ROYAL COURT (INFERIOR NUMBER) 1977/8.

Before: Sir Frank Ereaut, Bailiff,
Jurat W.F.A. Hamilton, O.B.E,
Jurat C.A. Le Breton.

Between
Gordon Morris Greene, Plaintiff
and
Quito Investments Limited, Defendant

and Between
Gordon Morris Greene, Plaintiff
and
Verdun Limited, Defendant

Advocate M.H. Clapham for the plaintiff
Advocate L.A. Wheeler for the defendants.

The plaintiff is a property consultant practising in Dublin. In July 1974 he was consulted by Mr. Stafford, the agent in Eire for Quito Investments Limited, (hereinafter referred to as "Quito"), about certain properties owned by Quito in Dublin. The plaintiff prepared a report which he submitted to Mr. Stafford, and subsequently notified him that his fee for the work was one thousand and fifty pounds sterling. Quito has refused to pay that fee.

In January, 1975, the plaintiff was consulted by Mr. Stafford, also the agent in Eire for Verdun Limited (hereinafter referred to as "Verdun"), about a certain property owned by Verdun in Dublin. The plaintiff prepared a report which he submitted to Mr. Stafford, and subsequently notified him that his fee for the work was five hundred and twenty-five pounds sterling. Verdun has refused to pay that fee.

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Because both Quito and Verdun are companies registered in Jersey, the plaintiff now actions the companies before the Royal Court for the above-mentioned fees. The two actions have been consolidated. The defence in both cases is the same. Each defendant admits that the plaintiff was employed to prepare a report, and that he is entitled to a fee which is reasonable in all the circumstances, but submits that the fee charged is grossly excessive in relation to the work carried out by the plaintiff in formulating and giving his advice.

It is necessary to consider each case separately, because as regards his action against Quito the case for the plaintiff is that Mr. Stafford agreed to the fee which he now claims and is therefore estopped from disputing its amount. Quito concedes that if the Court were to find that that fee had been agreed, then the plaintiff's action against Quito must succeed. We therefore consider first the action against Quito.

Mr. Stafford consulted the plaintiff on 31st July 1974 about three properties in Dublin owned by Quito, on which advice was wanted urgently. The plaintiff gave certain advice on the spot, then took away the files on the subject and prepared a report which he delivered to Mr. Stafford two days later. The plaintiff estimated that he was engaged on the matter for a total of some twelve hours. On receiving the report, Mr. Stafford described it as extremely helpful, and asked for a note of the plaintiff's fee. In reply the plaintiff indicated that his fee might depend on whether there was a successful outcome to the matter, and Mr. Stafford answered that a successful compromise had been negotiated.

On 10th January, 1975, the plaintiff attended on Mr. Stafford at his office. Mr. Stafford wished to consult him as a matter of urgency about a property owned by Verdun. Also present at the meeting was Mr. Leo Campbell, a chartered accountant, who advised

/Mr. Stafford

Mr. Stafford from time to time. At the end of a discussion about Verdun, Mr. Stafford asked the plaintiff the amount of his fee for the Quito work, and the plaintiff said that it was a thousand guineas. In giving evidence, the plaintiff told us that Mr. Stafford wrote the amount down and said he would send a cheque. When the plaintiff asked if the cheque would be on a Jersey bank, Mr. Stafford replied that it would not. The plaintiff added that neither Mr. Stafford nor Mr. Campbell queried the amount of his fee at that meeting.

Mr. Stafford's version of the conversation was different. When he was told the amount of the fee he was "staggered". He emphatically did not say that he would send a cheque, nor was there any discussion about whether it would be a Jersey cheque. He agrees that he did not then voice an objection to the amount, the reason being that he wanted to discuss what he considered to be a very excessive fee with Mr. Campbell after the meeting and so his only response at the time was to ask the plaintiff to send him a note of his fee (which the plaintiff denies - no note was sent).

