

JERSEY / JUDGMENT

Sinel v Dean & Dean

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[2007]JRC205 royal court (Samedi Division) 6th November 2007 Before: M. C. St J. Birt, Esq., Deputy Bailiff with Jurats Bullen and King Between Philip Cowan Sinel (practising under the name and style of Sinel Advocates) Plaintiff And

- (1) Shahrokh Mireskandari
- (2) Merhdad Jami-Therani
- (3) Caroline Turbin (practising together under the name and style of Dean & Dean, Solicitors) Defendants Advocate T. V. R. Hanson for the Plaintiff. Miss Turbin in person.

judgment

deputy bailiff: 1. This is an action by the plaintiff (Sinels) claiming fees in the total sum of £19,074.04 from the defendants ("Dean & Dean"). Miss Turbin is a partner in Dean & Dean. She appeared in person and spoke for all the defendants.

Background

2. At the relevant time, Dean & Dean represented a Mrs Mubarak in a long-running and hotly contested divorce proceedings in England. It is clear that Mrs Mubarak was very short of funds and Sinels were aware of this. In April 2004 Dean & Dean approached Sinels with a view to obtaining their advice on Mrs Mubarak's position in relation to a Jersey trust known as the IMK Family Trust. On 15th April, 2004 Dean & Dean signed a 'business relationship' agreement with Sinels agreeing to Sinels' terms of business. By this agreement Dean & Dean agreed to be directly responsible for Sinels' fees. When returning the agreement Dean & Dean endorsed it in manuscript to the effect that the costs at that stage were to be limited to £5,000. This was agreed by Sinels. 3. It would appear that a bundle of documents were then sent to Sinels and, following research and preparation, advice was given in conference by Advocate Sinel, the sole principal of Sinels. In due course Sinels submitted a bill on 12th May in the agreed sum of £5,000, although their timesheets showed work in excess of £10,000 as having been carried out. 4. In May 2005, Dean & Dean once again approached Sinels and asked them to deal with an application to strike out some proceedings brought by Mrs Mubarak (not through Sinels) in Jersey. Advocate Landick, who had by then become an employee of Sinels, appeared on that occasion. A fee note was rendered in June 2005 and, after some delay, was paid. The events in question 5. We now turn to the events which give rise to this action. We have received evidence in two forms. Firstly there is an agreed bundle

of correspondence, invoices etc. Secondly, we have heard oral evidence from Advocate Landick on behalf of Sinels. Advocate Sinel was due to give evidence but was ill on the day of trial and accordingly did not attend. Dean & Dean called no evidence and relied entirely on cross-examination of Advocate Landick by Miss Turbin, together with submissions. 6. On Wednesday 2nd November, 2005, Miss Sofia Moussaoui of Dean & Dean telephoned Sinels to request that they appear in proceedings which were to be heard in the Royal Court the following Monday, 7th November. It appears that, on this occasion, Sinels were being asked to represent Mrs Mubarak's son Salem Mubarak rather than Mrs Mubarak herself but neither party has suggested that anything turns on this. Miss Moussaoui spoke to Advocate Landick and it is agreed that on the telephone, he gave an estimate of £2,500 to cover the costs of Sinels' work in this respect. However, he had not at that stage seen any of the papers and emphasised that it was merely an estimate and provisional. Dean & Dean agreed to courier to Sinels the bundle of papers which they had received in connection with the hearing. As a precaution, Advocate Landick also arranged to obtain a copy of the bundle from Bedell Cristin, who acted for the trustees of the Jersey trust. Advocate Landick received both sets of documents the next morning and began reading into the bundles. 7. On that Thursday, Advocate Landick sent a fax to Dean & Dean confirming his understanding of the position. In particular he said this about the estimate:- "At Miss Moussaoui's request yesterday, I gave her a provisional estimate of this firm's fees for preparation for and attendance at the hearing on Monday 7 November 2005. That estimate of £2,500 was based on about four hours of preparation at £250 an hour and three hours in court at £300 an hour, with an additional allowance to provide for other preparation and travel to and from court and waiting. I stress, however, that the figure given is merely an estimate and provisional." In a postscript to the fax he said the following:- "Since dictating this fax, I have received the papers which you couriered to me, and spoken to you on the telephone. I have told you that I have already spent more than four hours reading the papers and discussing the matter with you. I am, as agreed with you, about to phone Miss Sofia Moussaoui to discuss further some of the matters you and I considered." 8. According to Advocate Landick he spoke to Dean & Dean (either Miss Moussaoui or her colleague Diana Bastow) that day and explained that, now that he had received the papers, it was clear that he could not hold to the estimate; indeed he said that he had already exceeded it. He told them that he did not know how much it would cost and he did not have authority to agree a cap on the fees. Dean & Dean would have to agree any such cap with Advocate Sinel but the difficulty was that Advocate Sinel was on holiday. Advocate Landick explained to Dean & Dean that, if they required a cap, he would have to down tools when that sum was reached. He did not think that this would be in the interest of the client and accordingly he said that he would carry on doing the necessary work and that Dean & Dean would have to speak to Advocate Sinel about the matter. 9. There seems to be no dispute about this part of the conversation. Thus, in a letter written on 9th January, 2006, Dean & Dean said:- "When we instructed you on behalf of Mr Salem Mubarak we were given a provisional estimate of £2,500. Advocate Landick then spoke to our Miss Bastow on the 4th November 2005 stating that the work could cost more than first estimated. Advocate Landick explained further that he did not have the authority to agree a fee and that

