



MAZUR & STUART V CHARLES RUSSELL SPEECHLYS LLP [2025] EWHC 2341 (KB)

KEY TAKEAWAYS:

1. Section 21(3) of the Legal Services Act ("LSA") 2007 does not permit a non-authorised person to conduct litigation themselves, even if employed and under the supervision of persons who are so authorised.
2. A person conducting litigation must themselves be authorised to do so, or fall within one of the exempt categories, under the LSA 2007.

ISSUE

Whether, pursuant to the Legal Services Act ("LSA") 2007, a non-authorised person is entitled to conduct litigation under the supervision of a person who is so authorised.

FACTUAL BACKGROUND

The Appellants failed to pay the fee of £54,263.50 that the Respondent charged for legal work they carried out. The Respondent instructed another law firm, Goldsmith Bowers Solicitors ("GBS"), to recover this debt. A Claim Form was issued and signed by GBS, and Particulars of Claim were signed by Mr Peter Middleton, GBS's "Head of Commercial Litigation". The Appellants made an application for directions, including an order directing that the Respondent replace Mr Middleton with a qualified solicitor, given that he did not hold a current practising certificate. DDJ Campbell ordered a stay of proceedings and an application was made by the Respondent to lift the stay. Before the initial hearing, Mr Middleton's involvement with the proceedings ended and he was replaced by Ms Lisa Adkin, a qualified solicitor with a practising certificate. Mr Robert Ashall, a director at GBS, made a self-report to the SRA in connection with Mr Middleton's employment and the SRA decided not to investigate. In a witness statement, Mr Ashall accepted that Mr Middleton was "not entitled to conduct any reserved activity as defined in the [LSA]" but explained that the work done by Mr Middleton in relation to the proceedings had been done under his supervision.

LEGAL SERVICES ACT ("LSA") 2007

SECTION 21(3)

In this section "**regulated persons**", in relation to a body, means any class of persons which consists of or includes -

(a) persons who are **authorised** by the body to carry on an activity which is a **reserved legal activity**;

(b) persons who are not so authorised, but are **employees of a person who is so authorised**.

REPRESENTATIONS FROM THE LAW SOCIETY

A person who is not individually authorised but who is employed by an authorised entity:

(a) is permitted to support an authorised solicitor in undertaking the reserved activity of conducting litigation;

(b) is not permitted to undertake reserved legal activity even under the supervision of an authorised solicitor except in relation to specific activities which were permitted prior to 2007 or are otherwise specifically permitted;

(c) is not permitted by virtue of the authorisation of their firm to undertake the reserved legal activity of conducting litigation themselves as an employee of the regulated entity.

REPRESENTATIONS FROM THE SOLICITORS REGULATION AUTHORITY (SRA)

The conduct of litigation is a reserved activity, and a person who is neither authorised nor exempt cannot lawfully engage in the conduct of litigation even if they are employed by a firm which is authorised to do so.

Non-admitted persons may assist or support authorised persons in the conduct of litigation provided that final responsibility for the conduct of litigation rests with an authorised person. In such a case, the non-admitted person does not "conduct litigation".

Under the LSA there are two ways in which a person may be entitled to perform reserved legal activities: they may be "authorised" (s18 LSA) or "exempt" (s19 LSA).

FIRST INSTANCE

His Honour Judge Simpkins

HHJ Simpkins decided to lift the stay and decided that the Respondent should file an amended Claim Form and Particulars of Claim verified with a statement of truth signed in the name of an individual at GBS who was duly authorised to do so.

Further, he decided that the claim would be allocated to the Intermediate Track, complexity band 4 and ordered the Appellants to pay the Claimant's costs of the application to lift the stay, summarily assessed in the sum of £10,653.

HHJ Simpkins found that there were two reasons which made it unnecessary to make a decision:

(1) there was no question of any breach of the LSA in the conduct of the litigation following Mr Middleton's replacement even if there was before;

and

(2) the SRA confirmed that Mr Middleton had authority to conduct litigation under the supervision of Mr Ashall.

