



Case No: SC-2019-APP-000099

IN THE HIGH COURT OF JUSTICE
SENIOR COURTS COSTS OFFICE

Thomas More Building
Royal Courts of Justice
Strand, London WC2A 2LL

Date: 29/05/2020

Before :

MASTER LEONARD

Between :

Ram Narayanasamy
- and -
(1) Mr Rahman Karim
(2) Ms Shanara Begum

Claimant

Defendant

Martin Young (instructed by **Dotcom Solicitors Limited**) for the **Claimant**
Kamar Uddin (instructed by **Cambridge Solicitors LLP**) for the **Defendant**

Hearing date: 3 March 2020

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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MASTER LEONARD

Master Leonard:

1. In November 2009 the Claimant, at the time one of two partners trading as Dotcom solicitors, entered into a contract of retainer with the Defendants. The terms and enforceability of the retainer are in issue, but for the purposes of this decision I refer to the retainer documents upon which the Claimant relies. They are a letter of retainer and a Conditional Fee Agreement (“CFA”) dated 25 November 2009. There is also some conflict in the parties’ evidence as to exactly when some or all of the retainer documents were signed, but it is not necessary, for present purposes, to address that.
2. The retainer concerned a partnership dispute between the Defendants and Mr Gulam Khan. Mr Khan had issued proceedings against the Defendants to dissolve a partnership and to recover £50,000.
3. Relevant passages from the retainer letter include these:

“Mr Ram Narayanasamy, a solicitor/partner of this firm will carry out most of the work in this matter... We will send a final bill after completion of the work i.e. on receipt of damages and costs from your opponent... You may terminate your instructions to us in writing at any time subject to the Conditional Fee Agreement...”
4. The CFA provided for a 100% success fee. Under “What is covered by this agreement” it said:

“Your partnership action against Mr Gulam Khan... Any appeal by your opponent... Any appeal you make against an interim order... Any proceedings you take to enforce the judgment, order or agreement... Negotiations about and/or a court assessment of the costs of the claim”.
5. The Claimant subsequently became a sole practitioner trading under the name of Dotcom solicitors and made arrangements for the practice to be taken over by a limited company, Dotcom Solicitors Limited (“Dotcom”).
6. Dotcom was registered on 5 November 2012 and obtained SRA approval on 1 April 2013. The Claimant was at the time sole director and shareholder. According to the Claimant’s evidence, on 5 April 2013 Dotcom sent a letter to each of the Defendants (the following words are extracted from the letter addressed to the first Defendant but there are no material differences):

“We are writing to tell you that, on 1st April 2013, the business of Dotcom Solicitors was converted to a Limited Company... You are unlikely to notice any change in the way we work. The same people will still be acting for you... All that is changing is that the company name is now Dotcom Solicitors Limited, but a limited company is just a different way of structuring the business and it won’t affect you... On the reverse of this letter you will find further information...”
7. The reverse of each letter was headed “The effect of changing to a Limited Company” and, insofar as relevant, read:

“Unless you inform us otherwise upon receipt of this letter, we will assume that you agree to your contract(s) being transferred to Dotcom Solicitors Limited with effect from 1st April 2013... Unless we inform you otherwise your contract has, or your contracts have, been assigned by Dotcom solicitors to Dotcom Solicitors Limited on 1st April 2013 and this letter is our formal notice of the assignment(s)... Your continued instructions will also be taken as your consent to the transfer of any confidential information to Dotcom Solicitors Limited, together with your files and any property or monies held on your behalf... The terms of your contract(s) **will not change** except that your contractual relationship will be with Dotcom Solicitors Limited... Dotcom Solicitors has assigned to Dotcom Solicitors Limited its right to be paid for work done prior to 1st April 2013. Future invoices will be issued by the company”.

8. In the meantime, the proceedings brought by Mr Khan had gone to a four-day trial. The Defendants had applied to stay the proceedings on the basis that the relevant partnership deed contained an arbitration clause. Mr Khan had denied the existence of such a clause and asserted that a partnership deed relied upon by the Defendant, apparently signed by him and containing the arbitration clause, was a forgery.
9. The matter went to trial and on 26 April 2012 the court found that the partnership deed was genuine and had been signed by Mr Khan. Mr Khan was ordered to pay the Defendants’ costs. It would appear that the action did continue for a time, but was discontinued by Mr Khan by the beginning of 2013. It would also appear that the Defendants attempted unsuccessfully to join Mr Khan’s wife to the proceedings and were ordered to pay her costs of the application: correspondence in relation to her claimed costs appears to have continued into late July 2013.
10. Mr Khan did not pay the Defendant’s costs as ordered. Dotcom obtained a Default Costs Certificate against him and attempted enforcement. The Defendants say that after the trial the Claimant asked the Defendants about any assets held by Mr Khan and that they gave him a list of properties owned by him in order to help them recover costs, although he did not ask for their assistance in the enforcement process.
11. The Claimant says that he had been given details of Mr Khan’s assets prior to the signing of the retainer, and that he took on the enforcement proceedings with the Defendants’ knowledge, but was unable to continue for lack of instructions: the Defendants fell silent and failed to respond to calls from his office.
12. A letter dated 11 January 2013 from the first Defendant to the Claimant provides information on a number of properties owned by Mr Khan or members of his family and reads:

“I hope I don’t have to further instruct you to take whatever the fair & appropriate actions to save our interest & recover all costs, because you do know my financial situations... I appreciate all your hard work and hoping to obtain all the positive result...”

