

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

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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  
10 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  
20 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  
30 Stone v. Copperform Pty Ltd [2002] 1 Qd.R 106.

The reasons for judgment of the District Court Judge  
40 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  
50 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:

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"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."

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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,

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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  
10 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  
20 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  
30 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  
40 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  
50 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.

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