

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN CIVIL DIVISION
CLAIM NO 1999 CL W- 035

IN CHAMBERS

BETWEEN HAZEL WRIGHT CLAIMANT
 (Near relation of Robert Phillips, deceased)

AND THE ATTORNEY GENERAL DEFENDANT

Mr Norman Samuels for the Claimant

Miss Lavern Walters for the Administrator General of Jamaica

Attorney-at-law - Application for attorney-at-law to pay interest on settlement sum – Delay in attorney-at-law making payment of settlement sum - Attorney-at-law awaiting an order of the court to pay over settlement sum – Whether interest payable by attorney-at-law – Legal Profession (Accounts and Records) Regulations; regs. 8 and 9

BROOKS J

20, 21 December 2010 and 31 March 2011

In 1999 Ms Hazel Wright sued the Attorney General to recover damages resulting from the wrongful death of her son Mr Robert Phillips. The details of the incident in which Mr Phillips met his unfortunate death are, however, not relevant for these purposes. The pertinent developments commenced in or about December 2006, when the parties to the claim arrived at a negotiated settlement. Mr Phillips’ estate had infant beneficiaries (his two minor children) and therefore, Ms Wright sought and secured the court’s approval of the settlement. Thereafter, the Attorney

General paid over to Ms Wright's attorney-at-law, as an *ex gratia* payment the sum of \$1,500,000.00 in full and final settlement of the claim.

Because Mr Phillips died intestate, the Administrator General for Jamaica was obliged to administer the estate to protect the interest of the children. The proceeds of the settlement became one of the assets of the estate which the Administrator General for Jamaica was obliged to supervise. It is in the course of the collecting and accounting for those monies that the Administrator General had strong disagreements with Mr Norman Wright, the attorney-at-law who acted for Ms Wright in the claim against the Attorney General.

As it transpired, there was some time-lapse between the time of the payment of the settlement sum to Mr Samuels and the time of the payment to the Administrator General of some of the proceeds of the settlement. The Administrator General has accused Mr Samuels of unreasonable delay in making the payment while Mr Samuels has stated that the time-lapse in the payment was due to the slow process which the Administrator General utilised in complying with an order of this court.

The Administrator General has applied for an order directing Mr Samuels to provide a statement of Ms Wright's account and to pay interest for the period for which the monies were held by him. Mr Samuels has

resisted the application. There is no doubt that Mr Samuels must provide an account. The issue for the court is whether he should pay interest. In deciding the question, the provisions of The Legal Profession (Accounts and Records) Regulations of 1999 (“the Legal Profession Regulations”) have to be considered. Mr Samuels has also responded to the Administrator General’s application by claiming interest from the Administrator General. I shall address the curious nature of that claim below.

Chronology

A chronology of the relevant events would assist the assessment of this application.

1. 3 January 2007 – The Attorney General’s department paid \$1,500,000.00 to Mr Samuels.
2. 17 December 2007 – Mr Samuels paid \$200,000.00 to Ms Wright to reimburse her for expenses incurred by her in respect of the funeral and other expenses.
3. 17 June 2009 – Thompson-James J ordered that the Administrator General should file a notice of application for court orders pursuant to regulations 8 and 9 of the Legal Profession Regulations.

4. 6 November 2009 – King J approved the settlement between Ms Wright and the Attorney General and appointed the Administrator General as trustee for the infant beneficiaries.
5. 13 May 2010 – The Administrator General filed the application for Mr Samuels to account for the monies held by him and to pay interest thereon.
6. 23 November 2010 - Mr Samuels paid \$1,000,000.00 to the Administrator General on behalf of the infant children.

That chronology demonstrates that it took almost four years for Mr Samuels to pay over the bulk of the settlement money which he had received.

The relevant law

The relevant law is contained in regulations 8 and 9 of the Legal Professions Regulations. They are set out in full hereunder:

- “8. (1) Subject to Regulation 14 of these Regulations, an attorney who holds money for or on account of a client shall account to the client for interest or an equivalent sum in the following circumstances:
- (i) where such money is held in an interest bearing trust account the attorney shall account to the client for the interest earned on that money;
 - (ii) where such money is not so held in an interest bearing trust account, the attorney shall, subject to Regulation 9 of these Regulations, pay to the client out of the attorney's own money a sum equivalent to the interest which would have been earned during the period it should have been so held.
- (2) In paragraph (1) of this regulation, for the avoidance of doubts, the reference to an attorney who holds money for or on account of a client

includes the attorney holding money in his or her capacity as attorney on account of the trustees of a trust of which the attorney is a trustee.

Provided that this Regulation shall not apply to money paid to an attorney on account for or in payment of fees for work agreed to be done for the client in the future where such work is performed by the attorney as agreed.

9. An attorney shall only be required to account in accordance with regulation 8 of these rules where he or she holds for a client a sum of \$200,000 or more for 30 days or longer; or

(i) the attorney holds for a client a sum of money exceeding \$200,000 for less than 30 days and it is fair and reasonable to so account having regard to all the circumstances; or

(ii) the attorney holds money continuously which varies significantly in amount over the period during which it is held and it is fair and reasonable so to account having regard to any sum payable under paragraph (i) of this regulation and to the varying amounts of money and length of time for which these are held, or

(iii) the attorney holds sums of money intermittently during the course of acting for a client and it is fair and reasonable so to account having regard to all the circumstances including the aggregate of the sums held and the periods for which they are held notwithstanding that no individual sum would have attracted interest under paragraph (i) of this regulation: or

(iv) regulation 10 of these Regulations applies.