his principal, Mr Philip Sinel was out of the office until the following Tuesday. Advocate Landick suggested that fees could be discussed and agreed when Mr Sinel returned to the office. This was agreed." In a further letter dated 3rd March, 2006, Dean & Dean said:- "In respect of Salem's costs your Advocate Landick provided this firm with an estimate of £2,500. This was agreed. Advocate Landick subsequently advised that the estimate was on the low side. We requested a firm figure that would not be exceeded with a view to ascertaining whether we wished to instruct you in respect of this matter. This was not forthcoming and we were advised that the only person who could agree such a ceiling was you and that you were unavailable. It was suggested by your Advocate Landick that he continue working on this matter and that upon being able to make contact with you we could subsequently agree a figure. Reluctantly this was agreed on the basis that any fee incurred would not greatly overrun the original estimate." [Emphasis added]

10. In cross-examination, Advocate Landick strongly disagreed that the emphasised words in the foregoing passage were said. He was clear that he had not said that the ultimate fee would not greatly exceed the original estimate. The estimate had been provided without sight of any documents and, by the time of the relevant conversation, he had already exceeded the time which he had allowed for in the estimate.
11. Having seen and heard Advocate Landick in the witness box and given (a) the absence of any oral evidence on behalf of Dean & Dean and (b) the fact that the suggestion by Dean & Dean that Advocate Landick had said that any cost overrun would not be great was not raised in their letter of 9th January but only appeared for the first time some four months later on 3rd March, the Court accepts his evidence and finds that Dean & Dean agreed to Sinels continuing to act in the matter notwithstanding their knowledge that the original estimate could not be held to. The Court finds that Advocate Landick made no suggestion that the fees incurred would not greatly overrun the original estimate.
12. No conversation about the level of fees ever took place between Dean & Dean and Advocate Sinel, and Advocate Landick duly appeared before the Royal Court on Monday 7th November on behalf of Salem Mubarak.
13. On 10th November Miss Moussaoui e-mailed asking for Advocate Landick to give a written opinion on the enforcement in Jersey of an English order made in certain proceedings which were then current. There was subsequently a conference call about the matter.
14. On 7th December Sinels sent an invoice ("the first invoice") in the sum of £9,476.51 in respect of the period 1st – 30th November.

