SAINT LUCIA:

IN THE HIGH COURT OF JUSTICE
(Civil)

SUIT No. 955 of 1995

BETWEEN:

WAREFACT LIMITED

Plaintiff

and

PARRY HUSBANDS

Defendant

Mr Dexter Theodore for Plaintiff
Defendant in person

1997: June 10, 11, and 13.

J U D G M E N T

NEVILLE SMITH J.

The plaintiff is a company incorporated and registered under the Commercial Code of Saint Lucia; and it agreed to sell a parcel of land with the building known and hereinafter referred to as the Voice Building in the City of Castries to another duly incorporated company called J.Q.Charles Limited (hereinafter usually referred to as "the purchaser").

The defendant is a senior practising barrister of the Eastern Caribbean Supreme Court and had been elevated in 1988 to the position of one of Her Majesty's Counsel. He was also honoured for his public service in the Island of Saint Lucia and served at one time as the country's Attorney-General. He holds a Masters's Degree which he earned at the University of Toronto in Economics.

The plaintiff, by oral instructions, retained the defendant to render it certain services relating to the sale of the Voice Building but terminated those services after the bulk of the work had been done by the defendant. The defendant did not take kindly to the determination of his services and refused to account to the plaintiff for certain moneys he collected for it.

The plaintiff called upon the defendant to render to it an account but the defendant replied by notifying the plaintiff of the quantum of the bill for

his services. When the plaintiff objected to the size of the bill and notified the defendant of its objection the defendant informed the plaintiff that he will not render a statement of account to it until the plaintiff agreed to pay him the amount he told it he wanted as his professional fees.

Dissatisfied with the stance the defendant had adopted and his failure to render accounts to it the plaintiff had a writ of summons issued against the defendant, claiming the following:

1. that the Defendant do render an account to the Plaintiff for all sums coming into his hands to the account of the Plaintiff;

2. that the Defendant do pay to the Plaintiff all sums rightfully due to the Plaintiff;

3. damages

4. interest thereon at such rate and for such period as the court shall think fit.

5. Costs.

In the statement of claim endorsed upon the writ of summons the plaintiff averred that it engaged the services of the defendant to negotiate the sale of the Voice Building for it. The defendant did so. The plaintiff also averred that in the agreement for sale between it and the purchaser it was stipulated that the purchaser would pay the purchase price of $3,750,000.00 (including the deposit of $187,500.00) to the defendant less certain amounts which were to be paid to plaintiff's relevant creditors.

The plaintiff went on to allege in the statement of claim that the defendant collected various sums of moneys from the purchaser totalling $687,500.00; and when the closing date for the sale had passed the plaintiff by letter terminated the services of the defendant requesting at the same time that the defendant furnish the plaintiff with a statement showing the amounts collected by the defendant and the disbursements made by the defendant therefrom.

The plaintiff alleged too that the defendant indicated to it that the plaintiff would have had to accept and agree a date for the payment of the

defendant's bill of $250,000.00 for the services he rendered before the defendant would provide the statement requested by the plaintiff. The plaintiff then averred that it had its new solicitor write to the defendant forwarding a cheque which was intended to be the payment for certain notarial services rendered by the defendant and offering to have the remainder of the defendant's fees taxed by the Registrar.

The plaintiff further averred that the defendant returned the cheque sent to him. Thereupon the plaintiff's solicitor wrote the defendant requesting the defendant to hand over all moneys held by the defendant belonging to the plaintiff. The plaintiff in the statement of claim stated that the defendant refused to provide the account it asked for or hand over the moneys he had for the account of plaintiff to the plaintiff.

The defendant filed a defence to the plaintiff's statement of claim and counterclaimed against the plaintiff for the following:

(a)	for identifying a buyer for the property and successfully negotiating the best possible price - 10% of consideration	$375,000
(b)	for obtaining waiver of interest on property taxes	$ 30,000
(c)	for successfully persuading Sheriff to accept balance due instead of gross sums from the Plaintiff and vice versa	$ 25,000
(d)	for filing claim as a Creditor on behalf of the Plaintiff in respect of a Judicial sale of the property in 1987	$ 25,000
(e)	for drafting and executing Agreement between Plaintiff and Gordon, Gordon & co.	$ 20,000
(f)	for miscellaneous services including conferences between the Parties et al	$ 15,000
(g)	Damages for breach of contract	
(h)	Costs.	

