
COURT 67
Before LORD JUSTICE THORPE

Thursday, 22nd April, 2010

At 10 o'clock

APPLICATION

B4/2010/0160 Poulney -v- Poultney. Application of Defendant for permission to appeal.

It would be more accurate to call this case:

Spenser Michael Poultney –v- FDC Law (solicitors)

My application of 25/04/2007 (it has taken THREE YEARS to get here) actually named FDC Law as a Party - but the BATH County Court refused to serve it and District Judge R James refused to accept that FDC Law WAS a Party (indeed, THE other Party)

I have only 20 minutes – I must be brief:

What has happened to me through the misconduct of someone else's solicitor should not be allowed to happen to ANYONE. The fact that FDC Law are *family law* “specialists” and that their VICTIM is and was, a single parent Father, simply adds insult to the injury and injustice suffered.

There has never been a level playing field in this case but the one thing we can be certain of is that the solicitors knew the TRUTH at the outset – indeed, they were the ONLY people to know the truth. Since 29/07/2003 all litigation has been about FDC Law's costs. The firm has Maintained their Client throughout and are the sole beneficiaries.

For the record – on 29/07/2003 the settlement ordered by the Court was for less than £60,000. I actually obtained a substantive Order £9,000 better than their “offer”. There was no “debate about costs” and (contrary to many rules) I was given NO Notice of their costs application.

Background

In 2002 / 2003 FDC Law acted for my former wife in THREE matters

1. Defence against an Occupation Order (Part IV Family Law Act 1996) – my application
2. Divorce – her petition – served on me as we went into court for directions in 1 above
3. Ancillary Relief – both Parties paid fees and applied

Items 1 and 2 were (from a costs point of view) concluded around September 2002 and both were “no order for costs” – [H H J Barclay, 2004, Pg. 78. Para. 3]

Item 3 was concluded on 29/07/2003.

Without Notice and at the very end of the hearing the solicitor produced a Form H showing costs totalling £6,187.50 [pg 53] (over 10% of the settlement) and asked for costs in that sum.

They did this in the FULL knowledge that I was not expecting such an application and that all I had seen was an estimate for £850

D J Rutherford simply rubber-stamped the figure put before him by trusted solicitors. That proper procedures were NOT followed on 29/07/2003 is evident in the Order of H H J Barclay in granting my (unusual) “appeal out of time” in 2004.

What we did NOT know at the time (and did not know for certain until 2008) was that the figure of £4,993.75 “solicitors costs” claimed in Form H was actually ALL of the costs recorded in the solicitors file. Under “Ancillary Relief Costs” the solicitor had included £1,823.60 for the Occupation Order and Divorce. [pg. 115 para. 72]

In 2005 H H J Cardinal described FDC Laws conduct as “incompetent” and “woeful” – in 2008 we discovered this was well short of the mark. Their conduct can now be shown to include:

- ***Professional Misconduct, Professional Negligence and dishonesty***
- Admitted signing of false declarations on bills of costs
- Submitting a further bill in 2008 that ALSO clearly breached the ***Indemnity Principle*** – (£145 / hr. contract –v- > £200/hr claimed)

First Appeal – 2004 – H H J Barclay

I appealed following discovery of the “heading” on the Form H [53] AND the discovery of the Form H from the FDR [52] – see H H J Barclay, pg. 79, para 6.

The Law Society (OSS) had asked FDC Law to provide me with more costs information and FDC Law refused.

FDC Law needed to be able to tell H H J Barclay that the costs of the divorce and occupation order were NOT included in the claim for £6,187.50. In July 2004, a year and 10 months after the work was completed, FDC Law billed Mrs. Poultney £1,823.60 for the divorce and Occupation order offering her the carrot of legal aid to defend against my appeal. FDC Law denied the Form H included these OTHER costs. This is at odds with the FINDING of D J James in 2008.

It is plain that I relied on the Forms H in bringing the appeal and that H H J Barclay relied on them in making his Order – it was ALL we had to go on. H H J Barclay granted my appeal “***so that justice can be done and be SEEN to have been done***” [pg. 82, para. 16].

So what happened NEXT is beyond the pale...

Finally FDC Law was ordered to provide a detailed bill.

Bill and Detailed Assessment

Nigel Douglas Long, FALCD – costs draughtsman appointed by FDC Law [49] – fined £5,000 with £500 costs in 2008

Long’s “bill” weighed in at more than £16,000.

