Case No: 1997 S No.411

THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

Royal Courts of Justice

Strand

London WC2A 2LL

Date: 2nd July 1999

BEFORE

THE HONOURABLE MR JUSTICE HOLLAND

BETWEEN

SLAUGHTER AND MAY (a Firm)

Claimant

- AND -

(1) ILENE RUTH MOSES

(2) CHERRY PICKERS LIMITED

(a company incorporated under the laws of Jersey)

Defendants

JUDGMENT

Mr. Justice Holland:

Introduction

By way of a writ issued on the 26th March 1997 Slaughter and May, the well known firm of solicitors, claim moneys as due under five bills, together with interest. That claim is developed by way of a Statement of Claim of September 1997 to which was appended photostat copies of the bills. That provoked a Defence of 5th November 1997, subsequently amended on the 28th May 1999. The pleadings are completed with a Reply of the 24th February 1999. Those pleadings disclose the following issues:

Bill 58171 dated 8th May 1989. The Defendants contend that liability for such rests solely with the company that is billed: Jolland Company Limited (now in liquidation). It is further contended that the claim based upon that bill is statute barred by reason of limitation.

Bill 59672 dated 24th July 1989. The First Defendant does not deny that she was the client to whom the services were provided, at least to the extent of £18,651.74, but she denies liability, because the claim is similarly statute barred by reason of limitation.

Bill 72198 dated 25th April 1991. The Defendants contend that any liability for such rests solely with the Second Defendant. Further by way of the amendment of the 28th May 1999, it is contended that the Claimant "would not be entitled to look to the Second Defendant for payment thereof until such time as the Second Defendant was put into funds therefor by or through the FIG consequent upon the business dealings (with FIG) .... As at the date hereof the Second Defendant is still awaiting payment of such monies."

Bill 74873 dated 24th October 1991, and

Bill 90651 dated 27th April 1994. The same issues are raised as under **72198**.

It is to be noted that these defences apart there is an express admission that the bills are due and payable. However a final point is taken as to interest: entitlement to such for any period preceding the 10th April 1997 is denied.

The Hearing

The First Defendant is a U.S. citizen aged 62 currently residing in Nevada further or alternatively, California. The Second Defendant is a company registered in Jersey of which the First Defendant is a director. Seemingly it has never actively traded and in any event for the purposes of this litigation it has only acted through the First Defendant. Until the 21st June 1999 both Defendants have acted through solicitors, Simmons and Simmons, but at 10.30 am on that day I acceded to an unopposed ex parte application made by them in Chambers to come off the record. By way of this application I learned, first, that the First Defendant felt too unwell to travel to this country so as to give evidence; and second, that on the 14th June 1999 Buckley J. had refused her application for an adjournment. In the overall result, when the case was

subsequently called on in open court I agreed to conduct the hearing notwithstanding the First Defendant's absence and lack of representation. Being a limited company it followed that the Second Defendant had no locus given no representation — and in any event no member or employee of that company was identified as present. In such circumstances, Mr. Graham, counsel for the Claimant, was asked by me to prove his full case so that I could properly and fairly adjudicate on the points raised in the Amended Defence and in the First Defendant's witness statement of the 12th January 1999: this he did in an exemplary fashion so that some two thirds of the Court day was spent reviewing the facts and the supporting documents. Further, I was asked to give my judgment in writing with sufficient particularity as to show how I resolved the issues — and this I now seek to do.

The History

Mrs. Moses (it is more convenient so to call her rather than the more formal 'First Defendant') first instructed the Claimant on the 10th February 1989. As at that date she had an enviable international reputation as an expert in the manufacturing and marketing of clothes and fabrics, particularly known for her skill in anticipating trends and fashions. She owned various companies in the United States (where she was normally resident) and she was the sole shareholder in Jolland Co. Ltd., a Hong Kong Company. Jolland had entered into a series of contracts with a cartel of businessmen or business interests individually originating in Europe, in the Middle East and in the Far East. For business purposes, Jolland was trading from Switzerland and the cartel acted through Liechtenstein. Mrs. Moses had come to the Claimant by way of an introduction made by Mr. Michael Belmont and Mr. Patrick Donlea of Cazenove & Co, the stockbrokers. The partner then concerned with Mrs. Moses was Mr. Michael Mitchell, the head of the private client department. From that day onwards he undoubtedly provided extensive, sophisticated legal advice and services over a prolonged period finally terminating in April 1994 when the Claimant effectively transferred its private client department to another firm, Withers. I would draw immediate attention to the fact that no issue has ever been raised as to the content or quantum of the bills — the only issues are as set out above. In such circumstances, even allowing for a need for a clear exposition of the Court's approach, I can be forgiven for doing no more than highlighting such features of that five year history as explain or bear upon the issues raised in the Amended Defence. Thus:

