

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

ANTIGUA AND BARBUDA

CLAIM NO. ANUHCV2007/0186

BETWEEN:

**ALISTAIR GREENE
JANNIS REYNOLDS-GREENE**

Claimants

AND

**ASQUITH FEARON
MYRON ROBERT HAYDT
As agent for William H Grube Jr.**

Defendants

Before:

Master Cheryl Mathurin

Appearances:

The Claimants acting in person

2008: June 6th
September 16th, October 14th

ASSESSMENT OF DAMAGES

- [1] **MATHURIN, M:** On the 6th June 2008, I ordered the Claimants (The Greenes) to file and serve evidence and submissions in relation to the assessment of quantum of damages in this matter subsequent to a judgment in default of compliance being entered against the First Defendant. The First Defendant (Mr. Fearon) was to reply to these submissions by the 22nd August 2008 and the matter was set for hearing to the 16th September 2008. Mr Fearon did not reply to the submissions and at the hearing of the assessment on the 16th September 2008, Mr. Fearon did not appear and this decision was reserved.
- [2] The Greenes state that they were at all material times clients of Mr. Fearon who is a practicing attorney in Antigua and Barbuda. The Greenes also allege that they paid Mr.

Fearon a 75% deposit of \$7,500.00 to handle four claims filed in the High Court. They state that during the time when Mr. Fearon was retained by them, he filed a lawsuit on behalf of the second named Defendant (Mr. Haydt) against Mrs. Greene who states that the statements made in that case were false and injurious. They state that Mr. Fearon owed them a duty of care and that he acted with professional negligence, in breach of contract, breach of fiduciary duty/trust. The Claimants have claimed in their Claim Form, the following reliefs

1. Damages
2. Aggravated and exemplary damages
3. Reimbursement of legal fees
4. Interest at the statutory rate from 1st November 2005 to reimbursement
5. Costs
6. Such other relief as the Court deems fit.

Reimbursement of Legal Fees

- [3] The Greenes filed an affidavit in support of the assessment of damages with submissions. They state that Mr. Fearon only dealt with one of the four matters that they retained him for and failed to deal with the other claims and as such they would like a return of their money. The Claimants however have not pleaded any details of the claims he was retained for or any loss occasioned as a result of Mr. Fearon not completely finishing representation in those matters. In fact, the claim does not even plead that the Claimants suffered any loss at all. In the absence of anything to refute this, I accordingly award the sum of \$7,500.00 less 25% in the sum of \$5,625.00.

Damages for breach of retainer contract

- [4] The Claimants allege that Mr. Fearon breached the contract by not completing three of the four matters that he was retained for. In Saint Lucia Claim No 360 of 2005 **In the Matter of Kenneth Foster QC**, Shanks J. held that in circumstances where an Attorney failed to appear in Court and failed to properly come off the record or take other steps formally to end his retainer, that this failure amounted to professional misconduct meriting reproof. In the absence of anything to the contrary I am satisfied that this is the case herein and that Mr. Fearon was in breach of the retainer between the Greenes and himself. In the circumstances where no details are provided of the breaches alleged nor has any loss been quantified or detailed I find nominal award in the sum of \$5,000.00 to be reasonable.

Damages for conflict of interest

- [5] The second part of the claim in which the Greenes are seeking damages refers to the fact of Mr. Fearon filing a lawsuit against Mrs. Greene on behalf of another individual when allegedly on retainer by the Greenes. Mrs. Greene states that the lawsuit contained false and injurious statements against her. It is clear that the issue of whether or not there were false and injurious statements against Mrs. Greene and the effect thereof is one to be resolved in that particular matter and not at this instance.

[6] The issue of whether or not a conflict of interest arises by Mr. Fearon's filing a claim on behalf of another against Mrs. Greene, I think, is more complicated than mere representation. Generally an attorney can not act for a client where that client's interests conflict with those of a former client. The Courts dealing with this problem are in fact seeking to balance two conflicting public interests. This is an excerpt from **Blackstone's Civil Practice 2002**; page 234 where the principles which the Court have to take into consideration are outlined.

“(a) The public interest in enabling the client to repose the fullest confidence in the solicitor he retains, and ensuring there is no risk or perception of a risk that confidential information relating to a client will be conveyed to anyone else. The information that the court will seek to protect will have the following characteristics:

(i) It was originally communicated to the solicitor in confidence.

(ii) It is still confidential, and reasonably capable of being considered capable of being recalled. It might lose this characteristic by becoming common knowledge, or (in certain circumstances) if it has been communicated to an opponent during the course of litigation. Alternatively, it might be so eminently forgettable that it should not be protected. A client complaining that confidential information might be at risk must identify it with some particularity, but the degree of particularity required depends on the facts of the case ([Re a Firm of Solicitors \[1997\] Ch 1](#)).

(iii) It is relevant to the subject matter of the subsequent retainer.

(b) The public interest in the freedom of the solicitor to obtain instructions from any member of the public, and for all members of the public to instruct the solicitor of their choice.”

[7] It is clear that in alleging a conflict of interest, that the Claimant has not pleaded any relevant information on which to base this other than the representation of Mr. Fearon against Mrs. Greene in another matter that has not been shown to have been related to the matters in which Mr. Fearon represented Mrs. Greene. There is no allegation of confidentiality having been compromised and in the event that I may be wrong, there is no claim for loss and damages suffered, a fact that can not be imputed by the Court. In the circumstances, I can make no award under this head.

Aggravated and/or Exemplary Damages

[8] Exemplary damages can be awarded only in very limited circumstances. The House of Lords in [Rookes v Barnard \[1964\] AC 1129](#) recognised only three categories. They are:

(a) oppressive, arbitrary or unconstitutional behaviour by government servants,

(b) cases where the conduct of the defendant is calculated to make a profit which will be in excess of the compensatory damages which are payable, and

(c) where an award of exemplary damages is expressly authorised by statute.

An award for aggravated damages is usually made where the manner in which the wrongful act was committed was such as to injure the claimant's proper feelings of dignity and pride.

The Greenes have neither pleaded nor proven any evidence to support this claim, neither have they pleaded nor proven any aggravating circumstances to merit an award under this head and respectfully, an award will not be granted.

Interest and costs

- [9] Interest is awarded on the sum of \$5,625.00 at the rate of 3% from November 1st 2005 to September 16th 2008. Thereafter interest is awarded on the total sum of \$10,625.00 at the statutory rate of 5%.
- [10] Costs are calculated at 30% of \$10,625.00 which is to be further discounted by 55% as the claim concluded after defence (struck out) up to and including case management. This amounts to \$1,753.12
- [11] In summary the order of the Court is as follows;
- (a) The defendant shall pay to the claimants the sum of \$10,625.00 representing reimbursement of legal fees and damages for breach of contract
 - (b) The defendant shall pay interest of 3% on the sum of \$5,625.00 from 1st November 2005 to the 16th September 2008, the date of the assessment
 - (c) The defendant shall pay the statutory rate of interest on the total sum of \$10,625.00 from the 16th September 2008 until payment.
 - (d) The defendant shall pay costs in the sum of \$1,753.12.

CHERYL MATHURIN
Master