6 pages.

ROYAL COURT

149

14th August, 1992

Before the Judicial Greffier

Between:	Jacques Pierre Labesse, Richard Arthur Falle, Steven Slater, John Le Cras Bisson and Linda Mary Williams exercising the profession of advocates and solicitors under the name and style of Bois Labesse	Plaintiffs
And:	Cherry Charlotte Pinson (by original action)	Defendant

AND

Between:	Cherry Charlotte Pinson	Plaintiff
And:	Jacques Pierre Labesse, Richard Arthur Falle, Steven Slater, John Le Cras Bisson and Linda Mary Williams exercising the profession of advocates and solicitors under the name and style of Bois Labesse (by counterclaim)	Defendants

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Application by the Plaintiffs in the original action (hereinafter referred to as the Plaintiffs) for a Judgment against the Defendant in the original action (hereinafter referred to as the Defendant) for their fees (except in so far as those fees were unreasonably incurred or are of an unreasonable amount) and this pursuant to Rule 6/17(4) of the Royal Court Rules, 1982, as amended.

Advocate R.G.S. Fielding for the Plaintiffs.
Advocate S.J. Habin for the Defendant.

JUDGMENT

JUDICIAL GREFFIER: This application arises in an action which has been brought by the Plaintiffs against the Defendant in relation to fees for legal advice and representation in relation to matrimonial proceedings. The Defendant has sought to defend the action and has brought a counterclaim and has alleged lack of due care, skill and diligence and negligence on the part of the Plaintiffs, partly by way of defence to the claim for fees and partly by way of counterclaim. It is clear that towards the end of 1990 the Plaintiffs ceased to act for the Defendant in relation to the matrimonial proceedings and that Messrs. Ogier & Le Cornu began to act for her and, in particular, Advocate Fitz. Paragraph 5 of the particulars of claim contains a reference to Messrs. Ogier & Le Cornu as being the subsequent legal advisers of the Defendant and this is admitted in the answer and counterclaim. On 10th December, 1990, Advocate Fitz, who was an advocate working for Messrs. Ogier & Le Cornu and who was dealing on behalf of that firm with the Defendant's matrimonial affairs, wrote a letter to Advocate Labesse, one of the partners of the Plaintiffs, which contained the following sentence -

> *"as you are not yet aware of the precise figures with regard to your costs I can only give you an undertaking from Mrs. Pinson that she will pay your reasonable costs but I fear this can only be when she finally receives her share of the capital from the Guest House."*

Advocate Fielding submitted that this undertaking, given by Advocate Fitz on behalf of Mrs. Pinson, was both an undertaking and also an admission of liability for the reasonable charges of the Plaintiffs and that accordingly I should give the Plaintiffs judgment for liability in relation to their fees with the quantification of the fees to be remitted to myself for taxation on an indemnity basis.

Advocate Habin, on behalf of the Defendant, denied that Advocate Fitz had had the necessary authority from the Defendant to give the undertaking. Furthermore, he alleged that any admission made in the letter had been made prior to proceedings being commenced by the Plaintiffs and was therefore not binding upon the Defendant.

Rule 6/17(4) reads as follows -

> ***"Where admissions of fact are made by a party to the proceedings either by his pleadings or otherwise, any other party to the proceedings may apply to the Court for such judgment or order as on those admissions he may be entitled to, without waiting for the determination of any other question between the parties, and the Court may give such judgment or make such order, on the application as it thinks just."***

Order 27, Rule 3 of the Rules of the Supreme Court is in very similar terms to those of Rule 6/17(4) and it is clear to me that it is sufficiently similar for me to look to the 1991 White Book as being authoritative.

Paragraph 27/3/2 of the 1991 White Book reads as follows-

""Either by his pleadings or otherwise" - Such admissions may be made expressly in a defence or in a defence to a counterclaim, or they may be admissions by virtue of the rules, as where a defendant fails to traverse an allegation of fact in a statement of claim (see O.18, r.13) or there is a default of a defence or a defence is struck out and accordingly the allegations of fact in the statement of claim are deemed to be admitted. An admission may be made in a letter before or since action brought (Ellis v. Allen, above; Hampden v. Wallis (1884) 27 Ch.D. 257; Porrett v. White (1885) 31 Ch.D. 52, C.A.: Neville v. Matthewman [1894] 3 Ch. 345, C.A.) or even orally if the admissions be proved; but oral evidence in other proceedings, alleging a certain matter, may not be an admission of such matter."

