

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
COMMON LAW & EQUITY DIVISION

BETWEEN

ALEXIOU KNOWLES & CO.
(A FIRM)

Plaintiff

AND

DR. CONVILLE BROWN

Defendant

Before: The Honourable Justice Ian Winder

Appearances: Keri Sherman for the plaintiff

Wayne Munroe QC with Tomell Roker for the defendant

5 June 2018

JUDGMENT

WINDER J

This is the plaintiff's application for payment of outstanding fees arising from legal services provided.

[1.] The plaintiff's claim is more particularly set out in its relatively short statement of claim which provides:

1. The plaintiffs are a firm of attorneys practicing in the Commonwealth of The Bahamas.
2. The defendant was at all material times a client of the plaintiffs and is indebted to the plaintiff pursuant to invoices issued for the provision of legal services.
3. The defendant, along with others, engaged the plaintiffs to act on his behalf in defending a claim for damages for breach of agreement brought by Caron Shepherd a former employee of the defendant and others in Supreme Court Action 2010/CLE/gen/01210.
4. It was a term of the plaintiffs' engagement that the Defendant would pay to the plaintiff all sums due and owing for legal fees and expenses incurred in connection with its engagement.
5. In breach of the terms of the engagement, the defendant has failed and/or refused to pay the plaintiffs the amount due under the invoices issued; the total amount of fees presently due and owing to the plaintiffs is \$70,855.60, which sum is still due and owing by the defendant to the plaintiffs.
6. The plaintiffs, by numerous e-mailed communications and letters, demanded payment of the monies due and owing but despite numerous promises of payment, the defendant has not paid the said sum outstanding.
7. By reason of the foregoing the defendant is indebted to the plaintiffs in the sum of \$70,855.60.
8. By reason of the matters aforesaid the plaintiffs have suffered loss and damage.
9. The plaintiffs also claim interest in accordance with the Civil Procedure Rate of Interest Act.

AND THE PLAINTIFFS CLAIM:-

1. Payment of the sum of \$70,855.60;
2. Damages;
3. Interest thereon;
4. Costs; and
5. Further or other relief.

[2.] The substance of the Defence is a denial and is reflected at paragraph 4 of the Defence:

4. Paragraph 4 of the Statement of Claim is denied. The Defendant avers that there were never any specific terms of the engagement insofar as the Defendant would agree to pay all sums due and owing for legal fees and expenses incurred from the Supreme Court Action 2010/CLE/gen/01210 and as such any controversy should be settled against the Attorneys.

[3.] At the trial Luther McDonald gave evidence on behalf of the plaintiff. McDonald's examination in chief is set out in a witness statement which provided, in part, as follows:

2. The Firm was initially engaged by Anthony Klonaris to act on behalf of Blue Vista Limited, Dr. Conville Brown, Ishmael Lightbourne, Garrett Finlayson and himself in defending a claim brought against them for breach of contract brought by a former employee of Blue Vista Limited in Supreme Court Action 2010/CLE/gen/1210 ("the 2010 action").

3. Anthony Klonaris died on the 23rd August, 2012.

...

6. By e-mail of 9th August, 2013, the Defendant responded to my e-mail attaching the letter of the 8th August, 2013 and advised that arrangements would be made to settle any outstanding fees.

...

9. I once again wrote to the Defendant by e-mail of the 17th August, 2013 to stress that notwithstanding their preference to split fee payments, this was purely an internal arrangement and they were all liable to the Firm for the whole of the fees outstanding. (Tab 3 page 3 of the Plaintiff's Bundle of Documents). I had stressed to the Defendant in conversations at the time that we were holding him responsible for the payment of our fees as the other Defendants were either difficult to contact or did not respond to our requests for payment.

...

12. By agreement made between the Defendant and Mike Klonaris on behalf of the Estate of his deceased father, Anthony Klonaris, the Defendant guaranteed payment of 70% of the Firm's fees in respect of the 2010 action and Mike Klonaris was to have the Estate of his father pay the balance. The e-mails detailing the arrangement appear at the Tab labelled 6-8 and 10, 11 of the Plaintiff's Bundle of Documents.

...

14. Upon completion of the trial, Invoice Number 32294 was issued on 21st October, 2014 in the amount of \$80,855.60. Save for a payment of \$10,000.00 on 9th February, 2015, the Defendant has failed and refused to settle the fees due to us as agreed and the amount of \$70,855.60 remains due and owing to the Firm.

