



Hilary Term
[2019] UKPC 9
Privy Council Appeal No 0037 of 2017

JUDGMENT

Causwell (Respondent) v The General Legal Council (*ex parte* Elizabeth Hartley) (Appellant) (Jamaica)

From the Court of Appeal of Jamaica

before

**Lord Kerr
Lord Carnwath
Lady Black
Lord Lloyd-Jones
Lord Briggs**

JUDGMENT GIVEN ON

11 March 2019

Heard on 9 October 2018

Appellant

B St Michael Hylton QC
Carlene Larmond

(Instructed by Axiom
Stone)

Respondent

Emile GR Leiba
Julianne Mais Cox
Courtney A Bailey

(Instructed by Blake
Morgan)

LORD BRIGGS:

1. This appeal from the Court of Appeal of Jamaica raises the following short question of Jamaican law: namely whether disciplinary proceedings commenced under the Legal Profession Act (“the LPA”) by a person purporting to do so as agent for the complainant, but without the complainant’s authority, are capable of being made good by ratification by the complainant, or whether they are a complete nullity incapable of ratification. The question turns upon the principles of the law of agency relating to ratification (which are the same in Jamaica as in England) and the true construction of the relevant provisions of the LPA.

2. The facts may be shortly stated. In 1973 the complainant Lester DeCordova instructed the law firm which later became Dunn Cox to apply on his behalf for probate of his recently deceased father’s will, and to act in the administration of his estate. The Respondent Janice Causwell is an Attorney-at-Law and a partner in Dunn Cox. She undertook the discharge of that retainer by the firm. In 1999 a Mrs Elizabeth Hartley began communicating with the Respondent in relation to the matter on Mr DeCordova’s behalf.

3. On 21st March 2002 Mrs Hartley filed a formal complaint against the Respondent with the disciplinary committee constituted under the LPA (“the Committee”). She stated that she was acting as the agent of Mr DeCordova and the substance of the complaint was that the Respondent had failed to deal with the matter expeditiously, failed to provide information as to the progress of the matter and had acted with inexcusable or deplorable negligence.

4. In two letters to the Respondent dated respectively 3rd March and 29th November 2004, Mr DeCordova confirmed that Mrs Hartley was acting as his agent in connection with his complaint.

5. The complaint led to a disciplinary hearing before the Committee which began in March 2008. Mrs Hartley gave evidence and was cross-examined but the hearing was then adjourned. On its resumption in January 2010 new counsel instructed by the Respondent raised as a preliminary objection the allegation that there was no evidence that, at the time of the initiation of the complaint, Mrs Hartley had authority to do so as agent for Mr DeCordova. In February 2011 the Committee ruled that, although there was indeed no such evidence of initial authorisation, Mr DeCordova had subsequently ratified Mrs Hartley’s initiation of the complaint by his letters in March and November 2004 to the Respondent.

6. The Respondent appealed that decision to the Court of Appeal in March 2011. The General Legal Council (“GLC”) which was cited as respondent, *ex parte* Mrs Hartley, did not challenge the finding that there had been no evidence of initial authorisation, preferring to confine its case to ratification. In July 2016 the Court of Appeal allowed the appeal and set aside the ruling of the Committee. It decided that, on the true construction of the LPA, the initiation of a complaint by a purported agent acting without authority was a nullity which was incapable of ratification. The GLC appealed that decision to the Board.

7. In accordance with the Board’s encouragement to parties to minimise the cost and inconvenience of appeals occasioned by oral hearings usually in London, arrangements were made for the hearing of the appeal to be conducted by way of video conference with both parties addressing the Board remotely, from Jamaica. Unfortunately, (and for the first time), technical difficulties made it necessary to discontinue the oral hearing, but the parties sensibly invited the Board to decide the matter on the papers, with the benefit of short further written submissions, which the Board has since received and considered. The Board wishes to commend the parties for the thoroughness and excellent focus of the written materials, in which the point at issue has been fully and fairly debated. Without in any way undermining the importance which the Board ordinarily attributes to an oral hearing, it has concluded, exceptionally, that this is an occasion when a decision on the papers can justly and fairly be delivered.

