

ST.KITTS-NEVIS

IN THE COURT OF APPEAL

CIVIL APPEAL NO.5 OF 1991

1. **ALCEO ZULIANI**
2. **TRANSAMERICA INVES (ST.KITTS) LTD**
3. **THE ROYAL ST.KITTS CASINO LTD.**

Appellants

and

VERNON S.VEIRA

Respondent

Before: The Honourable Sir Lascelles Robotham - Chief Justice
The Honourable Mr. Justice D.Byron J.A.,
The Honourable Miss Justice M.Joseph J.A.(Acting).

Appearances: George Newman Q.C., T.Byron, and H. Browne, for the
Appellants
Time Kendall Q.C., L.Moore, E.Ferdinand, for the
Respondent.

1991: October 7,8,
1992: March 23.

JUDGMENT

BYRON J.A.

This action was by the respondent, a solicitor, for the recovery of sums due on a Bill of Costs for work done between 1983 and 1988. In the statement of claim the three appellants were alleged to be jointly liable on the said Bill of Costs.

On 3rd April, Singh J. gave judgment against each appellant, severally, for items on the bill and ordered that these items be taxed by the Registrar of the High Court on the delivery of individual bills to be filed by the respondent with the Registry of the Court.

Background Facts:

The respondent qualified as a lawyer in 1983 and returned to St.Kitts. Before he was enrolled as a Barrister and solicitor in accordance with the law he was engaged as personnel manager of the Royal St.Kitts hotel and Casino.

The First-named appellant dealt with the respondent on behalf of himself and the other appellants.

In October 1983 to May 1985 the first-named appellant on his own behalf, on behalf of the second-named appellant and Transamerica Invest Inc. a Cayman Corporation, retained the Respondent as corporate counsel at a monthly retainer of \$3000.00. The trial judge found as a fact that the third-named appellant was not incorporated until 30th September 1987.

The trial judge found that the respondent performed services not included in the retainer agreement which could be briefly and partially summarised as :

1) Conveyancing:

- i) in relation to a transfer of title of a 16.9 acre parcel on which the first appellant was operating the Royal St.Kitts Hotel and Casino from the first appellant, to a Cayman Corporation and then to the 2nd appellant;
- ii) in relation to transfer of title of a 3.4 acre parcel from the Frigate Bay Development Corporation to the first appellant, then to the second appellant;
- iii) in relation to transferring and amalgating transfers of land from the first and second appellant in one title in favour of the third appellant.

2) Mortgage financing

- i) in relation to preparation of a debenture for a loan which in the end was not advanced;
- ii) in relation to writing opinions and vetting caveats for registration, and removing caveats for the second appellant;

3) Consultations, and disbursement for telephone calls and photocopying.

It is a matter of some significance that the first appellant was the signatory for the other appellants on all the conveyancing documents, and there were some he signed on behalf of both the

transferer and transferee. The relationship between the parties eventually deteriorated and the judge found that the first-named appellant asked the respondent to submit a bill which was done.

In **Misc. Suit No.2 1989** the Court after full argument by the appellants and respondent dismissed the respondent's application to have the bill of costs taxed in relation to the above matters.

The respondent then brought these proceedings.

The Relevant Statutes:

The **West Indies Associated States Supreme Court (Saint Christopher, Nevis And Anguilla) Act, 1975 No.17 of 1975**

section 78 prescribes:

"Subject to the rules of court, the law and practice relating to solicitors, and the taxation and recovery of costs in force in England shall extend to and be in force in the state and apply to all persons lawfully practicing therein as solicitors of the court."

It was generally accepted that this provision was effective to enact in St.Kitts the law currently in force in England on this subject being **The Solicitors Act 1974** and the **Solicitors Remuneration Order 1972 S.I. 1972 No. 1139**. These provisions have to be read with the **Rules of the supreme Court Order 62**. The provisions of these acts which are relevant to this appeal are:

The Solicitors Act 1974 section 69:

"(1) Subject to the provisions of this Act, no action shall be brought to recover any costs due to a solicitor before the expiration of one month from the date on which bill of those costs is delivered in accordance with the requirements mentioned in subsection (2);

(2) The requirements referred to in the subsection (1) are that the bill:

- (a) must be signed by the solicitor, or if the costs are due to a firm, by one of the partners of that firm, either in his own name or in the name of the firm or be enclosed in or accompanied by, a letter which is so signed and refers to the bill; and
- (b) must be delivered to the party to be charged with the bill, either personally or by being sent to him by post to, or left for him at, his place of business, dwelling-house, or last known place of abode; and

where a bill is proved to have been delivered in compliance with those requirements, it shall not be necessary in the first instance for the solicitor to prove the contents of the bill and it shall be presumed, until the contrary is shown, to be a bill bona fide complying with this Act."