[4.] The defendant was the only witness to give evidence in his case. His examination-in-chief is set out in a witness statement which provided, in part as follows:

12. From the onset of the Caron Shepherd matter there was no formal engagement letter put in place. There was an understanding that all named defendants in the matter would be responsible for the retainer and legal fees jointly.
13. In an email dated the 21st August, 2013 Mr. Luther McDonald sent us an email requesting that an invoice of \$14,639.00 be settled and that all parties were to sign an engagement letter dated the 20th August, 2013 ("the engagement letter").
14. The engagement letter did not state that we the shareholders will be severally or individually liable for all legal fees in this matter.
15. That at no time during the course of the Caron Shepherd matter did I convey to Mr. McDonald that in the event that the legal fees are not paid, that I or any of the other shareholders will be individually liable for the same.

...

17. The total invoice for the Caron Shepherd matter amounted to \$ 91,174.00 ("the final amount"). To date I have paid \$17,446.14 towards the total invoice.
18. I have always expressed my willingness to pay my portion of the final amount that being 25% of the final amount. This is expressed in a letter which is annexed and dated the 17th November, 2015, addressed to Mr. Luther McDonald and subject "*Alexiou Knowles & Co v Dr. Conville S. Brown-Cle/gen/00913 of 2015*".

Issues

[5.] The issues in dispute are:

- (1) Whether or not the defendant agreed to be personally liable for payment of all legal fees associated with the Caron Shepherd Action?
- (2) Whether or not the retainer between the plaintiff and defendant can be construed as a joint and several retainer thereby rendering the Defendant liable to pay \$70,855.60 to the Plaintiff?

Analysis and Disposition

- [6.] The plaintiff says that there was an agreement that the defendant would be responsible for the entirety of the fee invoiced. The Defendant says that there was no agreement and in the absence of such fees ought to be shared among the several shareholders. The defendant relies on the case of **Beaumont v Senior and Bull [1903] 1 K.B. 282**, where Lord Alverston CJ opined at pg 284:

"But in the absence of any agreement between the two defendants as to how the costs of the defence were to be borne, it is clear, on the authority of the cases to which we have been referred, that each of the two defendants is liable to their solicitor for half the costs of the defence, and that will be the amount of costs which the plaintiff will have to pay the successful defendant."

- [7.] Additionally, reliance is placed upon the **Bahamas Bar (Code of Professional Conduct) Regulations Ch. 64 ("the Bar Regulations"), Rule X Fees Commentary 5** which states:

"In matters where the attorney is acting for two or more clients on the same side it is his duty to divide his fees and disbursements equally between them in the absence of agreement otherwise".

- [8.] The plaintiff firm was acting for a company, Blue Vista Limited whose shareholding was spread among four persons in varied proportions. The defendant held 25% of the shareholding in the company. By letter dated 8 August 2013, below, the plaintiff sought to request the shareholders to settle its invoices.

8th August 2013

Mr. Ishmael Lightbourne

Dr. Conville Brown
Garet Finlayson
Mr Mike Klonaris
Cay Corporate Services Limited
Blue Vista Limited

Dear Sirs,

Re: Caron Shepherd v. Ishmael Lightbourne, Conville Brown,
Anthony N. Klonaris, Garet Finlayson, Cay Corporate Services Ltd
and Blue Vista Limited/ Supreme Court Action No 1210 of 2010

We received instructions to act for yourselves in the captioned action.

The trial is set for the 3rd and 4th September. We have been requesting of yourselves Witness Statements in preparation for trial but have not yet had any response.

We have also tendered a statement of account for our services to date again to which we have had no response (copy attached).

In the event that no Witness Statements are tendered, it is likely that the Plaintiff will make application to have our Defence struck out and to obtain judgment in default against yourselves.

Also, if it is desired to have us continue, we will need to have our outstanding account paid and a retainer or some other satisfactory assurance of the payment of fees that we will incur in respect of the trial be provided. May we hear from you urgently please.

Yours faithfully,

ALEXIOU, KNOWLES & CO

Luther H. McDonald (Signed)

[9.] As regards instructions, the plaintiff had been in contact with two of the shareholders, namely the plaintiff and Mike Klonaris. The defendant and Klonaris both sought to propose the splitting of the fees in proportion to their shareholding. Those separate emails were settled as follows:

From: Mike A. Klonaris [mailto:MKlonaris@klonarislaw.com]
Sent: Saturday, August 17, 2013 6:04 AM
To: 'DR. CONVILLE S. BROWN'; 'Luther McDonald'
Cc: Mike A. Klonaris
Subject: RE: KARON SHEPHERD CASE

Dear Luther,

Perhaps the simplest way of receiving payment would be for each shareholder to pay your Firm's fees in proportion to his shareholding. As my father's interest in the company was 10% of the issued shares I will forward to you on Monday or Tuesday next week the proportionate payment of the past due invoice and the retainer amount.