8. The relevant provisions of the LPA are to be found in Section 12 as follows:

“12.-(1) Any person alleging himself aggrieved by an act of professional misconduct (including any default) committed by an attorney may apply to the Committee to require the attorney to answer allegations contained in an affidavit made by such person, and the Registrar or any member of the Council may make a like application to the Committee in respect of allegations concerning any of the following acts committed by an attorney, that is to say-

(a) any misconduct in any professional respect (including conduct which, in pursuance of rules made by the Council under this Part, is to be treated as misconduct in a professional respect);

(b) any such criminal offence as may for the purposes of this provision be prescribed in rules made by the Council under this Part.

(2) In any matter or hearing before a court a Judge, where he considers that any act referred to in sub-paragraph (a) or (b) of subsection (1) has been committed by an attorney, may make or cause the Registrar to make an application to the Committee in respect of the attorney under that subsection.

In this subsection 'court' means the Supreme Court, the Court of Appeal, a Resident Magistrate's Court, the Traffic Court or any other court which may be prescribed.

(3) Any application under subsection (1) or (2) shall be made to and heard by the Committee in accordance with the rules mentioned in section 14.

(4) On the hearing of any such application the Committee may, as it thinks just, make one or more of the following orders as to—

(a) striking off the Roll the name of the attorney to whom the application relates;

(b) suspending the attorney from practice on such conditions as it may determine;

(c) the imposition on the attorney of such fine as the Committee thinks proper;

(d) subjecting the attorney to a reprimand;

(e) the attendance by the attorney at prescribed courses of training in order to meet the requirements for continuing legal professional development;

(f) the payment by any party of costs of such sum as the Committee considers a reasonable contribution towards costs; and

(g) the payment by the attorney of such sum by way of restitution as it may consider reasonable,

so, however, that orders under paragraphs (a) and (b) shall not be made together.”

9. As is common ground, this section gives statutory *locus standi* to bring a disciplinary complaint to the Committee to three categories of person namely: (1) any person alleging himself aggrieved by an act of professional misconduct committed by an attorney (2) the Registrar of the Supreme Court and (3) any member of the GLC. It is also common ground (although implicit rather than expressly stated in the LPA) that a person in category (1) may initiate and pursue such a complaint either in person or through an agent.

10. Two things need to be noted about Section 12. The first is that it is silent about agency and ratification. The second is that it imposes no time limit for the initiation of a complaint to the Committee. It is not suggested that any time limit is to be found elsewhere, for example in a statute of limitation.

11. There was not before the Court of Appeal, and is not before the Board, any challenge to the finding of the Committee that, when she initiated the complaint, Mrs Hartley lacked any authority from Mr DeCordova, as the named complainant, to do so. Nor did Mrs Hartley have any complaint to make of her own, as a person aggrieved, under Section 12 (1) of the LPA. That said, the Board wishes to reserve for a future occasion the question whether the Committee and the Court of Appeal were correct in assuming that a preliminary challenge to the authority of an agent for a complainant places the evidential burden on the complainant. The Board therefore proceeds upon the basis that the only way in which the initiation of the complaint could be made good (if at all) was by ratification. It is not in dispute that the letters from Mr DeCordova to the respondent in 2004 were, in principle, sufficient to ratify Mrs Hartley’s conduct as his purported agent if, but only if, ratification is available as a means of putting right, retrospectively, a defect in the initiation of the proceedings.

12. The conclusion of the Committee that Mrs Hartley’s lack of authority when initiating the complaint could be, and therefore had been, cured by ratification was based on three considerations. The first was that the initiation of a disciplinary complaint to the Committee without authority was not an illegal or criminal act which could not therefore be made right. Secondly, that the best analogy was the commencement of a civil action, where a lack of authority could, on settled authority, be made good by ratification. Thirdly the Committee relied upon the following dictum of Baron Martin in *Brook v Hook* (1871) LR 6 Exch 89, at 96:

“If a contract be void upon the ground that the party who made it in the name of another had no authority to make it, this is the very thing which the ratification cures...”

