34/01; [2000] VSC 75

SUPREME COURT OF VICTORIA

CHIODO & MADAFFERI v LUCIC & Anor

Ashley J

7 March 2000

CIVIL PROCEEDINGS – CLAIM BY SOLICITORS FOR WORK AND LABOUR DONE FOR LEGAL SERVICES RENDERED – CLAIM BY CLIENTS THAT MONEYS PAID IN FULL – MONEYS PAID TO PERSON (NOT A SOLICITOR OR EMPLOYEE) AT SOLICITORS' OFFICE – WHETHER ANY HOLDING OUT BY SOLICITORS THAT PERSON HAD AUTHORITY TO RECEIVE MONEYS – FINDING BY MAGISTRATE THAT PERSON HAD OSTENSIBLE AUTHORITY TO ASK FOR AND RECEIVE MONEYS ON BEHALF OF SOLICITORS – WHETHER MAGISTRATE IN ERROR.

L. were involved in a dispute with a bank. They consulted solicitors C&M and a person named Phillips. Phillips was not a solicitor or a member of C&M but had some professional association with C&M. The dispute with the bank was eventually settled whereupon C&M delivered a bill of costs to L. L. claimed that they had paid the sum claimed to Phillips by way of a series of cheques. C&M brought a claim in the Magistrates' Court for the amount owing. At the hearing, the magistrate referred to the facts that Phillips was allowed to use the offices of C&M together with the use of telephone and switchboard services, C&M's stationery and attendance by Phillips to at least one conference and found that C&M held out to L. that Phillips had an apparent or ostensible authority to ask for and receive moneys on behalf of C&M. Upon appeal—

HELD: Appeal allowed. Remitted for consideration and determination of a specific amount of claim by a different magistrate.
There was evidence before the magistrate that there was some professional association between Phillips and C&M. This could be inferred from the attendance by Phillips with L. to the offices of C&M on more than one occasion in connection with the litigation with the bank. Also, the use made by Philips of a C&M "With Compliments" slip. However, it was not possible for the magistrate to conclude in such circumstances that Phillips had ostensible authority to ask for and receive legal costs payable to C&M in the form of cheques payable to Phillips. The facts could not support a conclusion that there had been a pertinent holding out by C&M and thus, the creation of an ostensible authority.

ASHLEY J:

1. This is an appeal from final orders made by a Magistrate on 30 June 1999 in a proceeding brought by Cosimo Chiodo and Mark Madafferi (who at relevant times conducted a solicitors' practice under the title "Chiodo Madafferi") against Lorraine and Anton Lucic.

2. By their Complaint, the appellant solicitors claimed $14,550 for work and labour done in the way of legal services, together with statutory interest under the *Legal Practice Act* 1986 of $490.31. The total of the claim was, thus, $15,040.31.

3. The respondents filed a Notice of Defence. They denied that they were indebted to the appellants for the sum claimed, or at all. They alleged that they had paid to the appellants payments totalling $14,500, which had not been taken into account.

4. The Complaint, dated 8 October 1998, eventually came to trial in late June 1999. On the hearing the appellants were represented by counsel; the respondents appeared unrepresented.

5. The hearing which was tape-recorded, and in respect of which a transcript was prepared, took place between 28 and 30 June 1999. On the third and final day of the hearing the Magistrate delivered oral reasons, and in consequence made an order on the appellants' claim for $450, together with costs (in fact they were disbursements only) of $559.

6. It is convenient at this stage to note that the respondents prosecuted a counterclaim. The pertinent document was not before me on the appeal. It is enough to say that, by the Magistrate's order of 30 June, the counterclaim was dismissed; and that the respondents did not challenge this order.

7. The circumstances that gave rise to the litigation in the Magistrates' Court can be sketched fairly quickly. As at mid-1997 the respondents were in conflict with the Commonwealth Bank of Australia. The bank claimed that the respondents owed it a large sum of money – more than $600,000 — and that it held securities from them which it was entitled to enforce because they were in default. The dispute had apparently been in existence for quite some time prior to mid-1997, but the detail of the matter before that time is not important for present purposes.

8. In 1997, according to the reasons of the learned Magistrate, the respondents "were referred to the firm of Chiodo and Madafferi, and also to a man called Mr Ken Phillips" as a result of discussions with their accountant. Phillips, it is here convenient to note, was not a solicitor. The evidence showed, however, that on occasions he brought clients to the appellants.

