

IN THE SUPREME COURT OF WESTERN SAMOAHELD AT APIACP 126/92

BETWEEN: MURRAY ROY DRAKE AND RUBY DRAKE
Solicitors both of Tiapapata
practising in a law partnership
styled DRAKE & CO:

PLAINTIFFS

A N D: VAAI RICHARD MACDONALD of Apia,
c/- Le Godinet Beachfront Hotel
Company Director:

DEFENDANT

Counsel: R. Drake for Plaintiffs
Defendant in person

Date of Hearing: 16 February 1993

Date of Judgment: 16 February 1994

JUDGMENT OF SAPOLU, CJ

The plaintiffs in this case are partners in a partnership of solicitors. The defendant is a former client of the plaintiffs' partnership. The present claim is for fees for professional legal services alleged to have been rendered by the plaintiffs as solicitors for the defendant.

The services rendered by the plaintiffs as solicitors to the defendant were in connection with the liquidation of a company for which the defendant was governing director. Those services were rendered from September 1988 to March 1989. The defendant does not deny that the plaintiffs rendered services as solicitors to him. What he disputes is the amount of work done by the plaintiffs and the amount of the fees claimed.

According to the plaintiff, Mr Drake, who dealt mainly with the defendant, he spent hours and hours as well as lengthy periods of time in meetings and conferences with the defendant, the defendant and the liquidator of his company, and for preparing affidavits for the defendant. He also spent a whole evening and night preparing a 16 pages affidavit for the defendant and around that time, the defendant was almost living in his office from day to day. Mr Drake says that the plaintiffs' fees for work done for the defendant was based on time spent as well as the complexity of the matter and its importance to the defendant. A bill of costs dated 14 March 1989 for all that work including disbursements came to \$23,000 and was sent to the defendant. Of that amount \$21,500 was for services and \$1,500 was for disbursements.

That bill of costs was produced in evidence by Mr Drake and it shows that in addition to the services rendered by the plaintiffs as already mentioned, there is also the preparation of documents for court proceedings and attendances by the plaintiffs to those proceedings. The bill of costs also refers to lengthy legal research and urgent work done by the plaintiffs for the defendant. There are then disbursements which cover phone calls, agency fees, photocopying and filing fees. Mr Drake also says that the fee for solicitors in 1989 was about \$150 to \$175 per hour and the plaintiffs bill of costs is based on the law society scale of fees.

Mr Drake's evidence also shows that that there was an initial deposit of \$1,000 made by the defendant towards his fees. Then there were two payments made by the defendant in 1989 for \$500 and \$1,000. He also says that the defendant frequently discussed his account when he came to the plaintiffs' office and constantly referred to his lack of money but gave assurance that he will pay when he is in a position to do so. The defendant also did not query his account until April 1990. That was the same month that the plaintiffs requested the defendant for settlement of his account.

The defendant in his evidence says that he only spent about 25 hours with Mr Drake and the liquidator of the company of which he was governing director. He also says that his meetings with Mr Drake were brief except for one meeting on a Saturday and a one hour lunch which he had with Mr Drake. The defendant also says that he was the author of the 16 page affidavit mentioned by Mr Drake in his evidence. There is also a letter dated 12 March 1991 in which the defendant, amongst other things, queried the amount of the plaintiffs' bill of costs. The defendant says that he sent that letter to Mr Drake but Mr Drake denies having received that letter. The defendant also produced a bill of costs he received from a different solicitor for a criminal case for the purpose of making a comparison with the plaintiffs' bill of costs. However I find that bill of costs from another solicitor for a criminal case of no relevance to this case.

The defendant also produced in evidence a statement which he says is an analysis of the times he spent with Mr Drake. He says he prepared the bulk of that statement in 1988 and the rest in 1989. I do not believe that was so. The statement appears to me to have been prepared at one time and not part in 1988 and part in 1989. There is also no reference in that statement to any time the defendant spent with Mr Drake in 1989. It is also not clear from the statement as to when it was actually prepared. In any event the statement does not specify the lengths of the periods of time the defendant spent with Mr Drake. I do not find this statement to be of any assistance to the defendant.

Having given due consideration to the evidence by both Mr Drake and the defendant, I prefer the evidence of Mr Drake. It appears to me that the defendant refers only to the times that he spent with Mr Drake. But he does not deny what Mr Drake says about the times the plaintiffs spent on preparation of documentation for court proceedings, court attendances and legal research. Preparation of documentation for court proceedings and legal research are usually, if not always, done by a solicitor in the absence of a

client. There is also no denial by the defendant of what Mr Drake says about the complexity and the importance of the liquidation proceedings in question to the defendant as well as the urgency that was sometimes involved in connection with those liquidation proceedings. There is also no evidence from the defendant to counter the claim for disbursements in the plaintiffs' bill of costs. The defendant also does not in his evidence deny what Mr Drake says about the defendant frequently discussing his account when he visited the plaintiffs' office and his constant references to his lack of money together with assurances that he will pay his account when he is in a position to do so.

I also accept what Mr Drake says about the defendant spending hours and hours and lengthy periods of time in the plaintiffs' office. I do not believe the evidence of the defendant that he only made brief visits to Mr Drake's office. For such an important and complex matter as the liquidation of the company for which he was governing director, I do not believe that the defendant made only brief visits to see his then solicitor. I also do not accept that the defendant was the sole author of the 16 page affidavit mentioned in the evidence. He must have given the information on which the affidavit is based to Mr Drake, but I accept Mr Drake's evidence that he prepared the affidavit and spent an evening and night on it. Given that what was involved was liquidation proceedings, it is more credible that Mr Drake, a solicitor, prepared the affidavit for those proceedings based on instructions given to him by the defendant.

As to the letter dated 12 March 1991 which the defendant says he had sent to Mr Drake and which Mr Drake denies having received, I am of the view that if that letter was sent and there is no evidence to contradict that, then Mr Drake did not receive it and there is also no evidence to contradict Mr Drake's denial. Perhaps the point of significance about that letter is that the defendant says therein that he had paid \$3,000 towards his account with the plaintiffs. However he produced no receipts to confirm such an

amount was actually paid. The plaintiffs on the other hand produced receipts to confirm the amount they claim to have received from the defendant for his account. I prefer the evidence of the plaintiffs to that of the defendant on this point.

In all, the Court prefers the evidence given by the plaintiffs in this case in support of their claim as opposed to the evidence given by the defendant. The quality of the plaintiffs' evidence also makes that evidence more credible than the defendant's evidence. Accordingly judgment is given for the plaintiffs in the amount claimed of \$20,500. Costs are also awarded to the plaintiffs which I fix at \$400 plus disbursements to be fixed by the Registrar.

T. F. M. Sapala
.....
CHIEF JUSTICE