13. The Court of Appeal reached the opposite conclusion upon the following grounds. First, upon its true construction Section 12 of the LPA was designed, as a matter of public law, to control by way of restriction the initiation of disciplinary proceedings, so that they should not be “lightly undertaken”, by limiting the classes of person permitted to do so. Secondly, the LPA limited the initiation of a complaint by a person aggrieved (otherwise than acting in person), to agents duly authorised by the complainant at the time of the initiation of the proceedings. Thirdly, proceedings initiated under Section 12 by anyone else, including a person purporting to act as agent for a person aggrieved, but without authority, were a complete nullity, which could never be ratified. Fourthly, disciplinary proceedings under Section 12 were to be distinguished from ordinary civil claims, where ratification could cure the defect constituted by issue by a person purporting to act as agent, but without authority at that time.

14. The Court of Appeal supported its analysis by reference to a number of authorities, to the most important of which the Board will refer in due course.

15. For the reasons which follow, the Board’s opinion is that the decision of the Committee is to be preferred to that of the Court of Appeal. The starting point, in the Board’s view, lies in the general principles applicable to ratification as a part of the law of agency.

16. The editors of *Bowstead & Reynolds on Agency*, 21st Ed, (2018) describe the general principle as follows, at para 2–047:

“Where an act is done purportedly in the name or on behalf of another by a person who has no actual authority to do that act, the person in whose name or on whose behalf the act is done may, if the third party had believed the act to be authorised, by ratifying the act, make it as valid and effectual...as if it had been originally done by his authority, whether the person doing the act was an agent exceeding his authority, or was a person having no authority to act for him at all.”

At para 2-058, under the heading “Void acts: Companies” it is stated:

“The proposition that a nullity cannot be ratified is in principle uncontroversial. However, much turns on what is meant by ‘nullity’ or ‘void act’. An unauthorised act could in some contexts be regarded as void, but the starting point of ratification is that such an act can be ratified.”

At para 2-060, under the heading "Illegality", the editors continue:

"It has been said that 'life cannot be given by ratification to prohibited transactions'; ... The extent to which it is correct to regard a transaction affected by illegality as actually void will, however, turn on the nature of the illegality, the wording of any relevant statute, and the extent of the illegality. The law is far from clear."

17. At para 2-089 the editors identify established limits on ratification, including:

"(1) Where it is essential to the validity of an act that it should be done within a certain time, the act cannot be ratified after the expiration of that time, to the prejudice of any third party;

(2) Ratification may not be recognised if it will affect proprietary rights in either real or personal property, including intellectual property rights, which have arisen in favour of the third party or others claiming through him since the act of the unauthorised agent;"

18. The first of those exceptions prevents, for example, the ratification of the exercise by the unauthorised purported agent of a time-limited contractual right, such as an option to terminate or to renew a lease, outside the specified time limit. But it is to be noted that, in the context of the issue of legal proceedings by a purported agent without authority, ratification after the expiry of a relevant statutory limitation period is permitted: see *Presentaciones Musicales SA v Secunda* [1994] Ch 271. This is because, first, ratification relates back to the date of the originally unauthorised act and, secondly, the statutes of limitation do not render proceedings issued out of time a nullity for all purposes. In the present case, there is not in fact any relevant time limit at all.

19. The Board agrees with the Court of Appeal that the question whether the initiation of a complaint under the LPA by a purported agent acting without the complainant's authority is a complete nullity, incapable of ratification, depends upon the construction of the Act. But that question needs to be approached from the starting point that, in the absence of the expression of a contrary intention, the ordinary principles described above would permit, rather than prevent, ratification. Looked at in that way, there is nothing in Section 12 of the LPA which, in the Board's view, prevents or prohibits that general principle from applying. It is, as already noted, silent about the initiation of a complaint by an agent, although it must plainly, (as the Court of Appeal recognised) contemplate that a person aggrieved may initiate a complaint through an agent, rather than only in person.

20. Nor is *Bowyer, Philpott & Payne Ltd v Mather* [1919] 1KB 419 a pointer to a restrictive construction of the LPA, sufficient to exclude agency by ratification. The Public Health Act 1875 made provision for the recovery of statutory penalties by a party aggrieved, or by the local authority of the district in which the offence had been committed. Section 259 provided that:

“Any local authority may appear before any court, or in any legal proceeding by their clerk, or by any officer or member authorised generally or in respect of any special proceeding by resolution of such authority, and their clerk, or any officer or member so authorised shall be at liberty to institute and carry on any proceeding which the local authority is authorised to institute and carry on under this Act.”