9. In the event, between mid-1997 and June 1998, though with a very short hiatus when the respondents dispensed with the services of the solicitors, the appellants acted for the respondents in maintaining defence of a Supreme Court proceeding brought by the bank.

10. The work done by the solicitors included taking instructions from the respondents, briefing counsel to draw a defence, probably giving discovery, briefing counsel and themselves attending a mediation, further negotiating with the bank's in-house solicitors after the mediation had failed, and ultimately coming to a settlement on their clients' behalf with the bank. The amount of the settlement was $600,000 all-in. The formal terms of settlement were signed on 11 May 1998.

11. Thereafter, that is, on 28 May, the solicitors sent a lump sum bill of costs to their clients. Professional costs and charges were assessed at $16,500 and disbursements at $2,950. Credit was given for an amount of $4,900 received from the clients on account of costs and disbursements. The amount outstanding was thus said to be $14,550. That sum, it can be seen, was the sum claimed by the Complaint which commenced the Magistrates' Court proceeding, save only that the additional amount referable to interest had been added to it.

12. After the commencement of the Magistrates' Court proceeding, but before trial and in response to a request made on behalf of the respondents, the appellants provided a bill in taxable form, as was their obligation. Costs were there assessed at $18,459.80. Disbursements remained at $2,950. Notwithstanding, however, the increased amount of the itemised bill, the appellants, at trial, were content to pursue the amount claimed by the Complaint.

13. At the trial, evidence was given by Mr Chiodo, Mr Master, a costs consultant, and Mrs Lucic. Evidently, Mr Lucic was present. But he did not give evidence. At the conclusion of his wife's evidence he was asked by the Magistrate whether he proposed to give evidence or was satisfied that the full story had been given by his wife, and he said that he was satisfied with his wife's evidence and did not wish to give evidence. In closing submissions, I add, counsel for the appellants specifically did not argue that any conclusion adverse to the respondents should be drawn by reason of Mr Lucic not giving evidence.

14. Mrs Lucic gave evidence that cheques for amounts totalling about $14,500 had been drawn in respect, as she and her husband understood it, of the costs incurred by them for the appellants' work. Copy cheques were put in evidence. There were six cheques for $1,000 or more. In two cases – for amounts of $2,500 and $2,000 – the cheques were made payable to the appellants. In two cases – for amounts of $1,000 and $4,000 – the cheques were made payable to Phillips. In one case – for an amount of $4,000 – the cheque was made payable to "K. Phillips/Cash". In the last case, a cheque for $1,000 was made payable to cash.

15. His Worship accepted that Mr and Mrs Lucic had paid each and every one of the cheques; and, at least inferentially, that the accounts upon which they had been drawn had been debited. He concluded that the cheques payable to Phillips had been written out by Phillips and not by Mr or Mrs Lucic – though this did not in all instances coincide with the evidence of Mrs Lucic.

16. I said a little earlier that the learned Magistrate made an order in favour of the appellants for only $450. That amount was arrived at this way: the learned Magistrate reduced the amount of the claim, in a manner that I will later describe, from a starting point of $19,450 to $15,000; then he accumulated the moneys paid by the respondents to the solicitors by way of the two

cheques made payable to them, and the moneys paid by the respondents in the cheques made payable to Phillips, and the money paid by way of the cash cheque. He treated the moneys paid by the respondents by way of all the cheques as payment of the appellants' costs. In doing so, he expressed a conclusion that, although the solicitors did not actually receive what it is convenient to describe as the 'Phillips moneys' (in that description I include the cash cheque), nonetheless, the solicitors should be taken to have received them by reason of their payment to Phillips. That was because there had been a holding out that Phillips had authority to ask for and receive moneys, by which must be have been meant an authority to ask for and receive moneys representing costs payable by the respondents to the appellants – indeed, an authority to ask for and receive moneys representing such costs in a form where they were payable to Phillips, or to cash.

17. His Worship disavowed any finding that Phillips had actual authority to ask for and receive moneys of the kind now under discussion. He said

> "I do not find that the cheques were written by Mr Phillips in Mr Chiodo's presence, and I do not have any other evidence of any actual authority being conferred on Mr Phillips by Mr Chiodo to accept the cheques, or even ask for them".