Bills 58171 and 59672. The respective narratives of the bills merit citation in full as a near contemporaneous guide to the history:

> "Bill 58171: February to 31st March 1989.
>
> To PROFESSIONAL CHARGES in relation to further advice in relation to proposals for restructuring the business and assets of the Company including the possibility of the issue of a new class of share with or without the introduction of a new shareholder, advising as to the tax implications of the Company's present structure and ways in which this might be improved, including attending meetings in London and New York and discussing with United States tax attorneys among others."

"Bill 59672: 1989 April to 30th June.

To PROFESSIONAL CHARGES in relation to further advice in connection with proposals for restructuring the business and assets of Jolland Company Limited, to include proposals to transfer the assets and liabilities of the Company to a Bermudian subsidiary and the establishment of new operating entities in Bermuda and elsewhere, the proposed introduction of a new shareholder and the tax implications of the Company's present structure and the various proposals, involving the review/preparation of the documentation, attendance at meetings in New York and discussions with the United States attorneys and lawyers in Hong Kong and Bermuda."

Says Mr. Mitchell, all this reflected, first, Mrs. Moses' initial concern which was to minimise her U.S. tax liabilities, and second, that which emerged as being her personal dream: to set up an international business that was less dependent upon the cartel and which would be tax efficient. His response was to seek to devise and establish a corporate structure based in Bermuda over which Mrs. Moses could exercise maximum control consistent with a shareholding that did not exceed 50% - all so as to gain advantage for Mrs. Moses with respect to her U.S. taxation liability. Give the nature of the problem, he retained for Mrs. Moses the services of Bergman Horowitz and Reynolds ('BHR') a U.S. law firm specialising in tax and estate planning.

Bill 72198: The narrative similarly merits recital:

Bill 72198: July 1989 to 31 March 1991.

To PROFESSIONAL CHARGES in relation to advising on an extensive basis in connection with a proposed contract with a group of foreign investors (the FIG) for the provision of consulting services in connection with the garment and textile industries and numerous associated arrangements involving the creation and financing of a group of Bermudian companies; to include the conduct of negotiation of terms with solicitors representing the FIG, the review/preparation and revision of extensive documentation; the perusal of papers relating to certain proceedings in Switzerland; advising on certain proposals for the restructuring of the capital of Jolland Company Limited and advising also on certain questions arising out of the liquidation of Jolland Company limited; including communications with United States attorneys, Swiss and Bermudian lawyers, attendances at meetings in New York, Hong Kong and London, reporting thereon and on all aspects to date."

Says Mr. Mitchell, this new chapter opened with the commencement in Hong Kong of winding up proceedings against Jolland at the behest of a Swiss Company, Semifora AG, assignees of Jolland's indebtedness to a Swiss bank. Seemingly this could have been resolved through receipt of funds due from the cartel but here there developed a further complication. The composition of the cartel changed so that effectively it became one with Far Eastern members known as the

