

**Neutral Citation: [2013] IEHC 342**

**THE HIGH COURT**

**[2009 No. 10805P]**

**BETWEEN**

**BISI ADIGUN**

**PLAINTIFF**

**AND**

**LINDA McEVOY AND PATRICK MORAN PRACTISING UNDER THE NAME AND STYLE OF MORAN SOLICITORS**

**DEFENDANTS**

**Judgment of the preliminary issue of Mr. Justice Hedigan delivered on 23<sup>rd</sup> day of July, 2013.**

**1.** I read through all the pleadings and documents in this case before sitting on Friday afternoon last. It seemed to me that a very substantial issue on *locus standi* arose on these papers. Did the plaintiff have any status as a plaintiff in this claim or were all the relevant dealings between himself and the second defendant conducted by him in his capacity as director of Arambe, a limited liability company established by him? Should not the correct plaintiff be Arambe? It is a preliminary issue that needs to be resolved if this case is to continue.

**2.** The first thing to consider is what exactly was the dispute that gave the plaintiff to seek legal advice in the first place? The plaintiff, who has spoken forcefully and eloquently on his own behalf herein, actually summed up the dispute quite well in his submissions replying to Mr. Tuite, S.C. for the second defendant. He said:

"The reason I went to solicitors was because the Abbey owed Arambe money".

That was indeed the exact reason. The Abbey, following representations from solicitors for Roddy Doyle, concerning an alleged breach of copyright, had decided that, until that dispute was resolved, they would withhold payments due to Arambe from their box office receipts. Mr. Adigun urges on the Court that he was paid by the company and was in the same category as the beneficiary in a will suit in the case of *Wall v. Hegarty* [1980] ILRM 124 in that the solicitors owed him, as a beneficiary of the company, a duty of care just as the solicitor in *Wall* owed a legatee a duty of care to draft a will properly. However, I am not satisfied that these two situations are similar ones. No corporate entity intervened between the solicitor and the legatee in *Wall*. One does exist herein. Here, if the client was in fact the company and not Mr. Adigun then no privity exists between him and its solicitors. The fact Mr. Adigun stood to benefit from whatever monies came the company's way does not establish a duty of care between the solicitors for the company and him. He is in no stronger or weaker a position than any other member of the company. The dispute existing was between the company and the Abbey and it was the company that stood to gain or lose thereby.

**3.** So who was the client? Mr. Adigun argues that he was in reality. The second defendant says no, that it was the company. I have read through the papers carefully and listened to submissions from both sides. I can readily accept that on both sides there are loose references to the identity of the client. However, the issue should not be decided on that basis. The Court should look at the situation in the round and decide accordingly. In this regard, certain key documents exist that may assist. First and foremost though is the nature of the dispute. This is the framework within which everything occurred and by reference to which everything should be decided. Looking at the issues thus, the following seem to me of central significance;

(i) The dispute centered upon the claim of Arambe to be paid its royalties. It must be noted that when a further later dispute was brought to court in relation to a second run of "The Playboy" in 2008/09, it was in proceedings entitled *Arambe Productions Limited v. Abbey Theatre and Roddy Doyle*. Although the plaintiff herein notes that media reports had described counsel for the plaintiff as Mr. Adigun's barrister, that does not change the fact that the plaintiff was in fact the company.

(ii) The agreement herein upon which the plaintiff wanted to rely for payment of the money due was one between Arambe Productions and the Abbey Theatre dated the 18<sup>th</sup> May, 2007. See paragraph 5 of the statement of claim.

(iii) The first intimation of the dispute was a letter dated the 26<sup>th</sup> November, 2007 to Arambe Productions from Arthur Cox, Solicitors for the Abbey Theatre, describing the above proceedings; "We refer to the agreement dated the 18<sup>th</sup> May, 2007 between Arambe Productions and our client".

(iv) In his e-mail dated the 4<sup>th</sup> December, 2007 to Linda McEvoy, Mr. Adigun notes the importance of distinguishing Arambe Productions from himself. He speculates that it might be a better idea if he got another solicitor to represent him because he might as owner of the idea for the play and as co-writer, have to deal with Roddy Doyle. Clearly Mr. Adigun at this stage sees the distinction. The dispute over the withheld box office receipts is between the company Arambe and the Abbey. Any dispute concerning ownership of copyright in the play is between him personally and Roddy Doyle.

In a later e-mail of the 14<sup>th</sup> December, 2007, he confirms with Linda McEvoy that she has agreed to take the case

on behalf of "Arambe and myself". The case however has not changed. It is still about the dispute between Arambe and the Abbey. Arambe wants its money.

(v) On the 17<sup>th</sup> December, 2007, Mr. Adigun e-mailed Linda McEvoy again. He referred here to the very heart of his complaints that he now makes in these proceedings, i.e. the solicitors should write to the Abbey pointing out to them that if they refuse to pay Arambe's balance by the 27<sup>th</sup> December, 2007, "they will be in breach of the contract they have agreed with Arambe".