18. But then his Worship said this:

> "The reasons I find that there was nonetheless an authority, at least an apparent or ostensible one for which Mr Chiodo must bear responsibility, is that Mr Chiodo, by allowing Mr Phillips the use of his offices, the use of his telephonic and switchboard services, access to his firm's stationery, and his knowledge of the association of Mr Phillips with this matter, and the fact that he in fact had Mr Phillips to at least one conference, if not more, all go to produce a strong representation, in my view, especially given the nature of the clients and their ability, which I find Mr Chiodo as a solicitor acting for them appreciate, a strong representation hat Mr Phillips was in fact on the team and part of the team, even though I do find it as a fact that Mr Phillips was not a solicitor and not a member of the actual firm".

19. On 12 October 1999 a Master made orders which listed "questions of law shown by the appellants to be raised by the appeal". The first of the questions was as follows:

> "(a) Having regard to the whole of the evidence, was it open to a Magistrate properly instructed to conclude that Ken Phillips was either
> (i) the actual
>
> (ii) the ostensible servant or agent of the appellant".

20. There were obvious problems with the question so framed. His Worship did not find that Phillips was the actual servant or agent of the appellants. Moreover, his findings were couched in the language of agency, not employment. What could be the point of the appellants raising a "no evidence" debate in respect of matters which were not the subject of any adverse finding at first instance?

21. Beyond these obvious criticisms of question (a) it became very evident in the course of argument before me, that the appellants' real complaint and the issue of substance arising between the parties was not clearly raised by question (a). There was debate just how the true issue ought be formulated. Ultimately, as it seemed to me, the issue was capable of being exposed by two questions. The first of them was this:

22. In respect of the learned Magistrate's finding that Mr Chiodo held out to the respondents that Phillips had authority to ask for and receive moneys, that is, moneys in respect of the appellants' legal costs in his (Phillips) own name, was there any evidence of such holding out by

> – Mr Chiodo allowing Phillips the use of the firm's offices;
> – Mr Chiodo allowing Phillips the use of the firm's telephonic and switchboard services?

23. The second of the questions was this:
Were the findings that Mr Chiodo
– had knowledge of "the association of Phillips with this matter";
– had Phillips to at least one conference if not more;

> – allowed Phillips access to his firm's stationery — that is, the "With Compliments" slip which was Exhibit IF in the Magistrates' Court capable of supporting, singly or in combination, the finding that Mr Chiodo had held out to the respondents that Phillips had authority to ask for and receive moneys as described?

24. Consonant with the approach taken by other Judges, and myself, in past instances of appeals from the Magistrates' Court, I consider – notwithstanding the submission of Mr Solomon for the respondents to the contrary – that it is open to me to consider the issue thus framed, and to do so by directing that the issue in those terms be so determined. I have not the slightest doubt that this is a case where, such a course being permissible, it ought be adopted, because I consider it very clear indeed that in substance the Magistrate erred.

25. So far as the first question that I articulated is concerned, there was no evidence, specifically addressing the period of the retainer, which went to show that the appellants allowed Phillips the use of their offices and the use of their telephonic and switchboard services. There was some evidence bearing upon these matters, but it either addressed a later time or was at best non-specific.

26. Even if it was possible to conclude that the evidence which was given could have stood as evidence of the situation in 1997 and 1998, there was nothing that would have permitted the drawing of an inference that the respondents were at a material time aware of the situation painted by the evidence, or that would have permitted a conclusion that the appellants had thereby held out Phillips as having a pertinent authority. It would be piling speculation upon speculation to derive out of the evidence that was before the Magistrates' Court a conclusion that there had been a holding out such as the learned Magistrate used to found his ultimate conclusion.

27. Let me turn to the second question that I framed. There was evidence that Phillips had some association with the matter; in particular, that he had attended with the respondents at the appellants' office on more than one occasion in connection with their Supreme Court litigation. His Worship was entitled, therefore, to find as a fact that there was such an association, just as he was entitled to find as a fact that Phillips had attended with the respondents at the appellants' office. His Worship was also entitled to find that Phillips had, on one occasion, made use of a "With Compliments" slip, that is, one of the appellant's slips, in connection with the respondents' matter. The evidence showed that the respondents' file had been with Sydney solicitors and that, with a view of obtaining the file, Phillips had given the respondents a "With compliments" slip on which was handwritten "Attention: Ken Phillips.