'Foreign Investor Group' ("FIG"). This Group wanted to retain Mrs. Moses' skill and services and there started long, complicated and ultimately inconclusive negotiations for the making of a 'work contract' between Mrs. Moses and FIG. The negotiations were conducted on behalf of Mrs. Moses by Mr. Mitchell; FIG were represented by a Hong Kong solicitor, Mr. Christopher Hooley of Fairbairn, Catley Low and Kong. The difficulties that dogged these negotiations were many, principally the number of Mrs. Moses' outstanding but interrelated problems, her reluctance to commit herself contractually to regular visits to China (save with extensive conditions) and the variable intransigence of FIG. Mr. Mitchell's efforts did bear some fruit: on the 15th June 1990 Mrs. Moses signed a Memorandum of Intent as drafted by Mr. Mitchell which served to identify the structure of a work contract that would be mutually acceptable, hopefully so as to provide a basis for further discussions as to issues consequent upon such, for example monies due to Mrs. Moses by virtue of her previous contract. Shortly thereafter (on the 22nd June 1990) the Second Defendant company ('CPL') was incorporated so as to give effect to a suggestion of BHR that the new work contract should be conducted through the medium of a service company. The latter would charge FIG for the provision of Mrs. Moses' services and she would charge CPL for making herself available for such work. The latter charge would be less than the former charge thus enabling the diversion of money to Bermuda without becoming subject to U.S. tax. FIG had agreed to this development provided that (for some reason unknown) CPL was in a jurisdiction different from Bermuda — hence its incorporation in Jersey.

Other activities of Mr. Mitchell covered by this bill included activities demanded by Swiss civil proceedings initiated by Semifora A.G. to which Mrs. Moses was a third party, and by Swiss criminal proceedings against Mrs. Moses based on an allegation of fraud such as induced the Swiss bank to make the loan that had been assigned to Semifora. Yet further, Mr. Mitchell had to become involved with issues peripheral to a further development in the hectic life of Mrs. Moses: the inception of U.S. bankruptcy proceedings against her arising out of default with respect to a guarantee given by her with respect to a loan to her U.S. Company. His concerns centred upon trying to help her business empire afloat until the work contact came into being, hopefully releasing long needed funds.

Bills 74873 and 90651

The respective narratives read:

> **Bill 74873: (1st April, 1991 to 20th October, 1991)**
>
> **To PROFESSIONAL CHARGES in relation to further extensive advice in connection with a proposed contract with a group of foreign investors (the FIG) for the provision of consulting services in connection with the textile and garment industries and numerous associated arrangements involving the creation and financing of a group of Bermudian Companies, the review, preparation and revision of extensive documentation, the perusal of papers relating to certain proceedings in Switzerland, including communication with lawyers in the USA,**

Hong Kong, Jersey, Guernsey, Bermuda and Switzerland and attendance at meetings in New York and London (matter continuing).”

Bill 90651: 21st October 1991 to April 1994

To PROFESSIONAL CHARGES in relation to further advice in conjunction with a proposed contract with a group of foreign investigators (the FIG) for the provision of consulting services in relation to the textile and garment industries and numerous associated arrangements.”

As they collectively imply the themes already identified were pursued by the indefatigable Mr. Mitchell. The latter’s witness statement lists the work done: he is plainly entitled to refer to such as ‘vast’ as well as being complex and sophisticated. I note that as at May 1993 the Claimants’ hours devoted to Mrs. Moses’ affairs amounted to 1254. Indeed, there might have been more such but for a breakdown in the health of Mrs. Moses that rendered any work contract speculative and ultimately impossible. Again, her widespread failure to pay lawyers’ fees was tending to slow down activity on her behalf as did the issue in 1992 of an international arrest warrant by the Swiss authorities. The Claimants eventually ceased to act in April 1994 — the closure of the private client department forcing the issue.

The Issues

Bill 58171. As to the contention that liability rests with Jolland Co. Ltd. it is to be observed that the bill is specifically raised against that company and that the narrative is arguably consistent with that company having the status of a client of the Claimant. For the rest, there is nothing in Mrs. Moses’ witness statement that develops the point whereas Mr. Mitchell in giving evidence before me adopted the relevant text of his witness statement:

The first bill was addressed to Jolland, I believe, because I was requested by Mrs. Moses or Mr. Carrick to address it in this way. I do not think a copy of the bill would have been sent to Jolland. In my experience, which is fairly considerable, the rendering of a bill to a company owned and/or controlled by an individual client is something which happens all the time in private client work. It happened because it tends to make life simpler for the private client (i.e. the individual) most of their cash and assets tends to be held by companies or trusts and for a company or trust to be billed means that the company or trust can pay the bill on the individual’s behalf. It is often easier (and sometimes more tax efficient) for a company or trust to make payments on behalf of an individual in this way; the consequences in terms of company, trust and tax law will vary from one situation to another. The alternative is usually for the company or trust to make the required cash available to the individual by way of a cash payment, a process which usually requires more administration, delay and expense and may, depending on the circumstances attract unwarranted tax liabilities. Plainly, if the individual is resident in the UK

for tax purposes and the company or trust is not, a solicitor needs to remember that the bill should attract VAT (because the bill is really a bill to the individual). In this case there was no need for me to add VAT to the bill because Mrs. Moses was not resident in the UK for tax purposes. It should be quite plain from what I have already said that the work done and set out in the first bill was not work which Jolland had instructed me to carry out: Mrs. Moses was obviously acting on her own behalf in giving me the original instructions. The work carried out was not for the benefit of Jolland — it was for the benefit of Mrs. Moses."