The solicitor's file was conveniently "missing" at the hearing. NOTHING could be actually verified - D J Nigel Brookes had to rely on the solicitor's signature on the bill and the word of Nigel Long. Most of the bill claimed an hourly rate of £165/hr

D J Brookes was concerned by the "estimates" given [full transcript available]. He initially said that estimates should be within 5% to 10%. These were "out" by up to 530%.

D J Brookes accepted the "reason" (Leigh Vs Michelin) given by Long for the difference was that the solicitor failed to record here TIME properly. This "reason" was also later accepted by H H J Cardinal – who found that whilst D J Brookes did things in the wrong order he had (nonetheless) made a "Leigh" decision.

In 2008 the time ledger from which all three Forms H were drawn finally came to light. See page 26 para. 45 – ALL three Forms H were based on a charging RATE of £80/hr

[NB: Judges used to London rates in 2010 need to be aware that in the ex-mining town of Midsomer Norton, the most EXPENSIVE solicitors in town (SFLA Members usually command a higher rate) was only £120/hr in 2002 – so £80 is entirely believable. This was the rate charged to Mrs. Poultney for the Occupation Order and the divorce too.]

The MAIN and REAL "reason" (Leigh) for the huge increase from the estimates was the (more than) DOUBLING of the RATE. Leigh relies on the judge being told the TRUTH.

There is WORSE to come...

Despite his 5% - 10% D J Brookes finally decided I should pay one and a half times the estimate. In deciding this he took the SIZE of the estimate to be the £4,993.75 from the Form H and said I should pay £7,500 (£5,000 x 1.5).

The time ledger clearly shows that the estimate of £4,993.75 included £1,823.60 for the Occupation Order and Divorce – exactly as the heading said.

D J Brookes had no more authority to order me to pay for the divorce and occupation order than D J Rutherford had on 29/07/2003 – let alone 150% of those costs. He MUST have been misled. Long had SEEN the time ledger AND the bill for £1,823.60 that Mrs. Poultney had already paid. Worse – Long persuaded D J Brookes that the "estimate" was really £6,000 – resulting order for £9,000 is almost TWO AND A HALF TIMES the estimate for AR costs.

In short I am left with an Order that means FDC Law gets paid TWO AND A HALF TIMES for the Occupation Order and Divorce – which were "no order for costs"

There is a GREAT deal wrong with allowing a doubling of the RATE. FDC and Nigel Long knew this – but they kept it secret until 2008.

Now turn to pages 10, 11, 39, 123 and 131

I have been a company director since 1988 and have NEVER come across ANY trader of any description that has behaved like these solicitors have.

The Court now accepts that I was RIGHT all along when I first appealed because they had charged ME for their Clients own costs.

The Court now accepts that the estimates were based on £80/hr and the MAIN reason for the “increase” was the DOUBLING of the RATE

The solicitors had seen a transcript showing the LIES of Nigel Long and yet they allowed H H J Cardinal to believe the “reason” and the “size of estimate” Long pretended were true. Failing to correct a wrong assumption is just another form of lie.

The solicitors knew when they applied for a charging order against my house in 2006 that they were getting paid two and a half times for the Occupation Order and Divorce and that the subsequent costs of appeal were “won” by their dishonesty.

In 2008, from the safety of retirement (SDT will not normally act once a solicitor has been retired for a year) Patricia Wayman admitted under oath that she should NOT have signed Nigel Long’s bill. “A most serious disciplinary offence” according to Henry L J in Bailey Vs IBC Vehicles.

FDC Law learnt NOTHING (unless it is that dishonesty pays) because they did the SAME thing in 2008. The ALCD fined the “monkey” (Nigel Long) but the SRA refuses to take any action against the “organ grinders”

This case has all the hallmarks of criminal fraud – even if it did not, it is against all natural justice to REWARD professionally negligent solicitors so handsomely and to penalise the innocent so heavily. This is the price of standing up for your Human Rights, it seems.

The Judge – Lord Justice Thorpe – my last hope of justice



Born 30 July 1938; Called to the Bar (Inner Temple) 1961; QC 1980; a Recorder 1982-88; High Court Judge (Family Division) 1988-95; Family Division Liaison Judge Western Circuit 1990-1995; Lord Justice of Appeal 1995- ; Deputy Head of Family Justice 2005-
From here: <http://www.hmcourts-service.gov.uk/cms/1287.htm>

URL: <http://www.lcs-test.co.uk/thorpe-lj.htm>