In his said defence the defendant denied that he was retained by an oral agreement made in or around October, 1996 the date which the

plaintiff, wrongly as it turned out, gave as the date of the agreement for engagement of the defendant. The defendant admitted however that he did negotiate the sale of the Voice Building but denied most of the other allegations in the plaintiff's statement of claim; and he prayed that the plaintiff's case would be dismissed. He made no admissions as to the receipt of any moneys for the plaintiff from the purchaser.

In the counterclaim added to his defence the defendant averred that he was, in addition to being a barrister, competent in the fields of economics and finance; and he further averred that the sale of the Voice Building by the plaintiff was the first step in an economic/financial plan which he devised and had the plaintiff accept to permit "*inter-company lending amongst the plaintiff and other related companies....*"

The defendant further alleged in his counterclaim that he identified the buyer for the Voice Building and undertook to free the same from all encumbrances so as to effect the sale thereof. He went on in the counterclaim to set out certain things which he alleged he did in the execution of the services he was retained by the plaintiff to perform.

The defendant also averred that he tendered a first bill to the plaintiff in the sum of $250,000.00 in the hope that "*the sale of the property, being a first step*" he "*would continue to supervise and advise on the further extension of the plan aforesaid.*"

It was further stated in the counterclaim that the plaintiff offered to the defendant the sum of $100,000.00 for all the services rendered by the defendant but the defendant rejected that amount with the observation that he did not haggle over fees. The defendant then made the claim identified earlier herein against the plaintiff.

In its defence to the defendant's counterclaim the plaintiff denied knowledge of the defendant's competence in economics and finance and stated that it never consulted the defendant for economic or financial advice

nor agreed to any financial plan. The plaintiff further denied that the defendant was engaged to identify a buyer for the Voice Building and averred that the defendant did not identify the purchaser.

The plaintiff stated further in its defence to the defendant's counterclaim that it had no knowledge of how the defendant went about liquidating the encumbrances to the property it was selling but believed that a fee of $250,000.00 for the services rendered by the defendant was excessive. The plaintiff admitted that it counter-offered to the defendant the sum of $100,000.00 for the defendant's services but it did so even though it thought that a fee of the said $100,000.00 was also excessive.

It could be seen from the pleadings, informally abbreviated above, that the defendant should have expected that he would have had to account to the plaintiff for any moneys he received for the plaintiff and that once the plaintiff had repaired to the Court any insistence by him that the plaintiff accept the amount of his bill for fees as a precondition for his giving an account would be not to much avail. Quite rightly therefore the defendant volunteered to supply an account to the plaintiff at my suggestion when the matter came on for hearing and just before I set out to take the evidence from the parties.

The defendant served a document on the plaintiff as his statement of account for the plaintiff. In that statement he recorded that his fee had jumped from the already rejected amount of $250,000.00 to the astronomic amount of $490,000.00. There was no reason shown for the rise save that it reflected what appeared in the counterclaim.

It became clear too, out of the pleadings, that it would have been necessary for the court to adjudicate on the propriety of the remuneration sought by the defendant for the services he was retained by the plaintiff to do and for the court ultimately to determine the proper amount, and no more, that the defendant should be permitted to extract from the plaintiff.

In the trial Mr Lincoln St.Rose the managing director of the plaintiff testified for the plaintiff. Mr. Cornell Charles, a director of J Q Charles Limited the company which agreed to purchase the Voice Building was the only other witness to give evidence for the plaintiff. The defendant himself was the only witness testifying to support the defendant's case.

Mr St.Rose testified that sometime after the plaintiff had succeeded (in a case taken as far as the Privy Council) in acquiring the title to the Voice Building he was approached by Mr Cornell Charles who was interested in renting office space in another of the plaintiff's buildings. Mr St.Rose testified that during the course of talks between them Mr Charles enquired whether the plaintiff would have been interested in renting or selling the Voice Building. Mr St.Rose said that he told Mr Charles that the plaintiff had not made any decision as to what it wanted to do with the Voice Building but he would get back to him "*after discussions*" with his fellow directors.

Mr St.Rose further testified that he contacted Mr Charles some 2 days later and told him that the plaintiff would be willing to sell the Voice Building to J Q Charles Limited; and they arranged to meet to start negotiations as to the terms of the sale of the Voice Building.

Mr St.Rose went on to testify that he then contacted the defendant who had done some matters previously for the plaintiff and with whom he Mr St.Rose had been on very good terms, and asked the defendant to accompany him to the meetings which had by then been set up for the negotiations for the sale of the Voice Building by the plaintiff to J.Q.Charles Limited.

