

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
IN THE HIGH COURT OF JUSTICE
(CIVIL)**

**GRENADA
CLAIM NO. GDAHCV 2008/0110
BETWEEN:**

**DORSET CHARLES
Trading as World Wide Watersports**

Claimant

AND

**Reynold C. Benjamin
Trading as R.C Benjamin & CO**

Defendant

Before:

The Hon. Mde Justice Agnes Actie

Appearances:-

Claimant in person

Defendant in person

2020: August 16th

JUDGMENT

[1] **ACTIE J:** This claim is of some vintage and the parties are both litigants in person. It is the evidence that on 25th April 1996, the claimant, Dorsett Charles engaged the defendant, Reynold Benjamin of the law firm R. C Benjamin & Co to represent him in a court claim number 477/1996 against the Government of Grenada to recover damages for the demolition of his premises and equipment.

[2] In 1997, Alleyne J gave judgment in favor of Mr. Charles and on appeal in 1998, the Court of Appeal ordered by consent that judgment be entered in favor of Mr. Charles in the sum of \$1,661,340.00 with costs in the sum of \$15,000.00.

- [3] It is Mr. Charles's evidence that to date he has not realized the fruits of his judgment from the Court of Appeal. However, it is the evidence and accepted by Mr. Benjamin that the Government paid the firm of R.C Benjamin & Co the sum of \$100,000.00 under the judgment debt.
- [4] Mr. Charles filed a statement of claim on 25th February 2008 and an amended claim on the 17th November 2008 against Reynold C. Benjamin, Trading as R.C Benjamin & Co for the sum of \$100,000.00 less \$9000.00 for the legal fees owed to the defendant. Mr. Charles presented a receipt dated 25th April 1996 representing legal fees for the sum of \$10,000.00 with a deposit payment of \$1000.00 and a balance of \$9000.00.
- [5] Mr. Benjamin in his defence and counter claim filed on December 4,2008 states that he represented Mr. Charles at the trial in the High Court and even before the trial on an interlocutory application for an injunction. Mr. Benjamin states that he obtained judgment in favor of Mr. Charles at the first instance and on appeal. Mr Benjamin states that he represented Mr. Charles on the appeal on the agreement that he would be paid a contingency fee of 20% of the damages recovered on behalf of Mr. Charles. Mr. Benjamin states that he is entitled to the sum of \$320,000.00 on the monetary judgment plus 20% of the money value of the 10,000.00 square feet of land under the judgment. Mr. Benjamin conceded receiving the sum of \$100,000.00 from the government and counterclaims for the remaining sum of \$220,000.00 plus interest under the contingency fee arrangement.
- [6] Mr. Benjamin at trial states that he had discussions with Mr. Charles about his inability to satisfy fees in the High Court claim in 1996. Mr. Benjamin outlines the various stages in the litigation including an application for an injunction followed by representation at the Court of Appeal for which he said would have increased the \$10,000.00 previously agreed.
- [7] Both in his evidence and at the trial, Mr. Benjamin intimated that the contingency fee agreement was initially made orally and was subsequently endorsed in writing and signed

by Mr. Charles on the back of the Court of Appeal consent order. Mr. Benjamin states that the said order was lost during hurricane Ivan.

[8] Mr. Charles admits that he is indebted to Mr. Benjamin in the sum of \$9000.00. Initially he said that he did not have discussions or made any arrangement for the additional fees. In cross-examination, Mr. Charles states that he remembered the mention of 20% but he vacillated when asked about the signing/ endorsement on the Court of Appeal order.

[9] Having heard the evidence, I accept Mr. Benjamin's evidence that the receipt dated 25th April 1996 for legal fees of \$10,000.00 was in relation to the High Court claim. The parties could not have contemplated an appeal in 1996 when the claim was filed and in any event the retainer would have expired at the completion of the trial at the High Court level. Any representation on appeal would have been on a new retainer arrangement.

[10] The only issue for determination is whether there was a contingency fee arrangement and if so whether the said arrangement is enforceable. As was indicated earlier, there is no evidence of such signed agreement.

[11] Having reviewed the evidence and heard the parties, I do not accept Mr. Benjamin's evidence that such an arrangement was endorsed on the court of appeal. It is incongruous that an Attorney-at-Law would have made such an informal arrangement in light of the fact the same client had failed to complete payment on the High Court fees. Any such arrangement in my view should have been expressed in writing in advance of the appeal. This would have given the client an opportunity to solicit independent advice or engage other counsel if necessary. This is the expected standard practice in keeping with the professional practice and etiquette of an Attorney- at- Law.

