

4/99; [1999] VSC 204

SUPREME COURT OF VICTORIA

PINNA v KUEK

O'Bryan J

31 May, 4 June 1999

SOLICITOR – BILL OF COSTS – IN THE FORM OF LETTER SIGNED BY LEGAL PRACTITIONER WITH TEN ATTACHED UNSIGNED PAGES – WHETHER A BILL OF COSTS – WHETHER S107 OF LEGAL PRACTICE ACT 1996 COMPLIED WITH – CLAIM BEYOND COURT'S JURISDICTION – NOTICE GIVEN OF INTENTION TO ABANDON EXCESS – AMOUNT AWARDED WITHIN THE JURISDICTIONAL LIMIT – AMOUNT AWARDED NOT REDUCED BY EXCESS – WHETHER MAGISTRATE IN ERROR: LEGAL PRACTICE ACT 1996, s107.

1. Where a signed letter was attached to ten unsigned pages which set out details of work done, professional costs and disbursements, it was open to a magistrate to find that the letter and the attached pages constituted an itemised bill of costs which complied with the provisions of s107 of the *Legal Practice Act 1996*.

2. Where a magistrate found that the balance of a bill of costs was within the jurisdictional limit of the court, the magistrate was not in error in declining to reduce the amount found due and payable by the excess sum stated to be abandoned in the complaint.

O'BRYAN J:

1. In May 1997 the respondent (plaintiff in the court below) filed a complaint in the Magistrates' Court at Broadmeadows claiming \$53,072.50 from the appellant (defendant in the court below) for legal services. The claim included professional costs and disbursements, including counsel's fees, and interest at the penalty rate of 13.2%. The total amount due was stated as \$53,360.40. Because the jurisdictional limit in the Magistrates' Court is \$40,000 the respondent's claim stated: "We therefore give notice to you that we are abandoning the excess in the sum of \$13,360.40".

2. What the sum of \$13,360.40 related to was not stated on the complaint. It was simply an amount to bring the claim within the jurisdictional limit.

3. At the hearing in the court below the respondent did not amend the claim, it stood at \$53,360.40 until the hearing concluded. The Magistrate found for the respondent and ordered the appellant to pay the respondent \$24,772.50 and interest of \$5,200 and costs of \$5,445. Because the order was within the jurisdictional limit the respondent was not required to abandon any excess.

4. It is common ground between the parties that the Magistrate reduced the claim firstly by \$22,500 on account of unpaid counsel's fees which could not be recovered by the respondent, secondly, by \$800 for fees already paid by the appellant and thirdly, by \$5,000 being fees charged as "additional loading for care and responsibility, skill and attention". Total \$28,300.

5. The appellant was dissatisfied with the order and applied to Master Evans on 10 February 1999 to appeal the final order in the Magistrates' Court. Two questions of law are to be decided by the order of Master Evans.

(i) Whether the Magistrate erred when he determined that the bill of costs unsigned but attached to signed correspondence from the respondent dated 4 April 1998 constituted a bill of costs for the purposes of s107 *Legal Practice Act 1996*; and

(ii) Whether the Magistrate erred when he determined to allow the respondent to amend his claim by increasing the claim by the sum of \$13,360.40 the said sum having been abandoned by notice in writing to the appellant as in excess of the jurisdiction of \$40,000."

6. By way of introduction I should observe that the affidavit filed before or upon the attendance before a Master was quite inadequate and disregarded the requirements of Rule 58. The reasons given for the order was not exhibited and it was impossible to ascertain what happened in the court below.

7. What is now clear is that the learned Magistrate was not asked to allow the respondent to amend his claim by increasing the claim by the sum of \$13,360.40 nor did the learned Magistrate do so.

8. The claim in the court below for \$53,360.40 plus interest was accompanied by a statement, saying, in effect, if I am successful for the amount claimed I shall abandon \$13,360.40 to bring the order within the jurisdictional limit.

9. An elaborate argument was put to the learned Magistrate based upon estoppel. It proceeded upon the basis that the excess of \$13,360.40 had been removed from the bill of costs before the hearing commenced and that where the Magistrate reduced the bill of costs by \$28,300 he ought to have deducted this amount from \$40,000, not from \$53,360.40 as he did. Promissory estoppel was relied on upon the basis that the statement "we are abandoning the excess in the sum of \$13,360.40" was a promise to the appellant from which the respondent could not resile.