15. It would appear that certain further work was undertaken by Sinels during the course of December. In particular, Advocate Sinel attended a meeting in London to discuss the general position in relation to the English and Jersey proceedings. On 5th January, 2006 Dean & Dean wrote to Advocate Sinel enclosing certain files. It is clear that they were asking him to provide a formal written opinion on certain matters. However the letter made it clear that he should provide a quote in respect of the written opinion before undertaking any work.
16. The same day Sinels sent an invoice ("the second invoice") in the sum of £4,866.25 in respect of 1st – 31st December. This included a sum of £2,700 in respect of Advocate Sinel's travelling to London and attending the meeting on 15th December. By letter dated 9th January, 2006, Dean & Dean pointed out that he had in fact agreed not to charge for his time at that meeting, only for his air fare. Advocate Sinel responded on 12th January agreeing with that this was so and stating that the sum of £2,700 had been included in the invoice in error. He enclosed a revised second invoice in the reduced sum of £2,166.25.
17. The letter of 9th January from Dean & Dean also stated specifically that no further work should be carried out by Sinels without Dean & Dean's express authority.
18. On 18th January Advocate Sinel wrote giving a quotation for the provision of the opinion referred to in Dean & Dean's letter of 9th January.
19. On 2nd March Sinels sent a further invoice ("the third invoice") in respect of the two months of January and February 2006 in the sum of £1,525.88. For the most part the invoice appears to have related either to correspondence with the lawyers to the trustees concerning the possibility of recovering the costs of the November hearing out of the trust fund or to discussions between Advocate Sinel and junior counsel in England instructed on behalf of Mrs Mubarak.
20. In the meantime, on 23rd February, Dean & Dean had sent a letter asking for Advocate Sinel's opinion on six specific questions concerning the trust and the interplay of the English and Jersey jurisdictions. The letter also asked Advocate Sinel to deal with any other matters which he considered relevant. The letter made reference to the opinion being provided by 3rd March.
21. On 1st March Advocate Sinel wrote to Miss Moussaoui stating that, although he had actually spent that day looking at the papers, there would be no further movement in relation to the provision of the opinion until the outstanding fees had been paid and the £10,000 that had been quoted in respect of the opinion was paid into his client account. He said that he had set aside the next day to deal with the matter but he was not going to do any further work unless he received an unequivocal undertaking from Dean & Dean that the monies would be paid within seven days.
22. This provoked an angry response from Dean & Dean stating:- "We are extremely concerned that you are refusing to do any further work on this file unless or until we provide an undertaking that we will pay both sets of monies within seven days. In the circumstances we

confirm that we do to wish you to persist in this matter any further." The letter went on to say "your fees are now £14,332.43 and climbing. It was never agreed that fees would reach such a level and there was no subsequent discussions on the basis upon which you were instructed and the level of your fees following the actual hearing." Sinels were asked to return the papers. That letter was faxed to Sinels at 16.27 on 3rd March.

23. It appears that Advocate Sinel did not see that letter immediately because on 4th March, he dictated a letter (which was sent on 6th March) giving certain preliminary advice and stating at the end that the letter had been dictated before he had had sight of the letter of 3rd March.
24. On 4th April Sinels sent a final invoice ("the fourth invoice") in respect of the period 1st – 31st March in the sum of £3,201.40. For the most part the time was spent on 1st and 2nd March in relation to the proposed opinion but there were entries on 4th and 6th March when Advocate Sinel had spent time on the matter. We shall return to these two items later.

Discussion

25. In their answer Dean & Dean denied any liability to Sinels. In relation to the second, third and fourth invoices their defence was simple, namely, that no contract existed after 30th November because they had not given any express authorisation or instructions to Sinels to carry out any work after that date. How a firm of English solicitors, as officers of the English court, came to plead such a statement when they had, on any view, sent a long letter of instruction on 23rd February, 2006 requesting detailed advice by 3rd March is difficult to understand. Suffice it to say that this assertion was not defended at the trial and their case was rather different. It involved a detailed analysis of the work carried out by Sinels after 30th November and an acceptance that some of that work was clearly carried out upon express instructions coupled with an assertion that some had not been authorised.
26. In relation to the first invoice, the answer pleaded simply that there had been an estimate of £2,500 and that 'in the premises' the invoice in the sum of £9,476.51 was manifestly excessive. Again, at trial the defence was somewhat different and involved a detailed consideration of the work carried out by Sinels.
27. Sinels pleading was not entirely without fault. The claim in respect of the second invoice was brought in the original sum of £4,866.25 despite, as mentioned above, Advocate Sinel having agreed at the time that this had incorrectly included the sum of £1,700. As at the commencement of the trial, no correction had been made to this pleading, although Mr Hanson confirmed to the Court that he had only intended to ask for judgment in the lesser amount of £2,166.25 in respect of this invoice.
28. We propose to consider the case in respect of each invoice separately. (i) The first invoice
29. Much of the invoice related to work carried out after the hearing on 7th November. We are quite satisfied that this involved either new work undertaken at the specific request of Dean & Dean (e.g. the provision of a written opinion on the enforcement of English judgments in