For my part, I have no hesitation in resolving this issue against Mrs. Moses. Any sustained perusal of the voluminous documentation leads overwhelmingly to the conclusion that she was the one and only client of the Claimant, posing a multitude of personal problems with the resolution of some inevitably involving the companies over which she had absolute control. It is indeed to be remembered that one of the objects of the initial exercise was to lessen that control, at least ostensibly, so as to assist her in her dealings with the U.S. tax authorities. Dealing with this particular bill it is additionally to be noted that the narrative continues into the next Bill, 59672, which is raised against Mrs. Moses — because, says Mr. Mitchell, that was as she requested it.

As to the further contention that liability for the sum claimed became statute barred in 1995, the Claimant replies that all these Bills (save the last) were interim and that the work undertaken in accordance with her instructions did not terminate until April 1994. It was only as from the latter date that time started to run: such was not set in train as and when any interim bill was submitted. Support for this proposition is invoked from **Coburn v Colledge (1897) 1 QB 702** a decision of the Court of Appeal summarised in the head note: **"In the case of a solicitor's costs the cause of action arises when the work is completed, and therefore the Statute of Limitations begins to run from that time, and not from the expiration of a month from the delivery of the bill of costs."** It is pointed out in the judgment that this stipulation is beneficial to both parties so that, for example, a solicitor cannot stay the outset of the limitation period by delay in the submission of his bill: the crucial date for limitation purposes is that upon which the work is completed. I am satisfied as to the force of the Claimant's case in reply to the limitation point and on this issue I find in favour of the Claimant.

Bill 59672. The only issue specific to this Bill is the limitation point. Inevitably, my finding is as with the earlier Bill.

Bill 72198. Two issues are raised. First, it is pointed out that the Bill is raised against CPL and it is pleaded that only that company is liable. The point is not developed further in the witness statement of Mrs. Moses but Mr. Mitchell does deal with the point:

It was at about this time, ie, the summer of 1990 that the FIG through Mr. Hooley made the offer to reimburse Mrs. Moses in respect of her legal fees. The offer was that on the "closing" of the various transactions which were being negotiated the FIG would pay a sum equivalent to Mrs. Moses' then outstanding legal fees to a company nominated by Mrs. Moses. Mrs. Moses responded by thanking the FIG

for their offer and suggesting CPL as the company which should receive the payment in respect of her legal fees. I have been shown correspondence between Mr. Hooley (for the FIG) and me (for Mrs. Moses) dated the 4th, 8th and 19th June 1990 which relates to this particular question."

To this he adds that the bill was not actually sent to CPL but was submitted to Mrs. Moses. In my judgment this point cannot sensibly be advanced: the narrative demonstrates that the work billed started in July 1989 (that is, nearly a year before CPL was incorporated) and its nature was wholly relevant to the ongoing problems of Mrs. Moses. CPL was a potential instrument, it was never the client.