21. Proceedings were initiated by a person not so authorised under Section 259, and purportedly ratified by the local authority thereafter. The Divisional Court held that the attempted subsequent ratification was ineffective. As Salter J explained (at pg 425):

“Section 253 of the Public Health Act 1875 shows a clear intention on the part of the legislature that proceedings for the recovery of penalties should not be lightly instituted. Reading that section with Section 259 it is clear that the words in the latter section ‘officer or member so authorised shall be at liberty to institute and carry on any proceeding,’ must be confined to a case where the officer has received authority before the proceedings are instituted.”

22. This was therefore a case in which the relevant statute condescended to a precise delimitation of the type of agency sufficient for the bringing of proceedings, which excluded agency by ratification. By contrast, the LPA is entirely silent on the point.

23. Nor, as the Court of Appeal assumed, does the *Bowyer* case stand as authority for the existence of some general divide between public law and private law proceedings, such that ratification is available in relation to the latter, but not the former. The Board is not persuaded that the Court of Appeal was correct to regard Section 12 of the LPA as imposing a narrow basis for *locus standi* so as to ensure that disciplinary complaints to the Committee are not lightly undertaken. While it may be said that Section 12 excludes mere busybodies, it is otherwise couched in broad terms permitting anyone aggrieved by relevant misconduct to bring a complaint. The Board does not doubt that the Committee has the requisite powers to control frivolous or vexatious complaints, but that is a very different matter.

24. Both the Court of Appeal and the Respondent placed reliance, in support of the view that the unauthorised initiation of a complaint was a complete nullity, upon the decision of the Court of Appeal in *In re Pritchard* [1963] Ch 502. That was (to modern eyes) a hard case in which proceedings commenced by Originating Summons under the Inheritance (Family Provision) Act 1938 were issued out of a District Registry rather than, as required by the then Rules of the Supreme Court, The Central Office. The Court of Appeal held that this was a fundamental defect which could not be put right by a transfer of the proceedings or a waiver by the defendants. The case had nothing to do with agency or ratification, but reliance is placed upon the third of a list of classes of proceedings which are nullities, identified by Upjohn LJ, namely proceedings which appear to be duly issued but fail to comply with a statutory requirement. The express statutory requirement in that case was that the proceedings be issued by Originating Summons out of the Central Office.

25. In the Board's view, there is no corresponding statutory requirement, express or implied, either in the LPA or elsewhere, which prohibits the validation of the initiation of proceedings under Section 12 by way of ratification by the person alleged to be aggrieved. Of course, a complaint could not be pursued by a person purporting to act as an agent without authority once the lack of authority had been raised in the proceedings. Such proceedings would be defective and the Committee would, in the absence of ratification, no doubt prevent their continuance. But, as Baron Martin said in *Brook v Hook*, a defect of that kind is the very thing which the ratification cures. He was dissenting in that case, because the majority regarded the promissory note (upon which the defendant's signature had been forged) and the terms upon which the defendant proposed to honour it as tainted by illegality. In a case like the present, where the act in question is free from any such debilitating features, his pithy dictum provides, in the Board's view, the answer to the question raised by this appeal.

26. None of the other authorities relied upon by the Court of Appeal appear to the Board to afford material assistance. *Leymon Stachan v The Gleaner Company Ltd* [2005] UKPC 33; [2005] 1 WLR 3204 was a decision of the Board which, in passing, referred with approval to Upjohn LJ's categorisation of nullity in *In re Pritchard*. But the case was, as Lord Millett pointed out at para 27, nothing to do with the validity or otherwise of the commencement of proceedings, but rather whether an order of a judge of the Supreme Court made without jurisdiction is a nullity. *Right v Cuthell* (1804) 5 East 490 was a case where subsequent ratification of a notice to quit by one of a number of joint tenants who had failed to sign the notice originally was ineffective, because it occurred after the time limit specified in the lease for the giving of the notice. It was a classic example of the time-limit exception to ratification identified in *Bowstead and Reynolds* and referred to above.

27. For those reasons the Board considers that the decision of the Committee should be reinstated. The Board will therefore humbly advise Her Majesty that this appeal should be allowed.