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Privy Council Appeal No. 34 of 1993

(1) Alceo Zuliani
(2) Transamericainvest (St. Kitts)
Limited and
(3) The Royal St. Kitts Casino Limited *Appellants*

v.

Vernon S. Veira *Respondent*

FROM

THE COURT OF APPEAL OF THE
EASTERN CARIBBEAN SUPREME COURT
(ST. CHRISTOPHER AND NEVIS)

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL, DELIVERED THE
16TH JUNE 1994

Present at the hearing:-

LORD TEMPLEMAN
LORD JAUNCEY OF TULLICHETTLE
LORD SLYNN OF HADLEY
LORD WOOLF
LORD NOLAN

[Delivered by Lord Nolan]

The appeals before their Lordships arise out of proceedings which were brought by the respondent against the appellants in the High Court of St. Christopher and Nevis on 7th November 1989. In those proceedings the respondent claimed from the appellants the sum of US\$286,411.99 as remuneration for legal services rendered by him to them. This sum was referred to in paragraph 1 of the respondent's statement of claim as the amount owed for work done as shown by the respondent's bill dated 11th July 1988.

The bill was headed "Vernon S. Veira LL.B. L.E.C., Barrister & Solicitor" and was sent from the respondent's Chambers in Basseterre, St. Kitts. It was addressed to the three appellants, and it covered a total of eleven separate items.

On 28th November 1989 the appellants served a defence disputing the substantial merits of the respondent's claim

on a number of grounds, and asserting that in so far as the respondent had done any work for them he had been duly paid therefor. The defence thus pleaded by the appellants was comprehensively and emphatically rejected by the trial judge, Satrohan Singh J., in the judgment which he gave on 25th March 1991. There has been no appeal against this part of his judgment.

The points relied upon by the appellants before the Court of Appeal of the Eastern Caribbean Supreme Court and before their Lordships were points of law which were not pleaded, but were raised at the outset of the hearing before the judge. They related to the form and to the delivery of the bill of costs dated 11th July 1988, upon which the respondent's statement of claim was based. In particular, it was contended on behalf of the appellants that the bill was defective in that it charged the appellants jointly in respect of all the items covered, whereas in truth it should have charged them severally in respect of individual items for which they were respectively responsible. The learned judge accepted this contention, but did not accept that it defeated the respondent's claim. He gave judgment for the respondent against the appellants severally in respect of ten of the eleven items. The appellants succeeded only to the extent that, as the respondent conceded in the course of his cross-examination, the first of the eleven items fell to be excluded because the services in question had been rendered before he qualified as a barrister and solicitor; and the fee charged for the ninth item fell to be reduced because it exceeded the maximum amount allowable by statute for the type of work carried out. The judge said:-

"I order that the plaintiff recover from these defendants with respect to their individual liabilities as found by me, such sums as may be found due to the plaintiff upon taxation by the Registrar of this Court of individual bills of costs to be filed by this plaintiff with the Registry of this Court. Such sums as are finally arrived at upon such taxation to be incorporated in this order as part of the Judgment of this Court."

The decision of the learned judge was upheld by the Court of Appeal on 23rd March 1992.

The question then arose whether the appellants were, as they contended, entitled as of right to appeal to Her Majesty in Council. This question turns upon section 99 of the Constitution of St. Christopher and Nevis which so far as material provides that:-

"(1) An appeal shall lie from decisions of the Court of Appeal to Her Majesty in Council as of right in the following cases -

- (a) final decisions in any civil proceedings where the matter in dispute on the appeal to Her Majesty in Council is of the prescribed value or upwards or where the appeal involves directly or indirectly a claim to or question respecting property or a right of the prescribed value or upwards;"

The "prescribed value" is EC\$5,000: see section 99(5).

The appellants contended that the respondent's claim, even after the reductions conceded by the respondent, amounted to many times the prescribed value, subject only to such items as might be disallowed on taxation. The Court of Appeal held, however, in a decision on 2nd October 1992, that since the amount of the judgment or the liability thereunder had not yet been determined it could not be asserted with certitude that the value of the matter in dispute on appeal exceeded the prescribed value. The court therefore refused the appellants' application for leave to appeal as of right. On 9th February 1993, however, the appellants were granted special leave to appeal against both of the decisions of the Court of Appeal.

As to the first of the two decisions, the relevant statutory provision is section 78 of the Eastern Caribbean Supreme Court (St. Christopher and Nevis) Act, 1975, which reads as follows:-

"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 practising therein as solicitors of the Court."

The English law thus incorporated by reference into the law of St. Kitts includes the Solicitors Act 1974 and the Solicitors' Remuneration Order 1972 S.I. 1972 No. 1139. Section 69 of the Act provides as follows:-

"(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 a bill of those costs is delivered in accordance with the requirements mentioned in sub-section (2);

(2) The requirements referred to in sub-section (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."