The Solicitors' Remuneration Order 1972 section 3 (2):

"Before the solicitor brings proceedings to recover costs on a bill for non-contentious business he must, unless the costs have been taxed, have informed the client in writing:

- (i) of his right under paragraph (1) of this article to require the solicitor to obtain a certificate from The Law Society; and
- (ii) of the provisions of the Solicitors Act 1974 relating to taxation of costs."

The Appeal:

The appellants contend that the respondent was in breach of conditions precedent to commencing these proceedings in that:

1. He failed to deliver the Bill of Costs to the parties to be charged in accordance with section 69 of the Solicitors Act 1974 and accordingly, the judge should have dismissed the action on the original bill rather than give judgment on bills to be served as a result of his order.

2. The respondent failed to inform the appellants in writing of their right to require the respondent to obtain a certificate from the Law Society and/or of the provisions of the Solicitors Act relating to the taxation of costs in accordance with the Solicitors Remuneration Order 1972 section 3(2) (i) and (ii) and accordingly the action should have been dismissed for his failure to comply with these mandatory provisions of the legislation.

1. Delivery:

- A. Counsel for the appellants submitted that the bill was delivered to the first appellant only, and not the other two appellants, and under the statutes delivery to each appellant was mandatory and it was the duty of the court to rule in favour of the appellants on this issue because there was no evidence that there was delivery in accordance with the provisions of the statute.

Questions of service of documents are questions of fact. A court is entitled to make findings of fact in accordance with admissions in the pleadings.

In this case the statement of claim alleged in paragraph 1: "...The respondent duly performed the work and services and incurred the disbursements itemized in his Bill dated 11th July, 1988 to the defendants which said bill was signed by the respondent and delivered along with a covering letter on the 12th day of July, 1988 to the first-named defendant in his own behalf and also as principal officer of the second-named and third-named defendants."

The three appellants who entered a joint defence pleaded to that allegation as follows:

Para.1:

"The defendants admit that they received a bill dated 11th July, 1988 but deny that they are in any way indebted to the Plaintiff."

Despite the ingenuity of counsel's argument that there is a difference between the requirements of the law to deliver the bill in a particular way and an admission that the bill was received which does not necessarily connote that the receipt was in circumstances which complied with the statutory provisions the specific pleadings as to the delivery and receipt of the bill could only bear the meaning that the appellants admitted that the bill had been delivered to each of them.

In any event the facts found by the trial judge including the way in which the two companies traded through the first-named appellant and the fact that this very bill had previously been the subject of proceedings in the High Court for an order for its taxation indicate that the bill was delivered to all three appellants. I would therefore reject this argument.

B. Counsel for the appellant also challenged the delivery on the ground that the bill was defective and was therefore incapable of being delivered in accordance with the statutory provisions. He argued that -

- i) The bill was not sufficiently detailed.
- ii) By alleging that the appellants were jointly liable on the bill the respondent wrongly alleged that each was liable for all the work when that was not so resulting in the defect that the bill did not show for whom the work was done or who was to be charged for it.
- iii) The bill contained an illegal charge in that the respondent charged for work as a solicitor when he was not entitled to do so in accordance with **section 77** of the **West Indies Associated States Supreme Court (Saint Christopher, Nevis and Anguilla) Act, 1975 No.17 of 1975.**

1.B.(i) Itemization of Bill

The appellants argued that the bill was defective because of inadequate details. I thought that as a matter of fact this argument was untenable. On a perusal of the bill it set out in a specific manner the work for which charges had been made except for two items namely fifteen hours spent with client and telephone calls and photocopying. In my view the items were sufficiently specific for the appellants to know whether they objected to the charges and to require further details if they wished.