Best regards,
Mike

Mike A. Klonaris

From: DR. CONVILLE S. BROWN [mailto:drconvillebrown@gmail.com]
Sent: Saturday, August 17, 2013 10:51 AM
To: 'Mike A. Klonaris'; Luther McDonald
Cc: ISHMAEL LIGHTBOURNE; PHILIP SMITH; DR. CONVILLE S. BROWN (G-MAIL)
Subject: RE: KARON SHEPHERD CASE

Hello Mike and Luther

This is precisely what I was going to suggest in our meeting, Mike, because there is no other formula, other than equity holdings in the company, that would allow for the fair and equitable rationing of the invoices.

Luther, please keep this as stringent as possible because I could see some challenges herewith.

Hopefully, this can be favourably dispensed with, costs retrieved so that all members can be made whole again for their troubles, as much as possible.

Mike, can I also ask you to kindly indicate the shareholdings at the end of our company so that the appropriate notices can be distributed to our shareholders for their remittances directly to LM or a specified fund.

Thanks much,

CSB.

Dr. Conville S. Brown, MD, MBBS, FACC.

[10.] McDonald responded indicating that everyone would be jointly and severally liable.

From: Luther McDonald
Sent: Thursday, May 3, 2018 3:08 PM
To: Lynette Thompson
Subject: 111479 109689 FW: RE: KARON SHEPHERD CASE –
Item 3 List/Bundle

From: Luther McDonald<LMcDonald@bahamaslaw.com>
Sent: Saturday, August 17, 2013 11:01 AM
To: drconvillebrown@gmail.com; MKlonaris@klonarislaw.com
Cc: s_sunshine22@hotmail.com; philipssmith@coralwave.com
Subject: Re: KARON SHEPHERD CASE

Dear Conville,

We will try to accommodate yourselves as you find convenient. However, I am bound to stress that notwithstanding the preference to split the fee payments amongst yourselves owing to your internal arrangements, in the hopefully unlikely event that our fees are not paid, everybody is the liable for the same.

Regards,
Luther

[11.] Having heard and observed the witnesses I did not find, on the evidence, that there was any appropriate formal acceptance of this response of McDonald, but I am satisfied nonetheless that the defendant agreed that he and Klonaris would see to the settling of the plaintiff's invoices. The defendant wrote to McDonald on 28 August 2013 as follows:

From: DR. CONVILLE S. BROWN [mailto:drconvillebrown@gmail.com]
Sent: Wednesday, August 28, 2013 3:21 PM
To: LATASIEH CAREY (OPERATIONS MANAGER); MICHAEL STRACHAN (FINANCIAL CONTROLLER); MICHAEL KLONARIS; Luther McDonald
Cc: DR. CORRINE SIN QUEE-BROWN; DR. CONVILLE S. BROWN (G-MAIL)
Subject: FW: KARON SHEPHERD CASE AND SHAREHOLDER OBLIGATIONS/GUARANTEE.

Dear Tas, Mike (S) and Mike (K),

Please prepare our two checks for my signature and release this pm, delivery in am as (sic) I can't leave Miami before 5 pm.

I wish to propose the following to Mike and Luther and hope they are in agreement, under these awkward, at best, circumstances:-

I think we, Mike K. and I, will have to guarantee payment to Alexiou, and may ask to pay same in 3 installments to allow us more time to collect from our colleagues, who will have no urgency if they know this has been paid already by Mike and myself.

I suggest as follows:-

1. Payment by Mike and CSB as owed for both phases presently and by tomorrow;
2. In two weeks, Payment by Mike and CSB of 50% of balance.
3. In four weeks, Payment by Mike and CSB of remaining 50% of balance.

Mike K., I will clearly be on us, and cannot be on Luther, for us to collect or make said funds available as above. It is also our problem to find these good gentlemen and bring pressure, legal if necessary, to bear to facilitate their payment of their obligations.

I hope you find this approach acceptable, however distasteful, as neither you nor I have much time for this, but we need a default judgment in a frivolous case like we need a hole in our heads.

Thanks much, Gents,

CSB.

Dr. Conville S. Brown, MD, MBBS, FACC.

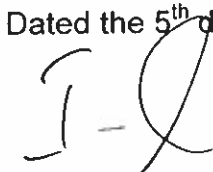
[12.] I am satisfied also that the defendant intended a sharing of the responsibility rather than jointly and severally being bound.

[13.] In the circumstances therefore, I find that the defendant was responsible for one half of the \$80,855.60 in fees due to the plaintiff in the amount of \$40,427.80. Therefore, taking into account the \$10,000 paid by the defendant I give judgment in the sum of \$30,427.80.

[14.] I award interest of 3% from the date of the filing of the Statement of Claim. Interest to accrue thereafter at the statutory rate.

[15.] The plaintiff shall have its reasonable costs to be taxed if not agreed.

Dated the 5th day of October 2018

A handwritten signature in black ink, appearing to read 'I-Winder', written over the printed name 'Ian Winder'.

Ian Winder

Justice