Jersey and a conference call with Miss Moussaoui and counsel about the comparative advantages of litigating in England or Jersey) or necessary follow up to the hearing in November (e.g. examining the draft act of court, informing Dean & Dean of the result). Indeed, in her closing submission Miss Turbin did not contend otherwise. On the contrary she accepted that all the entries on the detailed statement in support of the invoice after the hearing on 7th November were properly charged. She also accepted that the time spent in travel and waiting and attending at the hearing on 7th November was properly billed.

30. In the result she objected only to that part of the invoice which related to work done by Advocate Landick in reading and preparing for the hearing on 7th November. This totalled 17.6 hours. She submitted that this was simply excessive. In support she relied on the following matters:- (i) An estimate of £2,500 had been given. Whilst it was accepted that this was withdrawn at an early stage and Dean & Dean had agreed to Advocate Landick continuing his work and attending the hearing in that knowledge, the difference between the estimate and invoice was simply too large to be justified. Furthermore, she submitted, the letter of 3rd March suggested that Dean & Dean were under the impression that the estimate would not be greatly exceeded. (ii) She said that 17.6 hours was simply far too much for a three hour hearing on whether a trustee should submit to the English jurisdiction. She submitted that ten hours would have been a reasonable time for preparation. She asserted that, had Advocate Sinel been able to undertake the work himself, it would probably have taken a shorter time and Advocate Landick should have pointed this out to Dean & Dean.
31. We have carefully considered Miss Turbin's submissions but we are satisfied that Sinels are entitled to be paid for the time spent by Advocate Landick. We would summarise our reasons as follows:- (i) The estimate of £2,500 is a red herring. It was given by Advocate Landick on the telephone when he had not seen any papers. The basis on which he gave it was made clear. Furthermore the estimate was withdrawn within a day and Dean & Dean were informed that it would be exceeded and that Advocate Landick could not give a new estimate as to the amount of the fees. In this knowledge Dean & Dean agreed to his continuing to prepare for the hearing and to attend at the hearing. We have already given our reasons for rejecting the assertion on behalf of Dean & Dean but they were told that the overrun would not be great. (ii) We agree that we must consider whether the 17.6 hours spent by Advocate Landick is excessive. We know little of what was involved at the hearing because neither side has chosen to put any material before us which would assist in this respect. However the bundle of papers received by Advocate Landick prior to the hearing was identified by Advocate Landick in re-examination as comprising 434 pages with eight legal authorities and three affidavits. In addition he had to carry out legal research of his own as necessary. Advocate Landick asserted in evidence that he considered the time which he spent was necessary and proper in order for him to do justice to the case. No evidence was produced by the defendants to contradict this. They relied solely on an assertion by Miss Turbin in her closing submission that 10 hours would have been more appropriate. She had of course had no involvement with the case and little weight can therefore be placed on this. In the circumstances we accept Advocate Landick's evidence and see no reason to conclude

that he was wrong in deciding that this level of preparation was necessary. (iii) Miss Turbin put it to Advocate Landick that Advocate Sinel would have spent less time in preparation but he replied that he did not know whether this would have been the case and the Court accepts that it is impossible to know. Even if it were the case that Advocate Sinel would have worked more quickly, this would not have necessarily have resulted in a saving of fees because Advocate Sinel was being charged out at £125 per hour more than Advocate Landick. In any event this is irrelevant because Dean & Dean were fully aware that Advocate Sinel was unavailable and that, if they wished Sinels to appear on behalf of their client, it would be through Advocate Landick. (iv) In short, due to the lateness of the instructions given by Dean & Dean to Sinels, Advocate Landick had to work with great urgency in order to familiarise himself with the case and be ready for the hearing on Monday the 7th November. To that end he worked ten hours over the weekend of 5th and 6th November. There is nothing in the papers which leads us to the conclusion that the time he spent in preparation was unreasonable such that Sinels should not be able to recover for all of it.