In any event the pleadings indicated that the appellants were not embarrassed by any inadequacy of details because they pleaded to the bill with some degree of particularity. The bill satisfied the test of being capable of putting the appellants in a position to be advised as to their liabilities on it. It was mostly for conveyancing and commercial work and the services alleged were particularised.

1. B. (ii) Joint Liability

The bill was addressed to the three appellants and the statement of claim in paragraph 1 alleged that the respondent claimed from the appellants jointly.

It was the appellants contention that the bill was bad because it did not indicate who was liable for what and because the way it was presented involved the allegation that each of the persons to whom it was addressed was liable for each item. And that this false allegation was compounded in the pleadings by the plea that the liability was joint.

The trial judge found that the liability was in fact several and in his judgement reflected that finding by giving judgement against the appellants individually for the specific items on the bill that related to them.

As we have seen on the facts and the law, and I think it is fair to say that it was conceded, the respondent was wrong to have proceeded as if the liability was joint when it was clearly several. The issue for us is to determine what effect that should have.

West Indies Associated States Supreme Court (Saint Christopher, Nevis and Anguilla) Act, 1975, No.17 of 1975, section 20 prescribes:-

"The High Court and the Court of Appeal respectively in the exercise of the jurisdiction vested in them by this Act shall in every cause or matter pending before the court grant either absolutely or on such terms and conditions as the Court think just, all such remedies whatsoever as any of the parties thereto may appear to be entitled to in respect of any legal or equitable claim or matter so that, as far as possible, all matters in controversy between the parties may be completely and finally determined, and all multiplicity of legal proceedings concerning any of these matters avoided."

In my view Section 20 gives the court power to make orders to avoid the need for the respondent to bring back these proceedings particularly as the court has already found liability.

In this case the trial judge found that the solicitor had done the work he alleged and that he had not been paid for it. There was evidence to support that finding. The statute of limitations has not yet run. The defaults of the respondent have been of a technical nature and do not carry the taint of dishonesty. If there was any excess in the charge it can be rectified on the taxation of the costs. None of the wrongs that this respondent has been guilty of go to liability. They have been of a procedural nature or obvious default of pleading which did not prejudice the appellant. This writ could be brought again.

As a matter of jurisdiction the law clearly gives the Court power to allow a solicitor to withdraw a bill and deliver a fresh one where he has acted honestly and merits assistance. The evidence adduced in this case would certainly have permitted a judge to make such an order on a proper application.

In **Chappell v Mehta**(1981) 1 All ER 349 Lawton L.J said at 351:

"If there is any doubt about the jurisdiction of the court it is dissipated by the judgment of Uthwatt J. in **Re A Solicitor** (1943) 1 All ER 157...

The Learned Judge there said ...at 158:

"There is undoubtedly jurisdiction in the court to allow a solicitor to withdraw a bill and to deliver a fresh one. There are old authorities to that effect, and recently the Court of Appeal, in **Peter Thomas & Co. v Smith** (unreported, 2nd May 1932), exercised that power in circumstances which, so far as can be gathered from the only available material, were exceedingly like those of the present case."

In **Polak and Another v Winchester (Marchioness)** 1956 2 All ER 660, Jenkins L.J. at 666:

" In my judgment provided the court is satisfied that the case is one in which the solicitor concerned has acted honestly and merits assistance in the matter, the inherent jurisdiction extends to the withdrawal of a bill already delivered containing, as in the present case, disbursements in respect of counsel's fees which had not then actually been paid."

In this case the solicitor had not applied for the leave of the court to withdraw and substitute the new bill. However on the facts of the case it was clear that counsel for the appellant overstated his argument when he urged that the judge had thrown away the bill that the solicitor had originally submitted and given judgment on a new bill. What the judge did was to apportion

liability on the items of the bill between the defendants as he was entitled to do.

In these circumstances this Court should invoke section 20 of the Supreme Court Act and allow the order of the trial judge to stand as in effect, it allows the respondent to withdraw his original bill and submit fresh ones, which is a remedy to which he appeared to have been entitled.

1.B.(iii) Illegality

Section 77 of the West Indies Associated States Supreme Court (Saint Christopher, Nevis and Anguilla) Act, 1975 No.17 of 1975 provides:

" Every person who, not being enrolled as a barrister or solicitor, or otherwise lawfully authorized shall, either directly or indirectly for, or in expectation of any fee, gain or reward, draw or prepare any legal document or shall receive any fee gain or reward for drawing or preparing any such document, shall be liable on summary conviction to a fine not exceeding one hundred dollars."