Second, there is the 'contingency fee' point. As to this Mrs. Moses by way of her witness statement points out that almost throughout her relationship with the Claimant she was in financial difficulties and that indeed a continuing concern for the Claimant was as to how to 'unlock' funds already due to her and how to provide for future profit, all on a tax advantageous basis. Thus, she says: " .... the upshot of all this is that I always believed that it was clearly understood that Slaughter and May would never look to me personally for the settlement of their fees .... I and Cherry Pickers Group understood that Slaughter and May's fees would be paid from the fruits of the venture to which we had all been working." She points out that the Claimant was content to continue providing services notwithstanding her failure to pay the earlier bills and indeed were sufficiently cognisant of her situation and the crucial importance to her financial position of the never completed work contract as to hold off making serious demands for payment until 1996. Essentially, since the contingency (the unlocking of funds) never came to fruition no fees are due under this bill. Before turning to the Claimant's response I interpose to point out that this line of argument is entirely inconsistent with the limitation point taken with respect to the first two Bills. Mr. Mitchell accepts that the Claimant was aware that at all material times Mrs. Moses could not pay upon presentation of any one bill — at least not without difficulty; and that the Claimant, appreciating that one immediate product of the work undertaken for her should be the release to her of very substantial funds, was content not to press for payment over a substantial period of time. That said, as he contends, there was no question of the work being undertaken on a contingency fee basis. As a matter of policy the Claimant did not enter into contingency fee agreements — had it been minded to breach that policy the agreement would have been specific and in writing. Again, I have anxiously perused the documentation with the aid of Mr. Graham but have failed to find any indication of any such agreement as would deny to the Claimant any fees unless and until a contingency were satisfied. The very fact of interim bills is inconsistent with that construction as is the setting up of CPL as a vehicle for the receipt of moneys that were hopefully to be released by FIG for payment of Mrs. Moses' legal expenses. On this further issue, I have again to find against Mrs. Moses.

Bills 74873 and 90651. The issues are as with 72198 and are similarly resolved.

Generally

Having regard to the astonishing amount of sophisticated legal services provided to Mrs. Moses by Mr. Mitchell on behalf of the Claimant I confess to being surprised that any issue at

all is raised as to liability for the fees. The merits are all one way. True, I am still obliged to look carefully at the issues raised (more particularly because of the absence of Mrs. Moses) and this I have done but my failure to find anything in her favour is not a matter of regret. I add for sake of completeness that the formal steps relating to an action for recovery of solicitors costs have been complied with — indeed the contrary has not been contended.

Interest

By the Amended Defence it is pleaded in paragraph 8:

" .... the Defendants aver that the Plaintiff's entitlement to claim interest in respect of the bills pursuant to Section 5(1) of the Solicitors Remuneration Order 1972 runs from the date which is one month after the date on which the Plaintiff advised the Defendants of its right to obtain a remuneration certificate from the Law Society of England & Wales in respect of the Plaintiff's bills. The Plaintiff first wrote to the Defendants concerning this right on 19 March 1997. In the premises, the Plaintiff's entitlement to interest under paragraph 5(1) of the Solicitor's Remuneration Order 1972 is denied is so far as it predates 19 April 1997."

All this refers to certain Articles of the Solicitors Remuneration Order 1972:

"3(2) Before a solicitor brings proceedings to recover costs on a bill for non-contentious business he must, unless the costs have been taxed, have informed the client in writing-

(i) of his right under paragraph (1) of this article to require the solicitor to obtain a certificate from the Law Society, and

(ii) of the provisions of the Solicitors Act 1957 relating to taxation of costs

5(1) After the expiry of one month from the delivery of any bill for non-contentious business a solicitor may charge interest in the amount of the bill (including any disbursements) at a rate not exceeding the rate for the time being payable on judgment debts, so, however, that before interest may be charged the client must have been given the information required by article 2(3) of this Order."

Does interest run from a date one month after notification (as is contended by Mrs. Moses) or does it run from one month after payment under the bill became due (as is contended by the Claimant)? The answer, it is submitted lies in **Walton v Egan (1982) Q.B. 1232**. Mustill J. (as he then was) there decided that " .... **the cause of action for interest arises as soon as one month elapses but does not become enforceable until notice is given in accordance with**

Article 3." In my judgment that highly persuasive authority resolves the issue on the Claimant's favour.

Judgment

Bill No 58171	**£17,637.88**
- interest thereon	**£18,857.12**
Bill No 59672	**£18,651.74**
- interest thereon	**£19,349.31**
Bill No 72198	**£325,505.86**
- interest thereon	**£252,313.01**
Bill No 74873	**£188,643.34**
- interest thereon	**£132,034.69**
Bill No 90651	**£13,510.11**
- interest thereon	**£5,477.15**
Total	**£991,980.21**

There will be judgment against the First Defendant (Mrs. Moses) for that sum together with costs assessed in the sum of £292,025.26. There will be Liberty to Apply as to the assessment of costs.