Mr. St.Rose deposed that the first meeting was held on the 3rd September 1995 and after the negotiations the agreement for the sale of the Voice Building was executed on the 4th October 1995. The defendant attended the negotiating sessions with Mr St.Rose who said that he asked the defendant to accompany him because he felt that an agreement would

have been reached at the meetings and the defendant as his lawyer would have been there for such an eventuality.

When the defendant eventually testified he discounted the deposition of Mr St.Rose on the matter of the negotiations and stated that it was he who identified Mr Cornell Charles of J.Q.Charles Limited as a prospective purchaser of the building. He also said that he was in complete charge of the negotiations with J.Q.Charles Limited for the sale of the Voice Building by the plaintiff.

Mr. Cornell Charles also testified as to contacting Mr St.Rose with regard to renting office space from the plaintiff in another building and that during his conversation with Mr St.Rose the matter of the Voice Building came up. Mr. Charles testified that he enquired of Mr St.Rose as to the intention of the plaintiff for the Voice Building as two businessmen having discussions; and he said that Mr St.Rose informed him that the plaintiff had not decided what it wanted to do with the Voice Building but that he Mr St.Rose would get back to Mr Charles.

Mr Charles further testified that before his talk with Mr St.Rose he did not discuss the purchase of the Voice Building with anyone.

The defendant's testimony was obviously aimed at seeking to justify the claims (1) that he acted as a real estate broker for the plaintiff (2) that he was responsible for getting J Q Charles Limited interested in purchasing the Voice Building and (3) that he spearheaded the negotiations with J Q Charles Limited for the plaintiff. The defendant had no written directions from the plaintiff to act as a real estate agent for it in this matter nor indeed was the defendant a real estate agent or even claimed to be such in his testimony.

Mr St.Rose and Mr Charles are two leading businessmen in this country and on the defendant's admission their testimony is worthy of complete belief. Indeed, I found both Mr St.Rose and Mr Charles to be

believable witnesses and I accepted their testimony without qualification. There is no doubt therefore in my mind that J Q Charles Limited became the purchaser of the Voice Building in the way that Mr St.Rose and Mr Charles testified it so became. In the circumstances I do not accept that the defendant was employed by the plaintiff as a real estate broker or agent and that he identified J Q Charles Limited for the plaintiff as a prospective purchaser of the Voice Building.

I also do not accept that the defendant was entirely responsible for the conduct of the negotiations on the plaintiff's behalf for the sale of the Voice Building by the plaintiff to J Q Charles Limited. As however was pleaded by the plaintiff and admitted in Mr St.Rose's testimony the defendant took part in the negotiations for the plaintiff.

I adopt the principle that Courts have long ago decided that where there is a difference between a solicitor and his client on the question of retainer, the word of the client is to be preferred to the word of the solicitor or, at any rate more weight is to be given to it. The Courts have taken that stance because the client is usually ignorant and the solicitor is, or should be learned. If the solicitor does not take the precaution of getting a written retainer, he has only himself to thank for being at variance with his client over it and must take the consequences. That would also be this Court's approach to the practice of a notary royal.

It would follow therefore from what I have stated above that I do not accept that the defendant identified a buyer of the Voice Building for the plaintiff nor acted for the plaintiff as a real estate agent. I find however that the defendant did take part with Mr St.Rose in the negotiations for the sale of the Voice Building to J Q Charles Limited and for such he would be entitled to be fairly paid.

Mr St.Rose further testified that he knew that the defendant collected the sum of $687,000.00 from J Q Charles Limited for the plaintiff and had

not accounted to the plaintiff for those moneys. He further testified that he did retain the defendant and instructed him to clear off the encumbrances on the title to the Voice Building which would have impeded the transfer of the said property to the purchaser. And he had no difficulty in accepting that the defendant may have done the work he was retained to do up to the time when the plaintiff terminated the services of the defendant. He did not know exactly how the defendant went about doing that work.

Mr St.Rose produced a number of documents to support the contentions of the plaintiff in its statement of claim. Although he was aware that the defendant would have had to pay the Registrar a balance that was owing on the judicial sale of the Voice Building to the plaintiff and a further balance to the City Council as arrears of taxes the plaintiff was not given any vouchers to show that the defendant paid out the amounts to cover those debts. He further testified that he did not get any proper bills from the defendant and could not therefore be satisfied as to the plaintiff's position vis-a-vis the defendant. The plaintiff had not received any accounting from the defendant even up to the very morning of the commencement of the trial.