32. In the circumstances we hold that Sinels are entitled to recover all of the first invoice, namely the sum of £9,476.51. (ii) The second invoice
33. The second invoice essentially covered work done in obtaining a reasoned judgment from the Court in respect of the decision on 7th November and the attendance by Advocate Sinel at a conference call and a meeting in London at the request of Dean & Dean. We can see no conceivable reason why Sinels should not be able to recover for time spent on such matters and indeed it was conceded by Miss Turbin during the course of the hearing that the amended invoice in the sum of £2,166.25 (i.e. after the reduction agreed by Advocate Sinel) was properly payable. Mr Hanson confirmed that he was only seeking recovery of the amended amount and accordingly we find that Sinels are entitled to recover the sum of £2,166.25 in respect of the second invoice. (iii) The third invoice
34. The third invoice was rendered on 2nd March in respect of January and February 2006. On 9th January, as already stated, Dean & Dean had put Sinels on notice that no further work was to be carried out without Dean & Dean's express authority. The invoice must therefore be considered in the context of that instruction.
35. The client statement supporting the invoice shows that many of the entries were clearly undertaken on the authority of Dean & Dean. For example, on 8th February Advocate Landick took a call from Miss Bastow of Dean & Dean and noted her instructions concerning an amendment to a draft letter to the trustee concerning costs and there were then subsequent discussions and amendments concerning that matter. Similarly, later in February Advocate Sinel had a telephone call with junior counsel, which was clearly undertaken on the authority of Dean & Dean.
36. Having heard Advocate Landick's evidence and having considered the correspondence before the Court, Miss Turbin maintained her objection to only the following parts of the invoice. (i) She objected to an item on 11th January when Advocate Sinel charged £150 in

respect of 'letter from Dean & Dean and response'. On analysis this must be the letter from Dean & Dean dated 9th January. That complained not only about the first invoice but also pointed out that, in the second invoice, Advocate Sinel had wrongly charged for his time in attending the meeting in London when he had agreed beforehand that he would not do so. His response of 12th January (which must be the letter dictated and charged for on 11th January) accepted that the second invoice was wrong in this respect and agreed to a reduction of £2,700. We do not think that it is permissible for Sinels to charge for their time in reading a justified complaint about their invoice and then drafting a letter conceding the complaint and amending the invoice. We therefore disallow the sum of £150. (ii) Miss Turbin next objected to three items on 13th January and items on each of 19th and 25th January. These all appear to relate to correspondence or telephone conversations with Advocate Gleeson, who represented the trustee. We are satisfied from the correspondence that this was related to an attempt to recover Salem Mubarak's costs in respect of the November hearing out of the trust fund. It is clear that Dean & Dean were wholly supportive of such a step and indeed sought to include their own fees together with those of Sinels for this purpose. They undoubtedly authorised Sinels to spend time attempting to resolve this matter and accordingly we hold that Sinels were entitled to charge for time spent in dealing with this aspect. We do not therefore disallow any of the items objected to under this heading. (iii) She next objected to an item in the sum of £37.50 where Advocate Sinel charged for 'meeting with Pierre Landick/memo ref strategy'. The date is unfortunately not clear but it is some date in January on or after the 25th. There is nothing in the papers before us which shows what this was connected with and it would seem from the narrative that it related to the general strategy of the litigation. There is no evidence before us that Sinels had been instructed at that stage to look into that matter and, in the light of the letter of 9th January, we disallow it. (iv) Finally, Miss Turbin objected to two items on 17th and 18th January where Advocate Sinel had charged £225 for 'perusal of docs to preliminary to providing advice' and £37.50 for 'letters'. From the correspondence before the Court, the letter on 18th January must be the letter where Advocate Sinel gave his estimate for carrying out the work referred to in the letter of 5th January. We find that the time spent the previous day can only have been time spent by Advocate Sinel in perusing the documents sent to him on 5th January in order to decide upon his estimate. Given the terms of the letter of 5th January, we do not think it was open to Advocate Sinel to charge for time spent by him in providing an estimate or quotation on what he would charge if he were to undertake the work requested. We therefore disallow the sum of £262.50.