[12] Secondly, even if there was a contingency fee arrangement, there is a long established common law rule of professional conduct against contingency fees that forbids a solicitor from accepting payment for professional services on behalf of a claimant calculated as a proportion of the sum recovered from a defendant.

[13] A contingency fee, that is, an arrangement under which the legal advisers of a litigant shall be remunerated only in the event of the litigant succeeding in recovering money or other property in the action, has always been regarded as illegal under English law on the ground that it involves maintenance of the action by the legal adviser. Moreover, where, as is usual in such a case, the remuneration which the adviser is to receive is to be, or to be measured by, a proportion of the fund or of the value of the property recovered, the arrangement may fall within that particular class of maintenance called champerty¹.

[14] In **Wallersteiner v Moir (No 2)**² Lord Denning, then Master of the Rolls said,

'It may be worthwhile to indicate briefly the nature of the public policy question. It can, I think, be summarised in two statements; first in litigation a professional lawyer's role is to advise his client with a clear eye and an unbiased judgment; secondly, a solicitor retained to conduct litigation is not merely the agent and adviser to his client, but also an officer of the court, with a duty to the court to ensure that his client's case which he must of course present and conduct with the utmost of care of his client's interests, is also presented and conducted with scrupulous fairness and integrity. A barrister has similar obligations. A legal adviser who acquires a personal financial interest in the outcome of the litigation may obviously find himself in a situation in which that interest conflicts with those obligations.'

[15] Lord Denning MR also stated in **Trendtex Trading Corp v Credit Suisse** ³

"when the maintainer seeks to make a profit out of another man's action by taking the proceeds of it, or a part of them, for himself. Modern public policy condemns champerty in a lawyer whenever he seeks to recover not only his proper costs but

¹ Buckley LJ in *Wallersteiner v Moir* (NO 2) 1975 QB373:

² [1975] QB 373, at page 402

³ [1980] 3 All ER 721 at 741

also a portion of the damages for himself, *or when he conducts a case on the basis that he is to be paid if he wins but not if he loses.*"

[16] The English Court of Appeal in a more recent decision in **Morris v Southwark London Borough Council**⁴ held that:

common "where the allegedly champertous agreement was entered into with a person who was conducting the litigation or providing advocacy services, the law of champerty remained substantially unchanged as it was a clear requirement of public policy that officers of the court should be inhibited from putting themselves in a position where their own interests could conflict with their duties to the court;

[17] Applying the authorities to the facts, firstly I do not accept Mr. Benjamin's evidence that the agreement for payment of fees was endorsed on the Court of Appeal order and even if it was, is unenforceable. Mr. Benjamin as an Attorney-at-Law should have been well aware of the unenforceability of a contingency fee agreement. The law against contingency fees and champerty has its origins as a principle of public policy designed to protect the purity of justice and the interests of vulnerable litigants.

[18] I agree with Mr. Benjamin however that he is entitled to costs for representing Mr. Charles at the Court of Appeal. Mr. Benjamin's recourse at the time was to have applied to the court to have his costs taxed, which was the procedure prior to CPR 2000 when a client challenged costs. Until then Mr. Benjamin had no call on the monies due to Mr. Charles under the judgment. In the circumstances, Mr. Benjamin is to reimburse Mr. Charles the money received from the Government on his behalf.

[19] It is unfortunate that this matter is only now being determined in an excess of a decade since the filing of the claim in 2008. The new dispensation under the CPR 2000 requires

⁴ [2011] 2 All ER 240

an application for an assessment of reasonable costs taking into consideration the provisions of CPR 65.3.

ORDER

[20] In summary and for the foregoing reasons, it is ordered as follows

- (i) Judgment is entered in favor of Mr. Dorsette Charles on the claim in the sum of \$91,000.00 with interest at the rate of 6% from the date of filing the claim until payment in full with Prescribed Costs in the sum of \$13,650.00.
- (ii) The counter claim filed by Mr. Reynold Benjamin for the sum of \$220,000.00 stands dismissed with Prescribed Costs to Mr. Dorsette Charles in the sum of \$30,000.00.

Postscript

[21] Mr. Dorsett Charles states that he has not received any compensation from the Government of Grenada under the consent order for the sum of \$1,661,340.00 with costs of \$15,000.00 made by the Court of Appeal in 1998. The issue was not before the court for determination. It is for Mr. Charles to make his enquires at the appropriate government department.

Agnes Actie

High Court Judge

By the Court

Registrar