The defendant began his testimony late in the afternoon of the first day of trial and was under cross-examination by Counsel for the plaintiff when the Court rose for the day. Shortly before the beginning of the next day's hearing the defendant intimated that he wanted to reconcile his counterclaim with the bill for professional services which Mr St.Rose had produced in his evidence as a bill to the plaintiff emanating from the defendant.

Without objection from the plaintiff leave was granted to the defendant to amend his defence and counterclaim so as to show in paragraph 27 of that document all the particulars that appeared in the bill exhibited by the plaintiff instead of what appeared earlier as the counterclaim of the

defendant. This meant that the defendant was reverting to asking for $250,000.00 as his fees instead of the $490,000.00 which appeared in his original counterclaim.

Consequent upon the amendment of the counterclaim, the defendant indirectly submitted a document which he called a statement of account to the plaintiff somewhat without the benefit of a normal channel. This document showed that the defendant was admitting that he received $687,500.00 for the plaintiff and paid out $450,642.85 to the Sheriff and $69,986.13 to the Castries City Council for the plaintiff. He identified $250,000.00 in the said statement as "Counsel's fees" so that he would have been expecting the plaintiff to owe him as a result the sum of $83,128.98.

In giving his evidence the defendant sought in various ways to justify the charges he seemed to have contrived. He testified as to being highly offended and annoyed at receiving the letter from the plaintiff terminating his services; and seemingly in a fit of pique he decided to impose a staggering bill upon the plaintiff. The defendant testified that he had charged the plaintiff up to that time without sending out formal bills and the plaintiff had always unquestioningly paid. He did not like what happened in this case.

Much of the defendant's evidence did not give me the confidence I expected from it. And I could not be persuaded that the charges he identified in his claim were justified. He testified that he did not pay any attention to the tariff for legal practitioners' fees that was promulgated in 1987 and was adduced in evidence by Mr St Rose for the plaintiff. He testified that the tariff was outdated and was at any rate a tariff of minimum fees. He further contended that as an experienced practitioner, one of Her Majesty's Counsel since 1988, a former Attorney-General of this country, and a certified legal draftsman, he was entitled to make his charges based

on his appreciation of the complexity of the matter and other indicia determined by himself.

It has not been represented to me that the tariff exhibited by Mr St.Rose is generally accepted here but it did strike me that it could be useful as guide to an identifiable ball-park in which I may wander to find a reasonable figure for the plaintiff to pay the defendant for the services I find the defendant to have rendered.

The defendant was never clear as to exactly what he did or how he set about making his charges. He admitted he did not make or keep any record of the things he did like the telephone calls made or meetings attended. He testified that he spent $7,000.00 on telephone calls for the work he did for the plaintiff. Those calls were local and in the majority of cases were from himself to Mr St.Rose. He sought to justify those charges by suggesting that he was not only claiming for the telephone calls as a disbursement but was including charges for the content of the telephone calls. This was advanced notwithstanding that he would have already identified a fee for the work where the said telephone calls would have been made.

I was not satisfied that the defendant justified any of the claims he made for fees to be charged for the work he did for the plaintiff; and I was not in this exercise acting as a taxing officer but as a Court to adjudicate on the matters raised in the pleadings in this case on the admissible evidence before me. I had as much a duty to see that the defendant would be allowed his proper remuneration as to see that the plaintiff was not unreasonably charged for the services rendered to it. It is the plaintiff which had to betake itself to this Court for just relief and I have sought to give that to both the plaintiff and defendant.

I turn now to a resolution of the matters in issue. For a tidier exercise I shall deal first with the counterclaim of the defendant. It is the defendant's claim for fees that has interfered with the satisfaction which the plaintiff

could have expected from the sale of the Voice Building, so I shall determine those fees in light of the evidence that has been adduced before me and on the principles I enunciated earlier.

I have not been satisfied from the evidence that the defendant acted as an economic advisor to the plaintiff in the sale of the Voice Building. It is fitting therefore that he claimed nothing for that.

As I have earlier in this judgment shown the defendant did not satisfy me that he acted as an estate agent for the plaintiff; and he was not asked to identify a purchaser for the plaintiff. He did not do anything along the lines of such an agent for which he could demand payment from the plaintiff. He is not entitled therefore to charge the plaintiff anything as such agent.

