

IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

A.472/83

839

BETWEEN

GEORGE MATTHEW NOON

Plaintiff

AND

DESMOND STEWART GRANVILLE
DEACON and JOHN ANDREW
TANNAHILL

Defendants

Hearing

15 June 1984

Counsel

P. A. McKnight for the Plaintiff
J. R. Wild for the Defendants

Judgment

13/7/84

JUDGMENT OF ONGLEY J.

In this action the plaintiff claims to recover damages from a firm of solicitors for breach of covenant to exercise proper diligence and competence in prosecuting his claim for damages for personal injuries allegedly suffered in the course of his employment as a gas adjuster by the Wanganui City Council in the year 1970.

The plaintiff alleges that the defendants agreed to act as his solicitors in November 1970 in respect of his claim and up until 6 April 1973 did various things on his behalf in connection with it but subsequently failed to either settle the claim or prosecute it to a hearing. In March 1980 he instructed other solicitors to act for him which they did until 19 August 1983 when the action was struck out on the grounds of delay.

The defendants admit that one or other of them acted for the defendant in respect of his claim from November 1970 until 1 April 1974. They deny that they were in breach of their duty of care. Affirmatively, they plead that the accident giving rise to his claim was caused solely by his own negligence; that he failed to communicate with them after 29 January 1974 or to take any steps to get them to prosecute his claim; and he failed to instruct new solicitors until March 1980.

There are eight interrogatories in all. Objection is made to Nos. 2,3,5, and 6 which are in this form:

"2. DOES the plaintiff accept that, in late 1974 or early 1975 before the plaintiff was sentenced to imprisonment, the defendant, Deacon, told him that he would not act for him again?

3. IF the answer to question 2 is yes, what steps did the plaintiff take to obtain other legal representation?

5. DOES the plaintiff accept that, at least during the years 1967-1975, he had an alcohol related problem?

6. DID the plaintiff ever seek or undergo any treatment for an alcohol problem? If yes, give particulars."

Objection is made to questions 2 and 3 on the ground that they are in conflict with the defendant's pleadings and/or that they are not relevant to the issues arising in the action.

It is submitted by Mr McKnight that the defendants' pleadings are evasive in that while it is expressly admitted that the defendants acted for the plaintiff "from 1 April 1974" it is not alleged that the contract was terminated at any

subsequent date. I agree that the defendants might find difficulty on the pleadings as they are presently framed in attempting to rely at the trial upon a defence based upon the termination of their services either unilaterally or by agreement. I would not at this stage regard an interrogatory designed to obtain an admission to that effect as being supportable on the pleadings. I do, however, regard the interrogatory as being relevant to the issue of contributory negligence raised by paragraph 19 of the Amended Statement of Defence and do not think that in that context it is open to objection upon the grounds raised by the plaintiff.

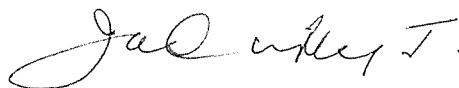
In relation to interrogatories 5 and 6, it is to be noted that there is no allegation that the plaintiff's original accident was due to his being affected by alcohol at the time it occurred. Mr Wild submits that paragraph 18(f) of the Amended Statement of Claim is wide enough to cover that allegation. That is a "catch-all" allegation that the plaintiff failed to exercise care and attention for his own safety in all the circumstances. I do not regard it as being sufficiently particularised to justify the introduction of evidence designed to show that the accident was caused or contributed to by the plaintiff's insobriety. Even if it were the questions posed by the interrogatories are not legitimate. The existence of an "alcohol related problem" can only be relevant if the

problem, as distinct from a state of insobriety at a particular time, affected his conduct in relation to his accident. In the absence of any allegation that it did so it can only have a prejudicial effect unrelated to the question of causation.

The same comment applies to the relevance of such information to the plaintiff's alleged contributory negligence, particulars of which are given in paragraph 19 of the Amended Statement of Defence. Unless it is expressly alleged that alcohol played a part in his causing him to be less than prudent in his relationship with his legal advisers, evidence of a general tendency towards excessive drinking is irrelevant and prejudicial.

For the reasons given there will be an order granting leave to administer interrogatories for the examination of the plaintiff in the form filed excluding questions 5 and 6.

The interrogatories are to be answered within 21 days of the service of the orders. Costs will be reserved.



Solicitors:

Izard Weston & Co., Wellington, for the Plaintiff

Luckie Hain Kennard & Sclater, Wellington, for the Defendants