

**THE SOLICITORS (SCOTLAND) ACT 1980
THE SCOTTISH SOLICITORS' DISCIPLINE TRIBUNAL
(PROCEDURE RULES 2008)**

INTERLOCUTOR

in Complaint

by

THE COUNCIL OF THE LAW SOCIETY OF
SCOTLAND, Atria One, 44 Morrison Street,
Edinburgh

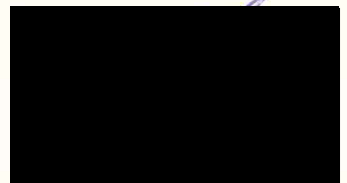
Complainers

against

JOHN JAMES RANKIN HODGE, Wallace
Hodge & Co Limited, 6 Killoch Place, Ayr

Respondent

Edinburgh, 21 August 2019. The Tribunal having heard submissions in relation to the Complaint at the instance of the Council of the Law Society of Scotland against John James Rankin Hodge, Wallace Hodge & Co Limited, 6 Killoch Place, Ayr; Repels the plea to the relevancy contained within paragraph 8 of the Answers; Fixes a hearing for 19 November 2019 at 10am; and Reserves all questions of publicity and expenses to the conclusion of the case.



**Kenneth Paterson
Vice Chair**

NOTE

This case first called for a procedural hearing on 16 May 2019. On the Respondent's motion, the Tribunal fixed a preliminary hearing on 21 August 2019 to debate the Respondent's preliminary plea contained with Answer 8, namely that,

“The Complainer has not relevantly averred grounds upon which the Tribunal may find that the Respondent has been guilty of professional misconduct.”

As directed by the Tribunal, parties lodged Notes of Argument prior to the preliminary hearing.

On 21 August 2019, the Complainers were represented by their Fiscal, Elaine Crawford, Solicitor, Edinburgh. The Respondent was not present but was represented by Norman Fraser, Solicitor, Ayr. The Tribunal had before it the Complaint, Answers, two Notes of Argument and an Inventory of Productions for the Respondent. Both Ms Crawford and Mr Fraser made submissions broadly in line with their Notes of Argument.

The Respondent invited the Tribunal to dismiss the Complaint on the grounds that the Complainers had not relevantly averred grounds upon which the Tribunal could make a finding of professional misconduct. Further detail was given in the Respondent's Note of Argument and Mr Fraser's submissions. He also referred to the documents in the Inventory of Productions for the Respondent. The Respondent objected to the Complainers' reliance upon extraneous documents without incorporating them into the Complaint. The Respondent claimed the Complaint did not sufficiently link the averments of fact to the averments of misconduct. The Respondent also claimed that Rule B2.1.7 did not apply because the Complainers did not seek to aver that the Secondary Complainer was a party to a transaction or prospective transaction. The Respondent questioned how the averments of professional misconduct could amount to a lack of honesty or integrity on the facts. The Respondent also claimed that the Complaint did not put the Respondent's conduct in context.

The Complainers did not accept that the Complaint was irrelevant and lacking in specification. The Fiscal submitted that the documents referred to in the Complaint were properly identified in accordance with usual civil court practice. She explained how the Complaint was laid out and contended that the averments of misconduct were supported by the averments of fact and duty.

She disagreed with the Respondent's interpretation of Rule B2.1.7 and argued that it did have application. The Complainers' position was that the facts could support a finding of dishonesty or lack of integrity. She suggested that the Respondent could give context to the Complaint in his Answers.

The Tribunal gave careful consideration to the parties' submissions. It proceeded on the basis that an action should not be dismissed as irrelevant unless it must necessarily fail even if all of the averments are proved (Jamieson-v-Jamieson 1952 SC(HL) 44). The Complainers' case was therefore to be taken at its highest. It also had regard to the principle that a Record should be looked at broadly with a view to ascertaining whether the Respondent has been given fair notice of the allegations against him (McNememy-v-James Dougall & Sons Limited 1960 SLT (Notes) 84). The Complaint should disclose a position in fact and law which requires or justifies the allegation of professional misconduct (MacPhail's "Sheriff Court Practice", paragraph 9.3).

The Tribunal considered each of the Respondent's issues in turn. It was of the view that in line with normal civil practice as described in MacPhail's "Sheriff Court Practice" paragraph 9.67, the Complaint referred to documents which were to be produced and their critical provisions were quoted in the averments. The Tribunal was satisfied that this style gave fair notice of the facts to the Respondent. He also produced many of these documents in the Inventory of Productions for the Respondent lodged for the preliminary hearing.

The Tribunal was content that the Complaint followed the usual style of Complaint to the Tribunal. A statement of facts was followed by averments of duty and misconduct. It was satisfied that the first averment of misconduct was supported by the facts averred in paragraphs 4.1 to 4.7; the second averment of misconduct was supported by the facts averred at 4.8 to 4.23; the third averment of misconduct was supported by the facts averred at 4.24 to 4.30; and the fourth averment of misconduct was supported by the facts averred at 4.31 to 4.34.

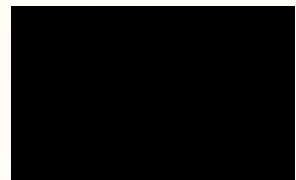
The Tribunal rejected Mr Fraser's contention that Rule B2.1.7 was not applicable. The discharge of the security and the sale of the property for which the discharge was required were both "transactions". On the facts averred in the Complaint and supported by the copy of the standard security produced for the debate, the Secondary Complainer was a party to the standard security

and its discharge. She was unrepresented. The Tribunal was therefore satisfied that the Rule applied in these circumstances.

The Tribunal considered carefully the Respondent's submissions regarding honesty and integrity. It will be for the Tribunal hearing the evidence to ascertain whether the Respondent failed in his duties under Rule B1.2. It is not a matter for debate. However, at this stage, the Tribunal was satisfied that the Complaint set out a case to answer. Attempting to exclude professional liability or a complaint about professional services or conduct in these circumstances is capable of raising questions of integrity and honesty. Therefore, this matter should be admitted to probation.

The context of the Respondent's conduct can be raised in the Answers. The Respondent can lead evidence in support of this at a hearing if so advised.

Therefore, having considered all the points raised in the Respondent's Note of Argument, the Tribunal repelled the plea to the relevancy and reserved all questions of publicity and expenses to the conclusion of the case. A hearing was fixed for 19 November 2019 at 10am. During the debate, the Fiscal had moved an amendment to the Complaint. The Tribunal made no decision on this motion and suggested that it be renewed at the next hearing once the Respondent has had an opportunity to consider it.



Kenneth Paterson
Vice Chair