I am satisfied however that he did engage in the negotiations with Mr St.Rose on behalf of the plaintiff when the plaintiff was dealing with J Q Charles Limited. The defendant testified as to attending four meetings at least and the plaintiff has accepted that this could have been so. The plaintiff was also willing to concede a fee along the order of $37,500.00 which the Court found to be reasonable. This is the amount the Court will allow the defendant in place of the $150,000.00 the defendant was claiming for identifying a purchaser for the plaintiff and acting as a real estate agent and chief negotiator.

The defendant claimed $30,000.00 for vetting three agreements. Those agreements were (i) the main agreement for sale between the plaintiff and J Q Charles Limited for the sale of the Voice Building (ii) an amendment to that agreement to extend certain provisions therein, and (iii) another agreement which was not produced in evidence. He said he charged $10,000.00 for vetting each of them.

Mr St.Rose testified that he got the plaintiff's new solicitor to send off to the defendant what was the tariff figure for vetting the main agreement

for sale where the consideration was $3,750,000.00. That fee was $9875. I have noted the defendant's disregard for the tariff.

The only evidence of a guide besides the figures given in Mr. St.Rose's evidence and the figures given by the defendant is the 1987 tariff mentioned earlier which gives figures for the preparation and drafting of agreements which may be a more demanding task than the vetting. The defendant testified that he used his considerable drafting skills to improve the documents when he was vetting them. Where the consideration in the agreement for sale is $3,750,000.00 the suggested tariff fee for the preparation and drafting of the agreement is $12,487.50 and I would allow that for the defendant as his fee for vetting the agreement for sale.

For vetting the amendment relating only to the extension of certain provisions in the agreement for sale and another agreement presumably even less complex and with consideration of about $81,000.00 a fee of $10,000.00 each could hardly be justified despite the protestation of the defendant as to his competence, ability and experience. Counsel for the plaintiff suggested that a fee of a couple hundred dollars would be adequate for the third agreement.

Since the amending agreement is only a development from the agreement for sale for which the defendant was already allowed a generous fee, it may be prudent to allow the defendant, on the evidence, a fee of somewhere around 25 percent of the main fee or $3,200.00. It would seem reasonable to allow the defendant a fee of $910.00 for vetting the third agreement.

That would mean that for the vetting of the three agreements the fees allowed would amount to $16,597.50.

The defendant was not sure of the number of times he appeared before the Registrar in relation to the paying off of the debt due by the plaintiff on its purchase of the Voice Building. The defendant took some

pride out of being able to persuade the Registrar to accept the difference only of what the plaintiff owed on the sale and what was owed to it. He was not sure as to how long the meetings lasted but they could have been of about 45 minutes duration. There could have been as many as 6.

There is no evidence as to what exactly the defendant had to do before the Registrar so that if he were allowed a generous hourly charge of $2,000.00 a total fee of $9,000.00 would appear reasonable. The defendant testified that he was aware of a study that indicated a charge of $1,500.00 an hour would be acceptable.

It did not appear reasonable for the defendant to charge $5,000.00 for preparing and submitting the document he produced to notify of claims of the plaintiff. The document in the form of a letter called for little thought to prepare and the Counsel for the plaintiff submitted that $100.00 for the same might have been over generous. On what has been adduced in evidence I would think that a fee of $500.00 could be reasonably allowed.

The defendant charged $10,000.00 for preparing a deed of mutual release between the plaintiff and another company. This service by the defendant equates to a radiation or discharge of an amount of $632,600.00. The tariff fee suggested would be less than $2,000.00. From the evidence I could reasonably allow the defendant a fee of $3,000.00.

The defendant was as imprecise about his appearances before the City Council to settle the payment of arrears of taxes for the plaintiff as he was on the matter of his appearances before the Registrar. The defendant also felt a sense of pride in his achievement but did not condescend to describe his services in such a way as to help the Court to allow a fee. In the same way I arrived at a fee for appearances before the Registrar I shall fix the fee for the 4 attendances of 45 minutes each he made on the Mayor. A fee of $6,000.00 would seem fair in the circumstances.

The charge of $10,000.00 made by the defendant for preparing and

registering radiations in respect of the Voice Building would seem to be unreasonable in the circumstances. Apart from the evidence that indicates that fees may already have been allowed for this work, nothing was adduced to show what exactly was done additionally for the plaintiff to have to pay a further sum of $10,000.00. On the *ipse dixit* of the defendant however, I would allow an amount of $1,000.00.

There has been no credible evidence that the defendant disbursed as much as $10,000.00 for telephone calls, faxes, letters and miscellaneous items. I have already said something about the weakness of the defendant's claim for telephone calls. The position with faxes and letters is no better and nothing was shown as being a miscellaneous expense. On the principle that a Court may in these matters make an award if one seems reasonable in the circumstances even if there is no credible evidence to support it, I would allow $100.00 as a global figure to cover those items.