Advocate Habin referred me to the following passages on pages 398 and 399 of Phipson on Evidence, 13th Edition (1982) Chapter 20. The start of paragraph 20-38 on page 398 reads as follows-

"In civil cases a solicitor has implied authority to make admissions against his client during the actual progress of litigation, either for the purpose of dispensing with proof at the trial; when they are generally conclusive; or incidentally as to any of the facts of the case, when they are prima facie evidence merely. Such admissions may be made in court or chambers, or by documents or correspondence connected with the proceedings."

On page 399 in the same section are the following words -

"Statements by solicitors admitting facts in judicial proceedings, are admissible. But admission made by a party's solicitor before litigation has commenced; or during litigation, but in mere conversation; or to a third party and not to the opposite party - are not evidence against their clients."

Advocate Habin also referred me to the case of Wagstaff v. Wilson (1832) 4B & Ad 339. I am now quoting the following section from that Judgment -

"Trespass for taking away a horse. At the trial before Parke J., at the last summer assizes for Yorkshire, the plaintiffs, to shew that taking was authorised by the Defendant, put in a

letter before the action was commenced, by Messrs. Smith Hinde, the attorneys who afterwards acted for the defen in the cause. The plaintiff's attorney had written letters to the defendant, which he received; the fi charging him with having seized the horse under a mist supposition, and demanding it back; the second complai that the horse had not been returned but sold, threatening legal proceedings unless reparation were ma The answer, signed by Messrs. Smith and Hinde, was follows: -

"Dear Sir,

Mr. Wilson has brought us your letter of 16th insta respecting a horse belonging to Mr. William Storey, tenant, distrained for rent in arrear. We are fully preps to prove that the horse in question was legally distrain with other chattels, by Mr. Wilson's authority, and afterwards removed from the premises by your client or agents, and therefore we think Mr. Wilson justified in steps he has taken. - We are," etc.

There was no proof that the letter had been written with defendant's sanction, except that one of the writers was attorney on the record. No answer was sent by the defend himself. The learned Judge thought the letter n admissible, and the plaintiff was nonsuited. Hoggins (in t early part of this term) moved for a rule to shew cause t there should not be a new trial, on the ground that t letter ought to have been received, being written in answ to a communication upon the subject matter of the action, by the party who is now the defendant's attorney on t record; and he cited Marshall v. Cliff (4 Camp. 133 Roberts v. Lady Gresley (3 Car. & P. 380), Peyton v. T Governors of St. Thomas' Hospital (3 Car. & P. 363), a Willmot v. Smith (3 Car. & P. 453).

Parke J. In Marshall v. Cliff, the attorney's letter reli upon to prove the joint-ownership of the defendant contained an undertaking to appear for them. That was a st in the cause. In Roberts v. Lady Gresley, the party who letter was produced, and whose agency was relied upon, h already acted in the business as agent for the defendant, a Lord Tenderton thought there was evidence to go to the ju that he continued so when the letter was written. The oth cases are clearly distinguishable. There is no ground for rule."

Counsel produced to me the four cases quoted above fr section 27/3/2 of the 1991 White Book. In three of the cases t admission which was made prior to the proceedings being commenc was made by the defendant. In the fourth case, that of Ellis

Allen, an admission was made by the solicitors for Allen but this was made after the commencement of the action.

Advocate Habin argued from these cases that any admission made by Advocate Fitz could not be used for the purposes of this application and this particularly as the defendant denied that Advocate Fitz was authorised to give the undertaking. Advocate Habin also argued, as a second line of defence, that even if the undertaking were given on behalf of the Defendant, it was of no effect as there was no 'cause' for it being given.

Advocate Fielding produced a recent letter from Advocate Fitz in which she confirmed that she had given the undertaking with the authority of the Defendant. Advocate Fielding argued, that even if the principle of Wagstaff v. Wilson applied to this case, it should not apply here because of Advocate Fitz's recent letter. He argued that it should only apply if the authority to give the undertaking were in doubt.