37. In summary, we disallow the aggregate sum of £450 from this invoice leaving the sum of £1,075.88 which Sinels are entitled to recover. (iv) The fourth invoice
38. Finally we come to the fourth invoice in the sum of £3,201.40 in respect of work done in March 2006. It is to be recalled that on 23rd February, Dean & Dean had sent a fax asking for detailed advice on a number of questions concerning the interplay between the Jersey and English courts in Mrs Mubarak's case. The letter requested the advice by 3rd March. We are quite satisfied from the detailed narrative attached to the invoice – and Miss Turbin did not

contend otherwise – that all the work charged for in this invoice related to the request of 23rd February. It all took place on 1st or 2nd March with the exception of two items. Advocate Sinel charged £375 for time spent on 4th March and £75 for time spent on 6th March. It is also to be recalled that by fax sent at 16.27 on 3rd March, Dean & Dean instructed Sinels not to carry out any further work.

39. Miss Turbin objects to the whole of this invoice. She refers to the letter from Advocate Sinel dated 1st March in which he pointed out that fees were outstanding and said that, unless an unequivocal undertaking to pay the fees within seven days was forthcoming, he would not do any further work on the matter. She submitted that, because Advocate Sinel had said that he would not be doing any further work, he could not charge for any work if he changed his mind and in fact proceeded despite the lack of an undertaking as to payment.
40. We have to say that we find this to be an extraordinary proposition. Dean & Dean had requested Sinels to undertake the work in question and, at that stage, wished Sinels to be proceed with it. Indeed, in their response of 3rd March to Advocate Sinel's letter of 1st March, they said that they were 'extremely concerned' that Advocate Sinel was refusing to do any work without an undertaking as to payment. It was Sinels who were indicating that they were not willing to do further work unless assured of payment. If in these circumstances a firm of lawyers relents and decides to undertake the requested work even without an assurance of payment that cannot possibly disentitle the lawyers from charging for that work, which is what the client has requested them to do. The only conceivable circumstance that we can envisage in which that might not be so would be if a case of estoppel were to arise. For example, if the client acted to his detriment in reliance upon the lawyer's statement that he could not carry out further work by instructing another firm which carried out the work instead. But nothing of that sort is alleged here and indeed no evidence has been called by Dean & Dean. In the circumstances we reject Miss Turbin's submission. In our judgment, subject only to the point dealt with in the following paragraph, Sinels are entitled to recover the amounts charged for in the fourth invoice.
41. As already mentioned, Dean & Dean responded to Advocate Sinel's letter of 1st March by sending a fax at 16.27 on 3rd March instructing Sinels not to carry out any further work and asking for the papers to be returned. It would seem that Advocate Sinel did not see and was not informed of that fax before carrying out work on 4th March. Mr Hanson argues that, because Advocate Sinel acted in good faith in carrying out this work, the firm is entitled to charge for that work.
42. We unhesitatingly reject that submission. If a client sends a fax to a lawyer telling him to stop work, he is entitled to expect the lawyer to act on it. If the lawyer's internal distribution procedures result in staff not receiving the message in a timely fashion, the fault lies entirely with the lawyer, not with the client. Sinels was at the material time a one-partner firm. The fax was addressed to Advocate Sinel personally. We do not know why he did not see and was not informed of the fax; perhaps he was out of the office. However that may be, it was the firm's fault that he was not informed of this important fax and Dean & Dean are not to be

charged for work undertaken simply because there was a failure in Sinels' office to bring the fax to Advocate Sinel's attention. Accordingly we disallow the sum of £450 which was for work done after receipt of the fax of 3rd March. That leaves a total of £2,751.40 which we find to be due.

Conclusion

43. For the reasons set out above we find the following sums to be due to Sinels: (i) The first invoice £9,476.51 (ii) The second invoice £2,166.25 (iii) The third invoice £1,075.88 (iv) The fourth invoice £2,751.40 Total £15,470.04 We therefore give judgment against the defendants jointly and severally in that sum.
44. We will hear the parties as to interest and costs. No Authorities

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