In a later e-mail to Linda McEvoy, now working locum with Morans Solicitors (it is agreed nothing turns on this changeover or merging of solicitors – Morans were the solicitors involved through Ms. McEvoy), Mr. Adigun refers to the agreement between Arambe and the Abbey.

(vi) On what is clearly the 18<sup>th</sup> December, 2007, Morans Solicitors sent a s. 68 letter outlining terms of business. It is an unsatisfactory letter of its type. It is undated and it does not clearly identify the client. It is addressed directly to Mr. Adigun whereas all previous dealings appear clearly to have been with Mr. Adigun in his capacity as director of Arambe Limited. It refers to the dispute that has arisen "between Arambe Productions Limited and Roddy Doyle", whereas the dispute up until then had been described as one between Arambe and the Abbey Theatre. It is an unhelpful and confusing letter.

(vii) Mr. Adigun's e-mail of the 19<sup>th</sup> December, 2007, however, returns the focus to the dispute as being between Arambe and the Abbey. His entire e-mail emphasises the contractual dispute between Arambe and the Abbey. This clearly is the dispute the solicitors are retained to deal with. On the 19<sup>th</sup> December, 2007, replying to this e-mail, Linda McEvoy indicates the solicitors' understanding of the identity of the client when she advises "The terms of business would need to be accepted by Arambe's Board or by you on Arambe's behalf". On the 20<sup>th</sup> December, 2007, Mr. Adigun replies confirming he has referred the terms of business to the Board of Arambe "and we are happy to let you handle the case for us". This is confirmation from both sides as to who the client is – it is Arambe Productions Limited. It is not Mr. Adigun.

(viii) In a later development, Mr. Adigun had a cheque prepared in order to pay Morans their retention fee. It is dated the 12<sup>th</sup> February, 2008 and is an Arambe Productions Limited cheque. On the 13<sup>th</sup> February, 2008, Mr. Adigun in his letter to Morans Solicitors said that the reason he is writing is to formally ask them in their capacity as Arambe's solicitors to write to the Abbey to express its wish to terminate the contract between them. Their failure to do so on this and previous occasions is one of his central complaints.

(ix) On the 7<sup>th</sup> March, 2008, Mr. Adigun wrote to Morans Solicitors at a time when clearly the solicitor/client relationship was approaching its end, if not already ended. He raises, in what is clearly a demand for an explanation, the question of why Roddy Doyle's solicitors wrote directly to him. The whole tenor and substance of the letter calls the solicitors to account in relation to all their dealings with the other side "since you took up this case on behalf of Arambe".

(x) On the 11<sup>th</sup> March, 2008, Morans Solicitors write to Arambe Productions Limited ending their relationship therewith. The letter clearly shows the solicitors' understanding that Arambe was the client and not Mr. Adigun. When Mr. Adigun instructs Duncan Grehan & Partners, it is clear from his e-mail to his Board of Directors dated the 23<sup>rd</sup> May, 2008 that the company is the client. Mr. Adigun stated

"... I am yet to sign anything because the document he [Mr. Grehan] promptly sent to me on Tuesday was addressed to Bisi Adigun and I wanted to be crystal clear that it is Arambe Productions, the company who commissioned and funded the co-writing and also enabled the Abbey production of the 'Playboy' that he is representing and not Bisi Adigun, the co-writer. My aim is to enage my own private solicitor to represent my interests as the originator and co-writer of the play if the case ends up in court or mediation".

(xi) When subsequently Mr. Adigun complained to the Law Society about Morans handling of the case, he did so on behalf of Arambe. Throughout the letter he sent Morans notifying them of this, he repeatedly confirms that Morans had been acting on behalf of Arambe.

**4.** The conclusion is inescapable. Morans Solicitors were retained to act on behalf of Arambe in its dispute over box office receipts to which it claims to be entitled. Arambe was the client not Mr. Adigun. Mr. Adigun had no proprietary interest in those box office receipts. He may have had an interest against Arambe to be paid but it was the company who had the claim pursuant to its contract. Mr. Adigun's action in these proceedings is set out in a highly prolix, involved statement of claim that runs in sixty six paragraphs to twenty two pages. It covers a vast range of complaints against the defendants. All may arise out of the original instructions but the problem for Mr. Adigun is that, as I have found above, he was never the client. His instructions were given on behalf of the company and in his capacity as its artistic director. Thus, in my judgment, he has no *locus standi* to sue the defendants because no relationship of solicitor and client ever existed between him and these defendants.

**5.** The separate corporate personality of a limited liability company lies at the heart of modern commercial enterprise. It confers many benefits including enabling persons to invest in business enterprises without risk other than that to which they agree. They may limit the extent of their liability. It does, however, have certain qualities that are not always favourable to those who establish such companies. In law they are separate and distinct persons. Herein is an example of the disadvantages that can arise. It is the company that should have brought these proceedings and not Mr. Adigun.

In the light of this finding, I must dismiss the plaintiff's claim.