28. It was, in my opinion, open to the Magistrate to conclude, at least by reference to the "With Compliments" slip, that there was some professional association between Phillips and the appellants. It was further the case that the slip had been given to the respondents. But the critical question is whether it was then open to his Worship to be satisfied that Phillips had ostensible authority to ask for and receive legal costs payable to the appellant, *a fortiori*, ostensible authority to ask for and receive such costs in the form of cheques payable to him, or to cash.

29. In my respectful opinion it was impossible to reach such a conclusion simply by reference to the "With Compliments" slip; and adding to that the several other matters of fact which I have identified improves the situation not at all from the respondents' standpoint.

30. In the event, the matter can be summarised this way: in concluding that the appellant held out Phillips to have the authority to which I have referred, his Worship in the first place relied upon findings of fact unsupported by evidence; and in the second place relied upon findings of fact which could not support a conclusion that there had been a pertinent holding out and, thus, the creation of an ostensible authority.

31. Mr Solomon, for the respondents, drew my attention particularly to two passages in the transcript: first, a passage at transcript 185-186, dealing with the "With Compliments" slip. About that passage I need say no more than I have already said in connection with the particular document.

32. Then he referred me to a passage at transcript 224 and following in the evidence of Mrs

Lucic. Asked about the cheque dated 3 July 1997, made payable to "K. Phillips/cash", the witness said that the document was signed by her husband in her presence, in the presence of Mr Chiodo. When asked by the Magistrate, "Who asked for the $4,000?" she replied "Cosimo Chiodo". When asked "What did he say?" she replied "That 'Ken Phillips will write the cheque out for you, and we will put it in the trust account'". Mr Solomon submitted that this was evidence of a holding out by the appellant of Phillips' authority to receive moneys, and that, having regard to question (a) as it was framed by the Master, that question must be answered favourably to his clients.

33. It is, in my opinion, crystal clear that his Worship rejected that evidence. I doubt that Mr Solomon contended to the contrary. I have already pointed out that his Worship specifically said that he did not find that the cheques were written by Phillips in Mr Chiodo's presence, and that his Worship did not have any other evidence of any actual authority being conferred on Phillips by Mr Chiodo to accept the cheques, or even ask for them. That finding involved the rejection of evidence repeatedly given by Mrs Lucic that all the cheques had been filled in and signed in the appellants' office in the presence of Mr Chiodo and Phillips, and at the direction of Mr Chiodo.

34. At another point in his reasons his Worship, being astute to say that he did not regard Mrs Lucic as a dishonest person, described her as "given to some exaggeration". Further to that description he said that he thought that she had revisited events by way of reconstruction, and had in fact been prepared to say that things had happened when in fact she thought they must have, rather than having a good memory of them.

35. Without pausing to consider whether it was sensible to describe as "exaggeration" a faulty reconstruction of events – a reconstruction of events which his Worship evidently rejected — it is, I think, only too clear that his Worship rejected the particular evidence under discussion. It would have been surprising, indeed, had he done otherwise. Other difficulties apart, the solicitors' bill made no claim for an attendance on any of the days corresponding with the dates on the cheques.

36. Mr Solomon submitted that, if question (a) was addressed in terms, he was entitled to rely upon evidence led below, even evidence that had been rejected, to show that there had been some evidence to support a particular conclusion. I doubt that this would be so. The question whether there was evidence to support a finding made in the Magistrates' Court has been revisited many times over the years. Formulations of the way in which such a question must be considered do not inevitably lead to the consequence that, simply because something was said on oath in the Magistrates' Court, it could not be concluded that there was no evidence to support a finding consistent with what was said. That would seem to be the case *a fortiori* where the particular evidence was specifically rejected by the Magistrate, his finding not being based upon it. For it may be said that the question is not simply whether there was any evidence upon which the Magistrate might have made a particular finding, but rather whether there was any evidence that he accepted, or at least did not specifically reject, which was capable of supporting that finding. But I do not need to analyse. Mr Solomon's submission further because I consider, as I have said, that the true issue requiring examination is somewhat different.

37. I have noted that the learned Magistrate made an order in the appellant's favour for $450 plus some disbursements. The Master framed a second question by his order of 12 October 1999. It was this:

> "(b) Was there any evidence on which a reasonable Magistrate properly instructed could have come to the conclusion that the work and labour done by the plaintiff was not less than $19,450?"