13. Nothing was recovered from Mr Khan. Such attempts to enforce as were made, including obtaining a final charging order on 17 June 2013, proved ineffective in that respect.
14. On 14 January 2014 Dotcom sent a bill to the Defendants totalling £223,226.75. A brief narrative on the bill read:

“Taking instruction from you on the basis of Conditional Fee Agreement dated 25 November 2009 and preparing for the whole case and eventually succeeding in your initial application... Thereafter we are instructed to continue with the enforcement of the judgment sum and obtaining the Final Charging Order was obtained 17th June 2013... Thereafter we have no instructions in this matter despite various assurances on the costs outstanding”.
15. The Defendants denied any liability to pay that bill. Some attempts at pursuing the claimed debt were evidently made by Dotcom: a Statutory Demand was served on each Defendant in April 2017. Nothing seems to have come of that.
16. On 10 February 2018, the Senior Courts Costs Office sealed a CPR Part 8 Claim Form issued by Dotcom and seeking an order, as against the Defendants, for the detailed assessment of its 14 January 2014 bill. On 21 June 2019 I dismissed that claim, along with an application by the Claimant to be joined as a claimant.
17. The claim failed because Dotcom was unable to show that there had been any agreement between Dotcom and the Claimant with the effect of transferring to Dotcom the Claimant’s rights and obligations under the contract of retainer dated 25 November 2009. The Claimant’s application to be joined as a party was also dismissed. Given that the bill in issue had been rendered by Dotcom rather than the Claimant, there was no basis for joinder.
18. On 9 July 2019 the Claimant rendered a bill to the Defendants in his own name. The bill essentially covers the same work as the Dotcom Bill of January 2014, updated to the point of working on Mrs Khan’s costs on 27 July 2013 (and continuing into 2017 to include matters which could never be properly chargeable to the Defendants as clients, for example preparing the January 2014 bill and serving statutory demands upon them). It comes to £235,341.60.
19. On 10 September 2019 the court sealed a CPR Part 8 claim by the Claimant against the Defendants for the detailed assessment of that bill. On that application two different, but connected preliminary issues emerged: whether the Claimant’s right to apply for detailed assessment is statute barred and whether any underlying claim by the Claimant to payment by the Defendant is statute barred. The purpose of this judgment is to address those issues.

The Law

20. Section 70 of the Solicitors Act 1974, insofar as pertinent, provides that:

“(1) Where before the expiration of one month from the delivery of a solicitor's bill an application is made by the party chargeable with the bill, the High Court shall, without requiring any sum to be paid into court, order that the bill be assessed and that no action be commenced on the bill until the assessment is completed.

(2) Where no such application is made before the expiration of the period mentioned in subsection (1), then, on an application being made by the solicitor or, subject to subsections (3) and (4), by the party chargeable with the bill, the court may on such terms, if any, as it thinks fit (not being terms as to the costs of the assessment), order—

(a) that the bill be assessed; and

(b) that no action be commenced on the bill, and that any action already commenced be stayed, until the assessment is completed.”

21. The Claimant's application falls within section 70(2).

22. Section 5 of the Limitation Act 1980 provides that:

“An action founded on simple contract shall not be brought after the expiration of six years from the date on which the cause of action accrued”.

23. In *Coburn v Colledge* [1897] 1 QB 702 the Court of Appeal found that a solicitor's cause of action accrues as soon as the work for which payment is sought has been completed. The solicitor had argued that because statutory provisions (still in effect now, under the 1974 Act) prevented a solicitor from suing until after a month of delivery of a bill of costs, the limitation period would not start to run until that point. The consequence of that argument, Lopes L.J. observed, would be that

“the solicitor may abstain from delivering his bill for twenty years, and then at the end of that time he may deliver it and sue after the expiration of a month from its delivery.”

24. In *Phillips & Co (A Firm) v Bath Housing Co-Operative Ltd* [2012] EWCA Civ 1591 the Court of Appeal found that that the limitation period identified in *Coburn v Colledge* could be extended by section 29 of the 1980 Act in the event of acknowledgement or part payment, but it is not suggested that section 29 has any application to this case and there is no evidence of either acknowledgement or part payment.

25. The Claimant cites the decision of the Court of Appeal in *Underwood, Son, & Piper v Lewis* [1894] 2 QB 306 as authority to the effect that where a solicitor conducts a claim for a client, the limitation period for the solicitor's claim for payment begins to run either from the date of termination of the claim or the lawful ending of the

solicitor's retainer. I am not convinced that the decision stands as authority for that proposition, but in principle (subject, for example, to specific contractual conditions) it seems to me to be perfectly sound: the relevant work will have been completed at the point of either of those events.

