

**IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CIVIL)**

SAINT LUCIA

CLAIM NO. SLUHCV2005/0214

BETWEEN:

VERNANTIUS JAMES

Claimant

and

FERGUSSON JOHN

Defendant

Appearances :

Claimant in person

Defendant in person

2007: May 15;
May 23.

JUDGMENT

[1] **COTTLE J.:** The Claimant is the former client of the Defendant. The Defendant was at all times a legal practitioner. In 1999 the Claimant retained the Defendant to institute legal proceedings against the Claimant's former employers for breach of the contract of employment. The Defendant commenced proceedings. The Claimant then went abroad to pursue studies which have now led to his qualification as a legal practitioner himself.

[2] At the case management conference before Pemberton J. the Defendant discontinued the claim. He was able to secure a ruling from the judge that there should be no order as to costs. The Claimant was not present at the case

management conference. He had not been informed by Counsel of the scheduled hearing.

- [3] The Claimant now brings the present claim for breach of contract or alternatively for professional negligence on the part of the Defendant.

The Claimant's case

- [4] The Claimant says that by discontinuing his earlier claim the Defendant has caused him to lose the opportunity to recover damages from his former employers. This discontinuance was done without instructions and constituted a breach of the retainer contract. Alternatively the Defendant failed to display the level of care and skill required of a reasonably competent legal practitioner and thereby caused the Claimant loss.
- [5] The Defendant denies that he acted negligently and says that his actions were consistent with the care and skill that would be expected of a competent legal practitioners who was cognizant of his duty to his client as well as his duty to the Court.
- [6] Both the Claimant and the Defendant gave evidence and were cross examined on the witness statements filed. From the evidence I found that the Defendant did not inform the Claimant of the scheduled case management conference. This was because the Claimant had absented himself from St. Lucia. He did not tell his legal representative of any forwarding address or leave him any means to contact him. The Claimant says that the parties had agreed that the Defendant would pass on any messages required to the wife of the Claimant who would contact the Claimant who would then in turn contact the Defendant to provide any instructions that would be needed.

[7] The Defendant says that there was no such arrangement. I prefer the evidence of the Defendant on this point. It may well be that the Claimant considered that as the parties were friends and the Defendant was aware of his wife's home address and telephone number, the Defendant would use this means to try to initiate contact.

[8] However I find that the Defendant acted reasonably in not telephoning the home of the Claimant at a time when he knew the Claimant was abroad studying. He could make no assumptions that the Claimant wished to involve his wife in the prospective litigation in any way. Additionally, and importantly, it was the Claimant's case. It was his duty to remain in contact with his legal practitioner. Sporadic visits at protracted intervals could not suffice to discharge that duty.

[9] In the absence of any specific instructions, the Defendant could not prosecute the claim on behalf of the Claimant. The case management conference is not a summons for directions. It is a hearing at which the parties to litigation are bound to attend. They must assist the Court to narrow and define the issues in contention. They must be prepared to negotiate. The Defendant was thus in no position to participate meaningfully in the case management conference. The judge adjourned the first hearing. At the second hearing, with no instructions, and the real probability of a substantial order of costs being made against the Claimant the Defendant decided to discontinue the claim. I do not consider that by this action he was in breach of any duty to the Claimant.

[10] At the trial of this matter, the Claimant made much of the Order made by the judge at the first case management conference. That Order in full read:

1. Matter adjourned to 18th December 2002 at 10:30 a.m.
2. If no settlement, matter to go to trial.

- [11] The Claimant contends that by this Order, the judge at the case management conference impliedly recognized that there was a good claim with a real possibility of success. He says that by discontinuing the Defendant, in acting without specific instructions and contrary to the Court Order, displayed negligence. The Claimant says that the Court had ordered the Defendant to litigate the earlier matter to settlement or trial.
- [12] I do not consider this submission to have any merit. The learned trial judge was merely indicating that the parties at the case management conference should be prepared to proceed. They must be ready to settle or litigate. As I have indicated above, the decision of the Defendant to discontinue was a reasonable one having regard to the absence of specific instructions from his client. He would have been in no position to comply with any directions given at the case management conference. Failure to comply would have exposed his client to the striking out of his claim and an award of costs against him.
- [13] I find that the Claimant has failed to make out any case against the Defendant. The claim is dismissed. Costs are awarded to the Defendant on the basis of prescribed costs. The Claimant sought to recover \$69,991.09 as special damages in addition to general damages. I am content to take the figure claimed as special damages as the value of this claim. The Claimant will pay the Defendants costs in the sum of \$17,998.22.

BRIAN S. COTTLE
HIGH COURT JUDGE