Article 3(2) of the Solicitors' Remuneration Order 1972 provides that:-

"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 1957 relating to taxation of costs."

As Byron J.A. pointed out at the first Court of Appeal hearing, the provisions of Article 3(2) (i) are unenforceable and of no effect in the present case because there is no Law Society or any other institute corresponding to the English Law Society in St. Kitts. It remains plain, however, and was common ground that the bill dated 11th July 1988 failed to satisfy the requirements of section 69(2) and Article 3(2) because in the first place, as has been mentioned, it was delivered to the three appellants jointly in respect of all the items which it covered whereas their liabilities were several; and secondly, the respondent had not informed the appellants in writing of the provisions of the Solicitors Act 1957 relating to the taxation of costs.

Mr. Newman Q.C., representing the appellants, submitted that a solicitor cannot be allowed to recover costs on the basis of a bill attended by such defects. Therefore, he submitted, the judge should have dismissed the respondent's claim without more ado.

This was, of course, the submission which had been put to the judge without success at the commencement of the hearing. After hearing the case on the merits, the judge established that, save for the concessions by the respondent already mentioned, the objections of the appellants to the respondent's charges were wholly without merit. The appellants were closely associated, but there was no difficulty in allocating the individual items between them severally. The appellants' complaint that they had not been advised in writing of their right to have the bill taxed was of a somewhat hollow nature, because the respondent had applied for the taxation of the bill at an earlier stage, an application which had been opposed, successfully and perfectly correctly, by the appellants themselves on the basis that liability was in issue and liability was a matter for the court, not for the taxing master. Mr. Newman frankly

and very properly conceded before their Lordships that if the judge had dismissed the respondent's action because of the bill's failure to comply with the statutory requirements the respondent could at once have delivered individual bills to the three appellants to which, on the basis of the judge's findings, they could have made no objection. It followed that the only substantial matter outstanding between the parties was the matter of costs.

Was the judge then precluded by the statutory provisions set out above from dealing with the matter as he did? In common with the Court of Appeal, their Lordships are satisfied that he was not, but that on the contrary he dealt with the matter in an entirely correct and appropriate way. The statutory provisions are of the greatest importance. They must be strictly enforced in the interests of justice both to solicitors and to their clients. But it by no means follows that an action brought on a bill which fails to satisfy one or more of the statutory requirements or which contains erroneous items must necessarily be dismissed without consideration of the merits. It has long been established that a court, confronted with a defective bill, is entitled to look into all the circumstances of the case and in appropriate cases to allow the solicitor to withdraw the bill and to deliver a fresh one: see, for example, *Chappell v. Mehta* [1981] 1 All.E.R. 349 per Lawton L.J. at pages 351-2, and the cases there cited. That is what the judge in the present case did. Mr. Newman complained that the respondent had made no application to withdraw his bill, nor delivered fresh bills to the appellants at the time of the judgment. That is hardly surprising, since the objection to the defects in the original bill had only been raised at the door of the court. Their Lordships agree, however, with the Court of Appeal that if this complaint raised any doubt about the power of the judge to act as he did, the doubt is dispelled by the provisions of section 20 of the Eastern Caribbean Supreme Court (St. Christopher and Nevis) Act, 1975, which provides that:-

"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 thinks 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."

The remedy to which the respondent was entitled in the present case was the recovery of the fees properly due to him from the appellants. The appellants were entitled to dispute the issue of liability in the proceedings before the judge, and in this they have substantially failed. Their

remaining entitlement is to receive individual bills of costs which can be submitted for taxation. This entitlement is affirmed by the judge's order. Thus, justice has been done in accordance with the statutory scheme.

Their Lordships will humbly advise Her Majesty to dismiss the appellants' appeal against the first decision of the Court of Appeal.

In the circumstances, the appeal against the second decision of the Court of Appeal is of no practical significance, but it raises a question of general importance. Again, in agreement with the Court of Appeal, their Lordships would answer the question in favour of the respondent. In providing that the automatic right of appeal should arise only where the matter in dispute was of the value of (or in excess of) a precise figure the legislature has chosen not to include an award of unliquidated damages. In the view of their Lordships this provision should be strictly construed. No doubt there will be many cases, of which the present is one, where it can be said as a matter of the utmost probability, or even of virtual certainty, that the damages ultimately awarded will be in excess of EC\$5,000, and in such cases the Court of Appeal may very well think it right, as general rule, to grant leave in the exercise of its discretion. Equally, however, there may be cases - and again the present case may serve as an example - where the likely amount of damages is at or above the statutory threshold, but which are so lacking in merit that the Court of Appeal in its discretion would refuse leave.

Accordingly, their Lordships will humbly advise Her Majesty that both appeals should be dismissed. The appellants must pay the costs of the respondent before their Lordships' Board.