Mr. Campbell was not called as a witness by either party at the original hearing, but after the case had been adjourned for speeches by counsel, we granted a defence request to call him. He told us that Mr. Stafford had asked him to attend the meeting on 10th January because the property of Verdun was to be discussed. He took little or no part in the discussion, much of which seemed to him irrelevant and a waste of his time. However, his interest was aroused when at the end of the meeting the plaintiff said that his fee for the Quito work was one thousand guineas. He thought this was a high figure and so he observed Mr. Stafford's face with interest. He saw him "wince". Mr. Campbell could not recall Mr. Stafford making any verbal response at all, nor any conversation about a cheque. However, after the meeting

/Mr. Stafford

Mr. Stafford asked him what he thought about the fee, using some such words as "Gordon has gone off his rocker", and he replied that he thought the fee somewhat high.

On 28th February, 1975, the plaintiff wrote to Mr. Stafford reminding him that at the meeting on 10th January:-

> "we agreed a fee of one thousand guineas and you were to arrange to have a cheque sent on to me from the company."

Mr. Stafford did not reply to that letter, but the two men met by chance on 11th March, when Mr. Stafford said he thought the fee excessive and offered to pay £500, which the plaintiff refused.

On 14th March, the plaintiff wrote to Mr. Stafford maintaining that the fee had been agreed and included a homily on the advantage of keeping one's word. On receiving no reply he wrote again on 27th March, but without avail.

On 25th August and again on 29th August the plaintiff met Mr. Stafford at the latter's request for consultation on property matters. At the latter meeting the plaintiff raised the question of his outstanding fees, and, according to an attendance note which the plaintiff subsequently made of that meeting, Mr. Stafford replied that "his purse was very tight at the moment but that he would endeavour to make a payment on his return to Dublin on the 6th October, and that I needn't have to worry on this score, but at the moment, there was some financial stringency". No payment was ever made.

Mr. Stafford agreed that he did not reply to the plaintiff's letters. He had always been prepared to pay the plaintiff's reasonable fees. He had thought the plaintiff was still practising as a Solicitor and he was always prepared to pay the much lesser sum that a solicitor would have charged. He suggested having the fee referred to a taxing master, but the

/plaintiff

plaintiff would not agree, so there seemed no solution. He agreed he had said his purse was tight, but he could not recall the meeting of 29th August.

When Mr. Stafford consulted the plaintiff on the Quito properties in July 1974 there was an implied agreement that he, as the agent for Quito, would pay the plaintiff's reasonable fee for the work. The issue before us is whether Mr. Stafford, on behalf of Quito, subsequently agreed to the plaintiff's fee of one thousand guineas We have come to the conclusion that he did.

The plaintiff's own evidence as to what was said at the meeting on 10th January, 1975, was very clear, and he confirmed his recollection of what was said in his letter to Mr. Stafford of 28th February, and he sent a further confirmatory letter on 14th March. Those letters are, in our view, the strongest possible evidence of what the plaintiff believed had been agreed at the January meeting. We were told, and we accept, that until he ceased to practise in early 1974, the plaintiff was a leading Dublin Solicitor of high reputation, and it is to say the least highly unlikely that he could have been mistaken on such a matter.

We accept that silence does not constitute acceptance, and Mr. Starford says that he made no comment on the fee at the January meeting, except to ask for an account. If that were so, then one would have expected him to have replied to the plaintiff's letters to correct the allegation that the fee had been agreed, but he did not do so and we find the reason which he gave us for failing to do so unconvincing.

It is true that the evidence of Mr. Campbell tends to support Mr. Stafford, but we do not find his evidence very helpful or satisfactory. He was able to describe to us the facial reaction of Mr. Stafford when told the fee, but he could not

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recall what conversation (if any) then took place between the two men, despite the fact that, as he told us, he became alert as soon as the question of a fee was mentioned.