26. I will mention that I have also been referred to *Beck v Pierce* (1889) 23 Q.B.D. 316, which does not seem to me to have a bearing on the fact this case.

Submissions

27. The Defendants say that any contract of retainer between them and the Claimant was terminated on 26 April 2012 or at the latest on 1 April 2013, when he ceased to practice. It follows that the six-year limitation period over which he could have taken legal action to pursue his claim for payment had expired before he rendered the bill which he now seeks to have assessed. Even, say the Defendants, if the Claimant's application for detailed assessment could be construed as a claim in debt (which is not accepted) he was out of time to make it.
28. The Claimant says that it cannot be right that his retainer was terminated on 26 April 2012: work continued long after that date, on the Defendants' instructions. The Defendants never terminated the retainer in writing. After 1 April 2013 the Claimant continued to provide the services which he had agreed to provide under the retainer, acting through Dotcom as his agent.
29. The fact that a bill was rendered as at 14 January 2014, albeit by Dotcom, shows (says the Claimant) that the retainer had not been terminated before that date. It is the earliest date on which the retainer, arguably, could have been terminated. More appropriate dates for termination might be 9 September 2015, when the Claimant received notification of a complaint by the second Defendant to the Legal Services Ombudsman, or 30 September 2015, when the Defendant instructed new solicitors, Adams (not, on the evidence, on any matter upon which the Claimant had been instructed). A written submission to the effect that 7 April 2017, when Dotcom served statutory demands upon the Defendants, might be the termination date was not pursued before me.
30. Given that the Claimant's claim for payment is not statute barred, there is, submits the Claimant, no barrier to the assessment of his bill under the 1974 Act.

Conclusions

31. On the evidence, Dotcom continued to provide services to the Defendants into late July 2013, and the Claimants did not ask Dotcom to stop. If the task before me were to establish the termination date of a retainer between Dotcom and the Defendants, I would have found it to be 14 January 2014, when the Claimant (in his capacity as a director of Dotcom) evidently decided that the relationship could not continue given lack of instructions, and that he would have to render a final bill.
32. The question is however when the contract of retainer between the Claimant and the Defendants came to an end. It seems to me that the only correct conclusion can be that the Claimant himself terminated that retainer with effect from 1 April 2013, when he ceased to practice in his own name.

33. The proposition that from that date the Claimant continued, through Dotcom as his agent, to provide his services under the contract of retainer dated 25 November 2009 does not seem to me to be sustainable.
34. A principal is, generally, liable in tort for loss or injury caused by his or her agent. The argument that a company providing legal services does so as agent for its director or directors seems to me to run contrary to the fundamental principle that a limited company is a separate and distinct entity from its directors, who have personal liability for the company's actions only in limited circumstances.
35. I can see that some such agency arrangement might have been made by express agreement, but there would have been little point for the Claimant in setting up practice through a limited company if he were to continue to bear full personal liability for its acts and omissions as if here were still practising in his own name.
36. In any event there is no evidence that any such arrangement was made. All the evidence is to the contrary.
37. The wording of the letters that the Claimant arranged to be sent to the Defendants on 5 April 2013, in particular to the effect that their contractual relationship would in future be with Dotcom, cannot be reconciled with the proposition that the original contract of retainer was to continue, with Dotcom merely acting as agent for the Claimant.
38. The Claimant in his own evidence says nothing about agency. He confirms that on 1 April 2013 he ceased trading as a sole practitioner and converted his firm to a limited company, Dotcom, which was authorised to provide legal services from that date. He refers to his former sole practice as Dotcom's "predecessor". That is consistent with the information he sent to the Defendants, and inconsistent with the agency argument advanced before me.
39. I can in any event find no practical or professional logic in the proposition that from 1 April 2013 the Claimant restructured his practice into a limited company and nonetheless continued to practice in his own right. As Mr Uddin for the Defendant pointed out, this would have raised all kinds of difficulties with regard for example to regulation, liability, the right to payment, insurance and the treatment of confidential information. None of these potential issues are addressed in the Claimant's evidence, doubtless because they never arose.
40. Given that, as I have found, the Claimant terminated his retainer with the Defendants on 1 April 2013, the consequence is that any right to take legal action to recover payment for his legal services has been statute barred since the beginning of April 2019.
41. I do not have to decide whether the Claimant's right to apply for detailed assessment of his bill under section 70(2) is in itself, strictly speaking, statute barred. Mr Young for the Claimant has made it clear that it is not the Claimant's case that there is some freestanding right under section 70 of the Solicitors Act 1974 which would allow the Claimant to circumvent the effect of the Limitation Act 1980.

42. I respectfully agree with that approach. An order under section 70(2) of the 1974 act is a discretionary remedy. Its purpose is to set in motion a procedure through which the court can certify the amount due to the solicitor (or in some cases, to the client). The court's certificate is then enforceable as if it were a judgment.
43. It would clearly be wrong to exercise the court's discretion so as to put a solicitor in a better position than any other person who has failed to take effective action to recover a debt before the expiry of the limitation period.
44. For those reasons, the Claimant's CPR Part 8 claim must be dismissed.