It was admitted that the respondent did conveyancing work before he became enrolled under Section 77 of the Supreme Court Act. This work was charged for as "item 1" on the Bill of Costs and the fees involved were close to a quarter of the entire bill.

The trial judge severed this item from the bill. Counsel for the appellants submit that the whole bill should have been declared null and void because of this illegal charge.

Another point on illegality is that there were items on the bill which charged fees for services rendered under the Title by Registration Act, Cap. 279 that exceeded the statutory tariff. These tariffs were established in the last century and not updated by the rule making authorities.

The order of the trial judge for the taxation of the Bill of Costs by the Registrar now imposes on the Registrar the duty to award appropriate fees for the services rendered. But Counsel for the appellants submit that the whole bill should be struck down because of these defects.

It was submitted that these insertions into the bill made it an illegal bill and that therefore it could not support any legal liability. In my view this argument is untenable. Item #1 is severable from the rest of the bill. There is no doubt that the appellants received the benefit of the services. The respondent is debarred from collecting his fees for those services which he performed before his call. It was conceded by counsel for the appellants and found by the trial judge that the error was not caused by any dishonest motive. The appellants did get the benefit of the services and having benefitted from the ruling that they do not have to pay for them I can see no reason why they should obtain the additional benefit of not paying for all the other services they received as well.

The interests of the appellants and the duty of the court in seeing to the discipline of legal practitioners were both adequately served by the order that the solicitor be not entitled to receive fees for this service.

As for the charges in excess of the statutory scale this is a matter well suited for assessment by the taxing master. I feel that it is appropriate to comment that the scale is outdated as there have been no amendments for over 90 years and the prescribed remuneration does not represent a fair charge for the services to be rendered.

2. It was also argued that what the appellants received was not a proper bill of costs because of the following defects.

- A. The respondent did not inform the appellant in writing of the right to obtain a certificate from the Law Society.
- B. The respondent did not inform the appellant in writing of the provisions of the Solicitors Act 1974 relating to taxation of costs.

A. Failure to inform of right to obtain certificate from Law Society.

There is no Law Society or other institution in St. Kitts performing the function of a Law Society. It is therefore impossible for a certificate to be obtained from the Law Society. It would therefore seem to me that the requirement to inform the client of such a right has no meaning and cannot be enforced. The omission to give this information therefore cannot invalidate the bill.

This highlights a serious drawback to the practice of importing wholesale the "law and practice" of another country on any given subject. England has institutions and traditions which support the law and practice relating to solicitors which do not exist in St. Kitts.

Although in situations like this the court cannot legislate, it cannot blind itself to the real and practical situation that exists locally and must apply the law with common sense.

2. B Notice Re: Taxation of Costs

The appellant submitted that the effect of section 3(2) of the Solicitors Remuneration Order was that the solicitor could not issue a writ of action to recover his costs until he had given written notice of the appellants' right to tax the costs and that the court should therefore dismiss this claim because a condition precedent to the commencement of action had not been performed.

However I cannot see that the protection which the legislation intended to be afforded to the appellant was in any adversely affected. If there was an omission it was a technical one of form. There is no doubt that the appellants were provided with an opportunity to have the bill taxed because the respondent actually commenced proceedings to have the bill taxed. It was the appellants who being represented by counsel took objection to the taxation of the bill on the ground that they were not liable on the bill. It would seem to smack of an awful injustice if the court having ruled on the request of the appellant that the bill should not be taxed because they were not liable on it, should then rule that subsequent action should be defeated when the respondent tries to establish liability on the same bill, because the appellant did not receive notice in writing of his right to have the bill taxed. In my view the documents issued in the legal proceedings for taxation of the bill must have clearly drawn the attention of the appellants to their legal position with regard to the taxation of that bill of costs. They took legal advice on the question and having successfully asserted an objection to the taxation of the said bill it would be inequitable for the appellants to be allowed to say they were not given notice of their right to have the bill taxed.

For the reasons given I would dismiss the appeal with costs fit for two counsel.

C.M.D.BYRON
Justice of Appeal

I concur.

SIR LASCELLES ROBOTHAM
Chief Justice.

I concur.

M. JOSEPH
Justice of Appeal (Ag.)