We accept that Mr. Stafford thought that the fee was very high, but that does not mean that he did not accept it. He had, immediately before the fee was mentioned, consulted the plaintiff about Verdun, and he continued to consult him subsequently over other matters. We think it unlikely that the plaintiff would have continued to be available for consultation if it had been made clear to him that on no account would his fee be paid. Moreover, we accept the accuracy of the attendance note of 29th August, which is confirmatory of the plaintiff's contention that Mr. Stafford had agreed his fee for the Quito work.

For the above reasons, we find that Mr. Stafford, as agent of Quito, did agree to the plaintiff's fee of one thousand guineas, and having so found we give judgement for the plaintiff against Quito.

We turn now to the plaintiff's action against Verdun for £525.

He was consulted by Mr. Stafford at the meeting on 10th January, 1975, about a property in Dublin belonging to Verdun, valued at £680,000. His advice was sought because a company had agreed to buy the property and later wished not to proceed with the purchase. He prepared a report within three days. The report took him some eight to ten hours, and in addition he had two long meetings with Mr. Stafford.

After thirty years practice as a solicitor in Dublin, the plaintiff ceased to practise in early 1974, and joined a firm of auctioneers in that city as a property consultant. However, Mr. Stafford claimed that he thought that the plaintiff was still

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practising as a solicitor when he consulted him about Verdun. Although Verdun had a regular solicitor, Mr. Stafford wanted a second legal opinion from a solicitor who specialised in property and that is why he consulted the plaintiff.

The defence called as a witness Mr. Cyril O'Neill, a partner in a Dublin firm of legal cost accountants, who examined the papers in the case and calculated that a proper fee, as between solicitor and client, for the work done by the plaintiff would have been £250. Counsel therefore contended that because the plaintiff had held himself out to Mr. Stafford to be still practising as a solicitor, and because, if he had in fact been practising as a solicitor at the time of doing the work, his fee would have been subject to taxing, the Court should give judgement in accordance with the estimate provided by Mr. O'Neill.

When the plaintiff was introduced to Mr. Stafford by Mr. Campbell early in 1974 he was still in practice as a solicitor, but, as we have said, by July he had ceased to practice and had joined a firm of auctioneers as a property consultant at a different address. The plaintiff told us that he was well known in Dublin and he assumed that Mr. Stafford knew that he was no longer in practice as a solicitor. Mr. Stafford's office certainly knew that he had changed his business address.

We do not consider that the plaintiff held himself out to Mr. Stafford as continuing to practice as a solicitor at the time he was consulted about the Verdun property. If Mr. Stafford was under a misapprehension, that is unfortunate, but we do not think that the plaintiff realised that Mr. Stafford thought that he was still in practice and we cannot criticise the plaintiff for not having expressly told him that he had ceased to practice.

/Any such

Any such misunderstanding on the part of Mr. Stafford is not, therefore, a matter to which we can have regard.

There remains, however, the question as to whether the plaintiff's fee is excessive. Mr. Stafford told us that he had frequently used the services of solicitors in the past on property matters, and their charges had always been far less than the fee charged by the plaintiff. He gave some examples where the fees he had paid seemed to us surprisingly modest. On the other hand, the plaintiff told us that he did not consider that his fee was more than would have been charged by an experienced solicitor specialising in property matters, which he had done when in practice. The evidence of Mr. O'Neill did not support that.

At the relevant time, the plaintiff was acting as a property consultant, and what we have to decide is whether the fee charged for this work by a property consultant with a great deal of legal knowledge and experience in the property field, as the plaintiff had, is excessive. Counsel for the plaintiff pointed out that his client had retired to concentrate on property work, and, as the facts showed, he was immediately available for urgent consultations and for the very speedy preparation of reports urgently required, which might not always be the case with a person who was still in practice as a solicitor. That seems to us to be a not insignificant factor. Moreover, we were told that the plaintiff is eminent in his field and his advice is, or was at the time, much in demand, and that was not disputed.

Our conclusion is that although the fee claimed may appear to be on the high side, we do not consider it to be at such a level that it is unreasonable. We therefore give judgement for the plaintiff against Verdun.