38. Leaving aside the grammar of the question, it is not apposite, as Mr Sandbach, for the appellants, agreed. The answer to that question is obviously yes, but that would not advantage the appellants. Their complaint is that the Magistrate reduced the amount of the claim by about four and a half thousand dollars. The appellants really wish to say that no reasonable Magistrate could have concluded that the value of the work and labour done by the appellant was less than $19,450.

39. In my opinion, considering the issue in the way that the appellants really seek to put it, they fail.

40. I do not doubt that there was evidence which would have permitted his Worship to reach a conclusion that the value of the work and labour done by the appellant was $19,450. Indeed, the itemised bill of costs would have justified a conclusion that the value of work and labour done was a greater sum again. But there is no doubt that his Worship was entitled to consider all the evidence in deciding what amount the appellants had proved to be the value of the work they had done. He was not confined to consideration either of the lump sum bill of costs or the itemised bill of costs. The fact that the respondents had not exercised their rights to have their solicitor and client bill taxed does not lead to any different conclusion.

41. His Worship had *viva-voce* evidence before him as to the nature of the proceeding in the Supreme Court and the work that the solicitors had done. He had before him the evidence of the costs consultant as to the manner in which the itemised bill had been compiled. He also had evidence before him of an estimate made by the solicitors at the time of their engagement of the total legal costs that might be incurred in defending the Supreme Court proceedings. Then the solicitors, making it clear that they were doing their best, estimated their professional costs — that is, excluding disbursements — in the range $10,000 to $15,000. They estimated total legal costs in the range $20,000 to $25,000.

42. In the course of the pertinent evidence of Mr Chiodo, and the evidence of Mr Masters, the costs consultant, his Worship asked many searching questions. In the case of the costs consultant they might be said to have elicited answers which put in doubt the reliability of the amount assessed in respect of "Instructions for Brief". That item made up $12,750 of the amount of $18,459.80 professional charges set out in the itemised bill. Then, turning to the answers given by Mr Chiodo to his Worship's questions, it is to be noted that when he was asked about the item "Instructions for Brief" his first response was: "Instructions for brief can't be $12,000, sir ... are you misreading that?" When it was put to him that the amount of $12,750 was extraordinary, he replied: "Sir, it may be extraordinary. I can only rely on the bill I've received." Later, asked about the initial letter to the clients which set out the costs' estimate, he said that the estimate of $10,000 to $15,000 for professional charges was a genuine estimate at the time and that it was an estimate which would take him to the point where the matter could be ready for hearing. Asked how it came about that the estimate was 50 to 100% out, he said that it was because a lot of negotiations went on; and then he said that maybe his estimate was out.

43. His Worship concluded that the proceeding in the Supreme Court had not been an unduly onerous one. He had regard to the initial estimate of costs that had been made and, as well, to the itemised bill. He did not attempt a taxing exercise, but it is evident that he concluded that the amount assessed in respect of instructions on brief, that is, $12,750, could not sit with what he concluded was a genuine and correct estimate of overall professional costs made by the solicitors at the outset.

44. His Worship then determined that the highest figure nominated by the solicitors at the outset in respect of their professional costs should fairly represent the value of the work they had actually performed, including disbursements. Having regard to the fact that disbursements amounted to a little under $3,000, the learned Magistrate in effect assessed the value of professional work done by the solicitors at about $12,000.

45. It is possible to criticise portion of his Worship's reasons at transcript 333. But in my opinion, in all the circumstances, it cannot be said that the conclusion which his Worship reached was one that was not available on the evidence that had been adduced.

46. A third question was stated by the Master's order of 12 October 1999. I should set it out:

> "(c) Whether the Appellant was denied natural justice in that the Magistrate in the conduct of the proceeding gone beyond the obligation imposed on him to see that unrepresented litigants are not unduly disadvantaged. (See pages of the transcript exhibit CC14): - Cosimo Chiodo, pages 75 to 99, 185 to 191. - Leon Masters, pages 144 to 158, 160 to 183. - Lorraine Lucic, pages 217 to 234".

47. Mr Sandbach pursued this question, though shortly, not on the footing that the Magistrate had, by interfering in the trial to a considerable extent, denied the parties a proper opportunity to be heard or, to put it another way, had made a fair trial impossible, but rather on the footing that the Magistrate's conduct should be viewed as disclosing apparent bias, that is, bias adverse to his clients.