I have concluded that it would not be correct for me to take into account the recent letter of Advocate Fitz. On such an application as this I am not attempting to try issues of fact between the parties but merely to see whether there is an admission upon which an Order under Rule 6/17(4) can be based.

It is clear that Messrs. Ogier & Le Cornu, and Advocate Fitz, in particular, were acting for the Defendant at the relevant time. Therefore, Advocate Fitz had the apparent authority to give this undertaking on behalf of the Defendant. There was 'cause' for the giving of the undertaking inasmuch that if it had not been given then the Plaintiffs would have proceeded with an action against the Defendant at a much earlier stage. In my view, there is a clear distinction between the giving of an undertaking on behalf of a client, on the one hand and the making of a statement in a letter as part of general correspondence prior to the commencement of proceedings. It appears to me that the rationale of the Wagstaff v. Wilson decision may well have been that casual errors can be made by a lawyer in such correspondence which would not be made as part of the formal record of proceedings. However, an undertaking is, in my view, a much more serious and formal matter. In any event, I am not bound by Wagstaff v. Wilson, which is an English case and not a Jersey case. The Jersey approach to agreements, as exemplified by the maxim, *"la convention fait la loi des parties,"* has always shown a great respect for the agreement of parties. I therefore distinguish Wagstaff v. Wilson and the extract from Phipson and find that the undertaking is a sufficient admission upon which to base a decision under Rule 6/17(4). The section from the White Book quoted above makes it clear that an admission may be made before the proceedings are commenced.

I therefore have no doubt that a Judgment for liability ought to be given in favour of the Plaintiffs. If Advocate Fitz exceeded her authority then that is a matter between the Defendant and Advocate Fitz. To hold otherwise would mean that such an undertaking would be virtually meaningless. It would mean that Jersey lawyers who received an undertaking from other Jersey lawyers on behalf of their clients would have to seek and obtain proof that that undertaking had been given with the consent of the client. Where, as in this case, the lawyer was obviously acting for the client and, indeed, had just received the relevant papers on a change of legal representation, this certainly ought not to be necessary. Indeed, it ought not to be necessary in any case as Jersey lawyers are officers of the Court.

Both counsel addressed me at some length on the question as to whether or not I should order a stay of any Judgment which I might give. In my view, this argument was irrelevant because I am only making a decision, on the basis of the admission contained in the undertaking, in relation to the issue of liability to pay the costs, with the matter of quantum remaining over. Until the quantum of liability under the original action is determined there will be no enforceable Judgment and so a stay is unnecessary.

Advocate Fielding, in the summons, asked that I give Judgment for the sum claimed (except in so far as those fees were unreasonably incurred or are of an unreasonable amount) and that the quantification be referred to myself for taxation on an indemnity basis. Such an Order is clearly not appropriate. This is not a matter of taxation of costs. This is a matter of determining whether or not legal charges being made by lawyers to their former client are reasonable. That is a matter for trial before the Royal Court not a matter for taxation before the Greffier.

Article 2 (1) of the Loi (1939) sur les honoraires des Avocats et des Ecrivains reads as follows:-

> ***"(1) Sauf les exceptions portées à l'alinéa (2) de cet Article, les actions touchant les honoraires des Avocats et Ecrivains de la Cour Royale pour leurs services professionels, quel que soit le montant en litige, seront du ressort de la Cour Royale."***

Article 2 (2) is not applicable to this case.

Accordingly, the correct order is for me to give a Judgment on admissions on the issue of liability to pay the reasonable legal charges of the plaintiffs, in favour of the plaintiffs, with the issue of the quantum of such charges being left over and with the counterclaim remaining.

Authorities

Royal Court Rules (1982) as amended: Rules 6/17 and 1/1.

R.S.C. (1991) Order 27, Rule 3.

Phipson on Evidence (13th Ed'n) (1982) Chapter 20: pp.398-9.

Wagstaff -v- Wilson (1832) 4B & Ad. 339.

Loi (1939) sur les honoraires des Avocats et des Ecrivains: Article 2(1).