[2002] QCA 293

COURT OF APPEAL

McPHERSON JA
MACKENZIE J
HOLMES J

Appeal No 4018 of 2002

CLIVE WILLIAM SPEAKMAN TRADING AS CLIVE SPEAKMAN SOLICITORS	Respondent/Respondent
and	
SIMON EVANS	Applicant/Appellant

BRISBANE

..DATE 09/08/2002

JUDGMENT

McPHERSON JA: This is an application by the defendant for a stay of proceedings for enforcement of a judgment for the sum of $16,509 including interest given summarily in the Magistrates Court for the recovery of remuneration for professional services rendered by the plaintiff solicitor in acting for the defendant client. The defendant originally appealed against that judgment to the District Court where his appeal was dismissed. He now seeks leave under s 118 of the District Court Act to appeal to this Court and also to obtain a stay of enforcement of the judgment given in the Magistrates Court. His right to apply for the stay here is dependent on his having an appeal to this Court, or at the very least a grant of the right to appeal by leave to this Court. See Stone v. Copperform Pty Ltd [2002] 1 Qd.R 106.

The reasons for judgment of the District Court Judge dismissing the appeal from the Magistrate's judgment identify the issues in the case before his Honour. At the hearing in that Court his Honour permitted the defendant to file and read three affidavits in answer to the original application for summary judgment. Permitting this to be done effectively met any complaint that the defendant might have had that in the Magistrates Court he had been denied the right to give evidence orally in answer to the plaintiff's claim and affidavit in support of the application for summary judgment.

Having considered the affidavit material presented in the District Court his Honour declared himself satisfied that there was no real issue to be tried in the action and that there was no likelihood of a defence succeeding. In particular, his Honour said at page 6 of his reasons:

> "It is clear that the respondent wrote on numerous occasions to the applicant seeking his signature to the written retainer but there is no documentary evidence that any of those letters were responded to with an assertion that there was no need to sign the written agreement because there was already an oral agreement and the matter was to be handled on a speculative basis.
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> It seems to me that the contemporaneous documentary evidence in this case is so strong as to make it entirely unlikely that at a hearing, if there were to be one, that it would be accepted that there was an oral contract of the type claimed by the appellant. In my view the defence outlined is so unlikely to succeed as to require me to dismiss the appeal."

His Honour considered that, even though there was no written agreement or retainer, there was a compelling inference from the actions of the parties that there was an implied agreement that the defendant was to pay the plaintiff's reasonable fees. From the correspondence between the parties his Honour drew the inference that an agreement to engage the services of the solicitor existed, and it follows that the terms were those usually applicable to such an agreement. Hence it also followed that, when the defendant refused to sign the retainer agreements presented to him, what he did amounted to a repudiation of the agreement as alleged by the solicitor,

which, taken with other conduct in the case, entitled the plaintiff as solicitor to put an end to the agreement and sue for fees for the work already done. That entirely accords with a long line of authority at common law including the decision in Planche v. Colburn (1831) 5 C & P 38. Once an agreement for work and labour or professional services is brought to an end by the party who requested those services, the party providing the services is entitled to recover the reasonable value of the services rendered.

When these matters are considered, and the reasons for judgment of his Honour are scrutinised, there seems to me to be no basis at all for giving leave to appeal in this case in a matter which has already passed through two Courts and which, if the leave were granted in this Court, would have to pass through an appeal before finally going to be tried in the ordinary way. It follows that in my view the application for leave to appeal must be dismissed, together with the purported appeal, if any, and the application for a stay of enforcement of the judgment in the Magistrates Court.

In my view, the applicant defendant must pay the respondent plaintiff's costs of and incidental to those applications and that appeal.

MACKENZIE J: I agree.

HOLMES J: I agree.

McPHERSON JA: The order of the Court will be as I have stated it.