In the result therefore I find that the defendant would be entitled to the global fee of $73,697.50 for his services rendered to the plaintiff as shown in the admissible evidence adduced. In arriving at that figure I had in mind that the plaintiff offered the defendant $100,000.00 which the defendant refused.. By this finding I do not seek to deny the defendant the opportunity of benefitting from the magnanimity of the plaintiff if it would make the same generous offer to him again. I sought only to be just and fair to both parties on the evidence adduced by the witnesses.

Throughout this judgment I have been referring to the defendant as a solicitor; and indeed the services he described as having done for the plaintiff may have included functions that are performed in England by a solicitor. *Section 5(2) of the Legal Practitioners Ordinance* provides as follows:

> *"(2) Save as provided by subsection three hereof every barrister of the Supreme Court shall be entitled to practise as a solicitor and notary in the Colony."*

Subsection 5(3) says this:

> *"(3) No barrister who has the rank of Queen's Counsel shall perform any of the functions which, in England, are performed by a solicitor and are not performed by a barrister; but a barrister who has the rank of Queen's Counsel shall not be precluded from continuing or engaging in partnership with another barrister by reason only that such last mentioned barrister performs any functions as aforesaid."*

Counsel for the plaintiff sought to raise the matter that the defendant might not be entitled to be paid for those things which he did as services for the plaintiff. The functions which in England are performed by a solicitor and are not performed by a barrister are matters of evidence. Generally all legal practice excluding advocacy, drafting conveyances, pleadings and other legal documents and advising on questions of law would go to make up the functions of a solicitor that are not performed by a barrister. There must however be proof of what that legal practice is in England. There is no evidence in this case as to what the functions of a solicitor are in England and I should not address the matter more. This is specially so since the plaintiff has not sought to get out of paying the defendant at all.

Now to the plaintiff's remedies.

The plaintiff asked the Court to order the defendant to render an account to it for all sums coming into the hands of the defendant for the plaintiff. As may have been gathered from all that has been written hereinbefore the plaintiff has done enough for the Court to make such an order if it were thought necessary at this stage. It is not now necessary.

The plaintiff alleged that it knew that the amount of $687,500.00 had come into the hands of the defendant for the account of the plaintiff. In his defence the defendant failed to admit that he received that amount but in the document he later submitted in the course of the trial as a statement of account there is an acknowledgement that he received those funds. That satisfied the plaintiff.

The plaintiff has also asked the Court to order the defendant to pay to the plaintiff all sums that are rightfully due to it. In the said statement of

account submitted by the defendant there appear two amounts which the defendant claimed he disbursed on the plaintiff's behalf to liquidate certain debts. The plaintiff has accepted that those amounts were properly paid so that the plaintiff should be remedied if it received the balance remaining from the amount collected less the amounts paid to the Sheriff and to the City Council.

The amount properly paid out by the defendant for the plaintiff was $520,628.98. If that is deducted from what was received by the defendant for the plaintiff there would be a balance of $166,871.02. That is the amount to which the plaintiff would have been entitled. It would be reasonable though for the defendant to have his fees extracted therefrom so that the final amount which the defendant should pay over to the plaintiff is $93,173.52. And I give judgment to the plaintiff against the defendant in that sum.

The plaintiff had also asked for damages in the statement of claim. At the trial however this claim was abandoned and I am therefore not called upon to make any order thereon.

The plaintiff also asked for interest on the moneys detained by the defendant presumably from beyond the date of the request made by the plaintiff. In a letter of the 3rd September 1996 from the defendant to the new solicitor for the plaintiff the defendant signified his intention to withhold all moneys that the defendant may have been entitled to receive. A solicitor is entitled to hold property belonging to his client against the receipt of his fees and the defendant would contend that this is what he was doing. It is not, however, open to a solicitor to hold the property of his client on which there is no lien; and the balance to which the plaintiff was entitled over and above the lawful fees of the defendant could have fallen in that category. The plaintiff would be entitled to be paid interest thereon as it demanded. In the circumstances the plaintiff will have interest at the rate of 6% per

annum on the said sum of $93,173.52 from 3rd September 1996.

In the result I give judgment for the plaintiff against the defendant in the terms as set out above. The plaintiff will also have its costs against the defendant such costs to be taxed if not agreed.

Dated this 13th day of June, 1997.

NEVILLE L SMITH
Judge.