

JERSEY / JUDGMENT

Voisin v Wain [2000] JRC 219 (08 November 2000)

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JUDGMENT

THE COMMISSIONER: 1. This case arises in respect of claims for professional services carried out for the defendant, Mr Leslie Wain, by the plaintiffs, Michael Matthew Godfray Voisin and Others, commonly called Michael Voisin & Co. 2. The claim is in three parts: first, in respect of conveyancing and other necessary work for the acquisition by Mr Wain through the medium of one company of the freehold of 76 St Saviour's Road and of another company of the Guest House business conducted there by Mr and Mrs Sallai. The figure claimed for this work is £1,793.69. 3. The second group of fees relates to a parking dispute as to whether or not the acquiring company - and hence beneficially Mr Wain - was entitled to park on a 'petite ruelle' serving his and other properties in St Saviour's Road. The sum claimed here is £548.34. 4. The third matter is in respect of a claim against The Iron Stores - which I will come to in a moment - totalling £748.62, making a total of £3,090.65. 5. In respect of the St Saviour's Road claim, not only was liability denied by the defendant, but a counterclaim was entered in a figure of £1,175.41. That claim was abandoned in the course of the hearing. 6. A further claim was submitted - it is alleged in the Answer - relating to the countersigning of an application by the vendors to the Island Development Committee ("the IDC") - now the Planning and Environment Committee

- in respect of certain work which needed to be carried out at the premises. 7. The counterclaim states that as a result of the application to the IDC being delayed, Mr Wain's company was unable to operate the property as a guest house which resulted in a loss of £800 for five weeks totalling £4,000. Again that claim was withdrawn by Mr Wain who said that it did not relate to this part of his dealings with Michael Voisin & Co but rather to the third matter to which I now turn, that is to the claim against The Iron Stores. 8. Mr Wain ordered two hot water cylinders from The Iron Stores in or about September, 1994. When they arrived one was found to be defective. The company agreed to replace it and eventually did so, although there was a considerable delay because the replacement had to come from Sweden. It is in respect of that delay that Mr Wain said he wanted to claim. However he has not put in a counterclaim in relation to this matter, on which he was advised by Mr Pearmain of Michael Voisin & Co. Instead he contends that they should not be paid for their advice because they had not diligently attended to it. In respect of The Iron Stores the defendant pleaded that Michael Voisin & Co failed to exercise proper care and skill and

should, therefore, not be paid. 9. The nub of the argument as regards the parking dispute is whether or not Advocate Robin Morris informed Mr Wain of the position before the contract was passed by Mr Wain's property company, 76 St Saviour's Road Limited, which thereby acquired the premises. Mr Wain stated quite clearly that he was not told. Mr Morris was equally adamant that Mr Wain was told that he only had a right of way and that he could not park on the right of way. 10. In the course of his evidence Mr Wain said that he was an efficient businessman. In reply to a question which the Court put to him he stated that during the course of transactions he had signed 'blind' without making himself aware of the contents because he had relied fully on the skills of his lawyers as he had on Mr Morris. Mr Morris said that it was his practice to read over contracts to clients before going to Court - and we have no evidence to suggest to the contrary, as that is what conveyancing lawyers still do in this jurisdiction. Therefore the Court rejects Mr Wain's assertion that he was told that he or his company could park in the right of way, and it is interesting to note that, although he claimed it was for business purposes, it was his private car which was later unclamped there and this led to his seeking advice from Mr Morris. We do not accept Mr Wain's evidence on that point and we find that that defence fails. 11. With regard to The Iron Stores, there is no more than an allegation and a denial that the plaintiffs' did not use due care and diligence and as the counterclaims have been abandoned that should dispose of the whole matter. However, because Mr Wain is defending himself, it is right that he should hear from the Court what it is that a lawyer has to do to fulfil his contractual duty towards a client. As it happens, I presided and gave judgment in the leading Jersey case, *Blacklock -v- Perrier & Labesse*

(1980) JLR 82, although the law has subsequently been refined and examined. In that case, at p.207, I said: "Actionable negligence may be said to possess three essential ingredients: the complex concept of duty, breach of the duty, and damage suffered by the person to whom the duty was owing. In the case of a solicitor and his client, such negligence involves: (a) a legal duty towards the client to exercise care or skill, or both; (b) a breach of that duty by the solicitor, i.e. a failure to attain the standard of care or skill prescribed by law; and (c) actual loss to the client as the direct result of such breach." I am only concerned with (a), but the following sentence applies to this case: "Also the English cases show that the standard of care is that of a reasonably prudent solicitor." 12. Later on, I cited from the judgment of Hodson LJ in *Simmons -v- Pennington & Son*

[1955] 1 WLR at p.189: "It is a question of degree and there is a borderland within which it is difficult to say whether a breach of duty has or has not been committed." 13. This Court is quite satisfied that in none of the matters alleged by Mr Wain was there a breach of duty by Michael Voisin & Co. As regards The Iron Stores it is true that it took some six months for the matter to be dealt with. But even when Mr Wain - who seems to make a habit of going from lawyer to lawyer - went to another firm of lawyers, neither in the case of The Iron Stores nor in the case of the parking dispute did the lawyer he went to claim that Michael Voisin & Co had themselves been negligent in dealing with these two matters. Accordingly there will be judgment for the plaintiffs. 14. Mr Winchester, you will have

your standard costs. Authorities Blacklock -v- Perrier & Labesse (1980) JJ 197. Stanton, Ltd -v- Mourant, du Feu and Jeune

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