of Solicitors by the Second Respondent. Consequently there was also an allegation against each of them of bringing the profession into disrepute and being guilty of conduct unbecom- ing

a solicitor. These matters had been proved and the First Respondent had been ordered to pay a fine of £2,000 and the Second Respondent, a fine of £3,000.

43. On 22<sup>nd</sup> January 2008 both of the Respondents appeared before the Tribunal on allegations which were very similar to those before the Tribunal today. The First Respondent had been ordered to pay a fine of £5,000 and the Second Respondent a fine of £4,000, all of the allegations heard being admitted.

#### **The further submissions of the Respondents**

44. The Applicant had asked for costs in the sum of £12,500. However in the Respondents' submission their means should be taken into account both with regard to penalty and costs. In that regard the cases of Merrick v the Law Society [2007] EWHC 2997 (Admin) and D'Souza v The Law Society [2009] EWHC 2193 (Admin) should be taken into account. The Respondents' financial situation was dire and they had no capital. If the Respondents were to be suspended or struck off then they would have lost their livelihood and it would be extremely difficult for them to find alternative employment given their ages. The Respondents therefore ask that any costs order be made at a level consistent with their ability to pay following the principles in Merrick and D'Souza.

#### **The Findings of the Tribunal and its reasons**

45. There had been an absence of any dishonesty in this case but the failure to comply with the undertakings given and the failure to respond to the Court Order had led to considerable disruption and distress.
46. A fine would not be appropriate in this case since both of the Respondents had been fined on a previous occasion for almost the same allegations as were before the Tribunal today. The system of undertakings used by the profession was key to the smooth running of a conveyancing practice and was therefore of great importance to the profession. In addition both the Respondents had shown a reckless disregard for a Court Order.
47. The allegations were serious and concerned more than one matter. This was the third time that the Respondents had been before the Tribunal and in the Tribunal's view their actions had been likely to bring both themselves and the profession into serious disrepute. Whilst everything that had been presented and said to the Tribunal today had been most carefully considered, including the mitigation given on behalf of the Respondents, in this case a striking off order would be appropriate to protect the public and the reputation of the profession. Having listened to the financial circumstances of both of the Respondents a costs order would be made but on the basis that it was not to be enforced without leave of the Tribunal.
48. The Tribunal Ordered that the Respondent, James Alun James of 20 Windsor Street, Uxbridge, Middlesex, UB8 1AB, solicitor, be Struck Off the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £12,500 (on a joint and several basis), such order for costs not to be enforced without the leave of the Tribunal.

49. The Tribunal Ordered that the Respondent, Jonathan Ure of 20 Windsor Street, Uxbridge, Middlesex, UB8 1AB, solicitor, be Struck Off the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £12,500 (on a joint and several basis), such order for costs not to be enforced without the leave of the Tribunal.

Dated this 13<sup>th</sup> day of April 2010  
on behalf of the Tribunal

N Pearson  
Chairman