10. In my view, the argument is a nonsense and ground (ii) of the appeal fails. The claim was not amended, it didn't have to be, because the balance of the bill of costs found due and payable was within the jurisdictional limit of the Court.

11. The first ground of appeal depends upon whether a "bill of costs" complies with s107 *Legal Practice Act 1996*.

12. The respondent prepared a letter, dated 4 April 1997, and posted the same to the appellant. The letter comprised, page 1 signed by Gabriel Kuek, a legal practitioner and 10 attached pages. The 11 pages were paginated 1 to 11 at the foot of each page but the 10 attached pages were not signed.

13. The letter stated:
"Account for Professional Costs and Disbursements Drawn in three parts in taxable form."

Below were the following words:

"To our professional costs and disbursements in respect of criminal charges against you involving blackmail, etc., calculated as set out in the following pages and summarised as follows:

1. Supreme Court bail application and judicial review	\$5,662.00
2. Supreme Court application for variation of bail	\$2,051.50
3. Magistrates' Court bail application and committal proceedings	\$39,759.00
4. Add loading for care and responsibility, skill and attention, say	\$5,000.00
5. Add drawing and engrossing taxable bill of costs (3 hrs.)	\$600.00
	<u>\$53,072.50"</u>

14. The attached pages provided details of each item numbered 1 to 5 in the letter, disbursements in one column and costs in a second column.

15. The details are clear to the reader.

16. In my opinion, the letter and accompanying pages were intended to be read together. The letter said so.

17. Section 107 relevantly provides:

"(1) A bill of costs may be in the form of a lump sum bill or an itemised bill.

(2) A bill of costs—
 (a) must be signed by—
 (i) the legal practitioner; or

(3) a bill of costs is to be given to a person—

(b) by sending it by post to the person or agent at the usual or last known business or residential address of the person or agent; or"

18. Section 108 provides that if a lump sum bill is received by a person, he or she may request the legal practitioner or firm to give them an itemised bill.

19. The appellant never requested an itemised bill pursuant to s109.

20. The appellant's submission in the court below was that the "bill of costs" comprised the present case is the attached 10 pages, all unsigned and the signed letter is not part of the bill of costs. Section 106(1) of the Act provides that a legal practitioner or firm must not commence legal proceedings to recover legal costs from a person until at least 30 days after the practitioner or firm has given a bill of costs to the person in accordance with s107. Sub-section (3) of s106 says a court before which any proceedings are brought in contravention of ss(1) must stay those proceedings on the application of a party, or on its own initiative.

21. The argument for the appellant below was that the legal practitioner for the respondent prepared an itemised bill but did not sign it. Consequently, it was incompetent for the legal practitioner to commence the proceeding in the court below and the court should have stayed the proceeding.

22. In my opinion, the argument cannot be sustained. On a fair reading of the letter and the attached pages I conclude that the 11 pages together are an itemised bill. The signature of a legal practitioner on the first page of an itemised bill satisfies the requirements of s107. The practitioner who did the work signed the letter and the bill was payable to her or her firm. Inclusion of the name of the legal firm on the face of the bill of costs did not alter the position that the letter and accompanying pages was a bill of costs for the purposes of s107 of the Act. See *McLean v Weaver* (1924) Vol. XLI TLR 47.

23. The Act does not define "bill of costs".

24. The letter stated it was an "account for professional costs and disbursements" and below set out five items and an amount which included costs and disbursements. The attached pages set out in detail separate charges for each item, the date and a description of the service provided. I repeat, that I am satisfied the letter signed by the solicitor and the attached pages constituted an itemised bill of costs signed by a legal practitioner and the absence of a signature on each of the accompanying pages is not non-compliance with s107.

25. The pre-condition required by s107 before commencing proceedings to recover costs against the appellant was satisfied and the Magistrate was right in holding that a proper itemised bill of costs complying with s107 had been posted to the appellant before the proceeding commenced.

26. The appeal is dismissed with costs.

APPEARANCES: For the appellant Pinna: Ms F O'Brien, counsel. Judy Cox, solicitors. For the respondent Kuek: Mr Paszkowski, counsel. Kuek & Associates, solicitors.