

CASE NOTE

Halliwells LLP v NES v Quinn Insurance Limited [2011] EWHC 947 (QB)

Judgment 23 February 2011 (approved on 13 April 2011)

On 23 February 2011 HH Judge McCahill QC sitting as a Deputy High Court Judge in the Chancery Division gave Judgment for Quinn Insurance Limited (“Quinn”) in a Part 20 Claim brought by NES Solicitors (“NES”) in which NES sought an indemnity in respect of a claim brought against NES by the Claimant Solicitors Halliwells LLP now in Administration (Halliwells). Halliwells had obtained a Judgment from Deputy Master Matthews dated 17 November 2009 that NES pay the sum of £1,500,000 to Halliwells by 15 December 2009 and pay Halliwells’ costs pursuant to an undertaking given by NES to Halliwells on 22 December 2008 to pay Halliwells the sum of £1,500,000 on or before 10 March 2009.

Background: The undertaking was given by NES on behalf of NES’s client Dr Hassan to Halliwells for the benefit of Halliwells’ client General Capital Finance Limited (“GCF”). GCF had relied on the NES undertaking and made a bridging facility of £1 million to Green Crown Properties Limited (“Green Crown”). This facility was intended to be used as a deposit to buy shares in Stratford Edge, a company which owned a substantial development site in Stratford High Street close to the 2012 Olympic site. GCF charged Green Crown an impressive “administration fee” of £450,000 and the bridging loan was repayable before 11 March 2009. Dr Hassan claimed to be a potential investor in the Stratford Edge Development and was willing to buy 25% of the shares in Green Crown for £1.5 million. He had deposited gold certificates allegedly worth \$10 million with NES as security. When NES gave the undertaking to Halliwells on 22 December 2008 NES Dr Hasan had also paid into NES’s office account a cheque for £1.5 million which subsequently did not clear. The Gold Certificates were subsequently established to be worthless.

Grounds relied upon by Quinn for declinature: Quinn had declined NES an indemnity on 19 June 2009 on the grounds that the claim did not arise from the provision of services in private legal practice within the meaning of Clause 1.1 of the Minimum Terms and Conditions because it was not given in the ordinary course of business as solicitors and because the claim was excluded by Clause 6.6 of the Minimum Terms and Conditions on the basis that the claim arose out of the provision of an undertaking by NES in connection with a benefit or advantage directly to the insured, namely the payment of a £15,000 fee for giving the undertaking. Following the issue of proceedings Quinn also contended that the Claim was excluded from cover under the equivalent of Clause 6.8 of the Minimum Terms on the basis that both partners had acted dishonestly and/or condoned dishonesty in giving the undertaking.

The Judge’s findings on the Law: Following a four day trial the Judge found that Quinn was entitled to decline an indemnity on all three grounds. In a useful analysis of the relevant law, the Judge applied *Starglade Properties Ltd v. Nash* [2010] EWCA Civ 1314 on the civil test of dishonesty, *Zurich Professional Ltd v. Karim* [2006] EWHC 3335 on the test to apply in determining whether the partners condoned each other’s and/or Dr Hasan’s dishonesty. He found that both partners were dishonest and/or condoned dishonesty. The partners both acted in a manner which they knew was wrong and dishonest and in which no honest solicitors would have acted.

The Judge also carried out a useful review of whether the undertaking was given in the normal course of business of a solicitor, considered the test in *United Bank of Kuwait v. Hammoud* [1998] 1 WLR 1051 considered the analysis in *Ruparel v Awan* [2001] Lloyds Rep 258, followed *JJ Coughlan v Ruparelia* [2003] EWCA Civ 1057 and found that the undertaking was not given in a solictorial capacity (notwithstanding the Deputy Master's Judgment).

Francis Bacon (instructed by Levi Solicitors LLP) acted for Quinn. Joshua Munro acted for NES.

Francis Bacon and Joshua Munro are both barristers practising from Hailsham Chambers.