Provided that an attorney shall not be required to account in accordance with regulation 8 where the client deposits or causes money to be deposited in an account maintained by the attorney until the attorney becomes aware of the deposit or ought reasonably to have been aware of it.

A reading of regulation 9 makes it clear that if the sum held by the attorney-at-law is in excess of \$200,000.00 and it is held for a period in excess of 30 days, then interest is payable on that sum.

Regulation 10, referred to in the above quote, addresses clients' money kept in an interest bearing account separate from other clients' funds. That regulation, therefore, does not apply to the instant case. Regulation 14 addresses arrangements in writing between the attorney-at-law and the client; including money held subject to a trust. It states:

14. Nothing in these Regulations shall:-

- (a) affect any arrangement in writing, whenever made, between an attorney and his client as to the application of the client's money or interest thereon;
- (b) apply to money received by an attorney:
 - (i) being money subject to a trust; or
 - (ii) in his or her capacity as trustee rather than as attorney, on account of the trustees of any other trust of which the attorney is a trustee;
- (c) affect any agreement in writing for payment of interest on stakeholder money held by an attorney.

Application of the law to the instant case

The evidence is that Mr Samuels held the monies as an attorney-at-law acting on behalf of his client Ms Wright. It is true that because the monies belonged to the estate of the late Robert Phillips, Mr Samuels, prudently, did not pay all the monies over to Ms Wright. The monies were not, however, in his hands, subject to a trust, for the purposes of regulation 14; they were paid to him on behalf of his client. Regulation 14, therefore, does not apply to the instant case.

In my view regulation 9 applied to the monies held by Mr Samuels. This is because the sum:

- a. was in excess of \$200,000.00, and,
- b. was held for in excess of 30 days.

The reason that monies are not paid over to the client, other than those set out in the regulations, are immaterial in considering the question of the payment of interest. The regulations do not admit of exceptions for such reasons. Once monies in excess of \$200,000.00 have been in the hands of the attorney-at-law for over 30 days, and the exceptions provided by the regulations do not apply, interest should be paid in respect of those monies.

In the instant case, regulation 8 applies. As a result, Mr Samuels' assertion that there was delay by the Administrator General in making the application ordered by the court, does not absolve him from paying interest on the settlement sum held by him. Consequently Mr Samuels is required to pay either the interest which the sum had attracted in a trust account. If the sum was not held in such an account, Mr Samuels should pay interest as if it had been held in such an account.

Mr Samuels has not said whether the sum was held in an interest bearing trust account. The Administrator General has, however, provided no evidence concerning the interest which the sum would have attracted. In the

absence of that evidence, I shall order that interest be paid at the rate of 6% per annum which is the rate payable on judgment debts.

In my view, Mr Samuels' claim for interest against the Administrator General is misconceived. Indeed, no grounds were advanced to support the claim for that interest. It would be difficult to support that claim in light of the fact that the monies were being held by Mr Samuels during the relevant period. Mr Samuels' application must fail.

Mr Samuels' costs

In an affidavit filed on 15 April 2008 Mr Samuels had asked the court to award \$300,000.00 for legal expenses. In another affidavit filed on 10 June 2009 he deposed that he had had no contingency agreement with Ms Wright. In the later affidavit he asked the court to approve the sum claimed as legal expenses, in an application for court orders. I did not see any such application for court orders. There was, however, a subsequent affidavit (filed on 5 November 2009) in which Mr Samuels claimed legal fees as follows:

“(i)	Conduct of the Claim from filing on 26 January 2000 to settlement in January 2007	\$300,000.00
(ii)	For Obtaining Paternity Certificate	\$150,000.00
(iii)	Application for Court Orders	<u>\$ 50,000.00</u>
	Total	\$500,000.00

Although Mr Samuels did not specifically request a summary assessment of his legal fees pursuant to rules 65.8 and 65.9 of the Civil Procedure Rules 2002, I do not consider this a proper case for such an approach. In light of the fact that the monies are to be paid to the estate with a view to benefiting the infant children, I find that the more appropriate manner to deal with quantifying the legal fees is to have them taxed.

Conclusion

For the reasons stated above, Mr Samuels must pay interest on the sums held by him at the rate of 6% per annum from the date of receipt by him until the date of payment to the Administrator General.

Mr Samuels is entitled to have his legal fees for acting on behalf of Ms Wright against the Attorney General and applying for the approval of the settlement. Those fees must, however, be taxed.

The orders therefore are:

1. Attorney at Law Mr Norman Samuels shall provide a statement of account to the Administrator General of all monies coming into his hands as attorney-at-law acting on behalf of Ms Hazel Wright and/or the Estate of Paul Roberts, deceased;
2. The said Mr Norman Samuels shall be entitled to tax his costs for acting on behalf of the said Ms Hazel Wright in connection with the estate of Paul Roberts, deceased;
3. The said Mr Norman Samuels shall pay to the Administrator General, in respect of the said estate, all such sums, if any, due to the estate of Paul Roberts, deceased, upon the rendering of the

account and the taxing of his bill of costs as ordered at one and two above;

4. The said Mr Norman Samuels shall pay to the Administrator General, interest at the rate of 6 per centum per annum on all sums held by him in respect of the estate of Paul Roberts, deceased, from 3 January 2007 to the date of payment over to the Administrator General of the sums mentioned in order three above. To avoid confusion, it is declared that the sum of \$200,000.00 paid to Ms Hazel Wright shall not be considered for the purposes of calculating interest after 17 December 2007 and the sums due to Mr Norman Samuels for legal expenses shall be excluded for the purposes of calculating interest due to the said estate.
5. Costs of this application to the Administrator General to be taxed if not agreed; such costs are to be paid by the said Mr Norman Samuels.