

25/83

SUPREME COURT OF VICTORIA

MILLER v AMBROSY

Jenkinson J

18 June 1980

LEGAL PRACTITIONER – RECOVERY OF PROFESSIONAL COSTS – SERVICE OF BILL OF COSTS BY POST – AT PLACE OF BUSINESS – PARTICULARITY OF ITEMS IN BILL.

Section 81 of the *Supreme Court Act* 1958 provides, *inter alia*, that:

"...no solicitor...shall commence or maintain any action... for the recovery of any fees...until the expiration of one month after such solicitor...has...sent by the post to... his place of business...a bill of such fees."

A., a solicitor, carried out work for M. and in due course, posted a bill of costs to a post office box of a company which was the place of business of M. In giving evidence, M. said that he never received the bill and submitted that A. was not entitled to commence or maintain the proceedings. The Magistrate rejected this submission and made an order for the amount claimed plus costs. On order nisi to review—

HELD: Order nisi discharged.

(1) Posting in an envelope addressed to the private box of a person having a place of business who invites business correspondence by that mode of delivery, is sending by post to that person at his place of business within s81 of the Act.

(2) It is not the law that the bill required by s81 must specify a separate charge for each item of work. What is required is sufficient particularity to enable the client to decide whether to require taxation of the bill.

Malleson & Ors v Williams [1930] VicLawRp 62; (1930) VLR 410; [1930] ALR 310 applied.

JENKINSON J: *[After setting out the facts and s81 of the Supreme Court Act 1958, His Honour continued]:*

... [3] The envelope in which a bill of costs dated 5th April 1978 was alleged to have been posted was addressed thus: "Mr R.A. Miller, C/o Essex Finance Corporation Pty Ltd, Post Office Box 136, Albert Park, 3206." The letterhead of the copy letter in the respondent's file, which was tendered in evidence, justified an inference that the place of business of Essex Finance Corporation Pty Ltd was on the first floor, 160 Albert Road, South Melbourne, and the Post Office Box 136, Albert Park, 3206, was a private box of which that company was tenant under the provisions of Division 4 of Part III of the *Postal By-Laws*, of which judicial notice is directed by s4A of the *Commonwealth Evidence Act* 1905 to be taken. There was no evidence, nor any submission that the inference should not have been drawn by the learned Magistrate who heard the [4] complaint, or that he should not have made a finding in the terms of that inference.

There was in my opinion evidence which justified a finding by the learned Magistrate that at the time when the letter was alleged to have been posted the place of business of Essex Finance Corporation Pty Ltd was also the "place of business", within the meaning of that expression in s81 of the *Supreme Court Act*, of the male applicant. There was in my opinion evidence of the respondent's office practice which justified a finding that the envelope containing a bill of costs was posted on or about 5th April 1978.

If the learned Magistrate accepted the evidence of the male applicant that he had never received the envelope or the bill of costs, there was nevertheless evidence which in my opinion justified the conclusion that the bill of costs had been "sent by the post to...him at his...place of business", within the meaning of those words in s81 of the *Supreme Court Act*. In my opinion posting in an envelope addressed to the private box of a person having a place of business who invites, as the letterhead of Essex Finance Corporation Pty Ltd did invite, business correspondence by that mode of delivery is sending by post to that person at his place of business, within s81. If another person has the same place of business and shows himself to be on good terms with the tenant of the private box and suggests no mode of postal delivery to himself other than delivery to the private box then in my opinion posting in an envelope addressed to that private box is sending

by post to that other person at his [5] place of business, within s81, and, in those circumstances, evidence by that other person merely of his not having received the envelope, without any evidence that he enquired of the tenant of the box, or otherwise sought after the envelope, does not in my opinion displace either of the statutory presumptions which s25(1) of the *Acts Interpretation Act* 1958 enacts (cf. *Lombard Australia Ltd v Mohrwinkel* (1973) 21 FLR 277; (1973) 1 ACTR 57; and the cases there cited).

[His Honour then referred to a ground of the order nisi and the Magistrate's reasons, and continued]:

... [6] When reference is made to the submissions which were addressed to the Magistrate after the conclusion of the evidence, which submissions are summarised in the affidavits before me, it is apparent that the observations he made concerning s81 of the *Supreme Court Act* were evoked, at least in part, by the submissions that s81 requires that a separate charge be specified for each of the items of work to which the bill of costs relates.

In my opinion it is not the law that the bill required by s81 must specify a separate charge for each item of professional work. [7] What is required is sufficient particularity to enable the client to whom the bill is rendered to make, with the aid of any legal adviser he has, an informed decision whether to require taxation of the bill: (see *Malleson, Stewart, Stawell and Nankivell v Williams* [1930] VicLawRp 62; (1930) VLR 410; [1930] ALR 310). The bill dated 5th April 1978 does in my opinion satisfy that requirement.