48. There is no doubt that the Magistrate took a major role in the conduct of the proceeding; that he asked each of the witnesses a great many questions; that he frustrated the ability of the examiner or cross-examiner (as the case might be) to pursue his or her intended course.

49. That said, I could not conclude that his Worship demonstrated any apparent bias adverse to the appellants upon the test well recognised in the law. No doubt he asked questions of Mr Chiodo and Mr Masters in a direct, even provocative, way. But at the same time, Mrs Lucic did not escape his forthright attention.

50. I consider that an objective observer, looking at what occurred over the three-day period, would conclude no more than that his Worship attempted to get to the heart of the dispute in a robust way. In doing so, no doubt he was influenced by the fact that there was representation on one side but not the other, and by the fact that it was necessary to elucidate just what the unrepresented parties wished to say in defence of the appellants' claim and prosecution of their counterclaim.

51. What, then, must be done?

52. Mr Sandbach submitted that if I concluded that the learned Magistrate's reasoning in respect of the ostensible authority point was defective, then I should allow the appeal and correct the order made below to increase the amount awarded to the appellant by the sum of the moneys paid to Phillips.

53. Mr Solomon submitted, however, that if I dealt with the substance of the issue raised by question (a) rather than question (a) as framed by the Master (he said that the latter course was the only permissible course), then at the least I should remit the matter for rehearing, because otherwise the appellant would have the advantage of both successfully attacking conclusions impermissibly reached by his Worship and of relying upon his Worship's rejection of evidence bearing upon the same general issue.

54. My general appreciation of the evidence given below leads me to have no confidence at all that the piece of evidence at transcript 224 relied upon by Mr Solomon would be likely to be accepted on a rehearing. Again, as a matter of appreciation of the evidence given last year, I think that his Worship was generous in his assessment of the reliability of Mrs Lucic as a witness, and in his explanation for those parts of her evidence which he rejected. But that should not lead me, I consider, to conclude that the respondents should be denied the opportunity to advance that evidence again. If I did deny the respondents that opportunity, the appellants would be put in the position of claiming the benefit of a successful attack on so much of the Magistrate's reasoning as disadvantaged them and claiming the benefit of so much of his reasoning as presently stood to their advantage.

55. In my opinion the right course is to allow the appeal, set aside only the order made on the claim, and remit it for rehearing by the Magistrates' Court, differently constituted, but upon the footing that the amount of the appellants' claim, if made out, is $15,000 — denying to the appellants the right to pursue a claim for a larger amount, and denying to the respondents the right to contend that the proper amount of costs (and disbursements) was less than $15,000.

56. There is a corollary of the orders which I intend to make. This is not a case in which the respondents should be entitled on the rehearing to seek to make capital by way of an attack on the credit of a witness – of the fact that the claim for professional costs and disbursements had been, in effect, fixed as to amount. My reasons will, of course, be available to the Magistrates' Court, as they will to the parties, and if any improper advantage were sought to be taken of the matter being remitted to the Magistrates' Court on the footing that the claim was for an amount of $15,000, neither more nor less, then the fact that improper advantage was so being sought would, no doubt, and rightly, be brought to the Magistrate's attention.

57. In concluding that the matter should be remitted in the way I have described, I specifically exclude consideration of statutory interest. If the Magistrate, on a rehearing, finds in favour of the appellants, I make it clear that the amount of $15,000 is the amount of costs and disbursements, and nothing else. If, in addition to that, some statutory interest might be awarded, then the

appellants should be at liberty to pursue that claim and the Magistrate should understand that he or she is not precluded from making such an award.

58. I will give a direction that the two questions which are at the heart of the issue sought to be raised by question (a) be considered and determined.

59. I will make orders allowing the appeal on the claim and for its remission to the Magistrates' Court in the form that I have described.

60. There remain two matters. First, the costs of the appeal; second, the costs of the hearing in the Magistrates' Court. As to the first, it seems to me the appellants should have the costs of the appeal. Although it would not be a matter of a court order, I think the respondents should have a certificate under the *Appeal Costs Act*. As to the second, I think that the costs of the hearing in the Magistrates' Court in June last year should be costs in the cause, which is as yet undetermined.

APPEARANCES: For the Appellants Chiodo Madafferi: Mr A Sandbach, counsel. Chiodo Madafferi, solicitors. For the Respondents Lucic: Mr P Solomon, counsel. Findlay Arthur Phillips, solicitors.