Following a complaint, the SRA handed down a decision not to investigate the conduct of GBL in relation to Mr Middleton, with the relevant section reading as follows:

"Goldsmith Bowers Ltd is authorised under the Legal Services Act 2007 arrangements as it is a firm authorised and regulated by the SR[A] under the powers delegated to it under the Act. Its employees are permitted to undertake "reserved activities" due to section 21(3). We are satisfied that Mr. Middleton has not conducted a reserved legal activity without entitlement to do so, so are satisfied no further action is required on this occasion."

THE APPEAL

Mr Justice Sheldon

Sheldon J broke down the Grounds of Appeal into two core points:

(i) did His Honour Judge Simpkins err in deciding that Mr Middleton was authorised to conduct litigation under the supervision of Mr Ashall;

and

(ii) did His Honour Judge Simpkins err in making an award of costs, or making an award in the amount of £10,653, against the Appellants?

WAS MR MIDDLETON ENTITLED TO CONDUCT LITIGATION UNDER THE SUPERVISION OF MR ASHALL?

Sheldon J said that the short answer to this question was "NO" and, therefore, HHJ Simpkins's conclusion to the contrary was an **ERROR OF LAW**.

In paragraph 49 of his judgment, Sheldon J opined that the following was the proper construction of the LSA:

"Mere employment by a person who is authorised to conduct litigation under is **not sufficient** for the employee to conduct litigation themselves, **even under supervision**. The person conducting litigation, even under supervision, **must be authorised to do so, or fall within one of the exempt categories.**"

The natural reading of s21(3) LSA 2007 is not that it extends the definition or scope of who is "authorised" to carry out reserved legal activities, but rather it **defines who is subject to the regulatory authority of a body such as the SRA**.

Sheldon J held that this natural reading of s21(3) fits clearly with the other provisions of the LSA which make a **clear distinction between persons who are entitled to carry out reserved legal activities and those who are not**.

The conclusion reached by the SRA in their decision letter, which was relied on by HHJ Simpkins, that "employees of [GBS] are permitted to undertake "reserved legal activities" due to section 21(3)" was **clearly wrong** and HHJ Simpkins's reliance on it was an error.

Both the Law Society and the SRA distinguished between (a) **supporting an authorised solicitor in conducting litigation** and (b) **conducting litigation under the supervision of an authorised solicitor**.

Sheldon J agreed with their contention that **activities falling within (a) are permitted**, but **those falling within (b) are prohibited** by the statutory regime, and that this was supported by the text of the LSA itself.

WAS THE LEARNED JUDGE ENTITLED TO AWARD COSTS AGAINST THE APPELLANTS?

As HHJ Simpkins erred in concluding that the Appellants had "raised this point [under the LSA] and ... lost", Sheldon J held that it followed that **the award of costs made against the Appellants could not stand**.

Sheldon J also found that the sum awarded at first instance **exceeded the costs that HHJ Simpkins was entitled to award** given that this case was allocated to the Intermediate Track.

According to CPR Part 45, a **cost cap** had to be applied to any award to a case falling within Section VII, of which this case was one, **unless "exceptional circumstances" applied**.

As there was no indication that HHJ Simpkins considered that there were "exceptional circumstances", and the Respondent's LSA arguments failed, he made an **error in ordering the Appellants to pay the costs of the application to lift the stay** in the sum of £10,653.

The only award that he could have made would have been **£333** (Table 1) **plus the court fee of £303**.

CONCLUSION

Sheldon J allowed the appeal, quashed the order made by HHJ Simpkins and varied the costs order to one of "no order as to costs" to reflect the justice of the matter below.

ALEXANDER'S PRACTICE ENCOMPASSES INSOLVENCY, ARBITRATION AND COMMERCIAL CHANCERY. THIS INCLUDES CONSIDERABLE CROSS-BORDER AND OFFSHORE EXPERIENCE.

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