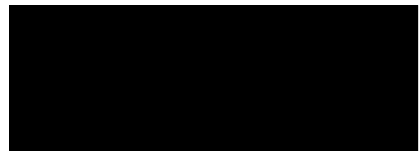


IN THE COURT OF SESSION

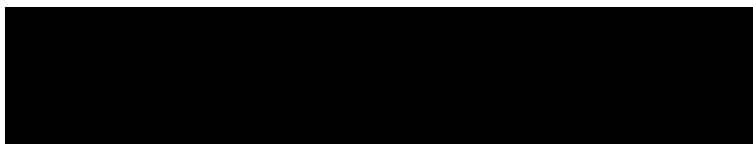


R E P O R T

by

AUDITOR OF THE COURT OF SESSION

in causa



Pursuer

against

STUDENT LOANS COMPANY LIMITED, a
company incorporated under the Companies Acts
and having a place of business at 100 Bothwell
Street, Glasgow

Defenders



EDINBURGH. 10th June 2002.

In attendance at the diet of taxation on 22nd April 2002 were [REDACTED] Esq.,

Solicitor, on behalf of the Scottish Legal Aid Board and [REDACTED] and [REDACTED]

[REDACTED] on behalf of Messrs. Balfour & Manson, Solicitors, and Messrs. Hughes

Dowdall, Solicitors, representing the Pursuer.

The only matter in dispute is whether it was reasonable for two agents to attend at the

Open Commission in Fort William to take the Pursuer's evidence.

██████████ produced a Note by Mr. J.L. Mitchell, Q.C., which is referred to for its terms. This is dated 30th November 1999, one week after the Commission. At the end of the penultimate paragraph, Mr. Mitchell writes, "It was particularly important to the Pursuer in his state of health to feel that Mr. Watson was present and providing the necessary support." Mr. Watson, of Messrs. Hughes Dowdall, the local agents, had been instructed by the Pursuer when he lived in the West of Scotland before moving to Fort William. This was an important matter for the Pursuer. It concerned the termination of his employment with the Defenders. The sum sued for was £150,000.00. Mr. Watson would have required to give evidence had there been a Proof. The importance of the case, Mr. Watson's involvement and the Pursuer's health made it reasonable for two Solicitors to attend at the Commission.

██████████ relied on the dicta of Lords Kyllachy and McLaren in *Hood v. Gordon 1896 23R.675*: "I see no reason to doubt that the principle which we must follow in this case is that established in the case of *Walker v. Waterlow*, and also in the case of the *Wigtown Burghs*. That principle is, that while the taxation as prescribed by the statute be as between agent and client, yet as the expenses in a case like this have to be paid not by the client but by a third party, the principle of taxation, though not indeed identical with that between party and party, must yet be different from that applied in the ordinary case of agent and client." Then Lord McLaren's opinion states, "when a statute authorises the taxation of expenses, as between agent and client, what is given is the expenses which a prudent man of business, without special instructions from his client, would

incur in the knowledge that his account would be taxed." That standard is the test applied by Regulation 4 of the Civil Legal Aid (Scotland) (Fees) 1989, "*Subject to the provisions of regulations 5 and 7 regarding the calculation of fees, regulations 6 and 7 regarding the calculation of outlays, and the provisions of regulation 8 regarding the submission of accounts, a solicitor shall be allowed such fees and outlays as are reasonable for conducting the proceedings in a proper manner, as between solicitor and client, third party paying.*"

Despite the background to this case and despite the arguments put forward by Senior Counsel in his Note, the Auditor is not persuaded that a prudent man of business would have incurred the expense of two Solicitors attending the Commission. Accordingly, he disallows the fees of the local agent, Mr. Watson in attending the Commission.

██████████ had a supplementary point under Regulation 21(1)(e) of the Civil Legal Aid (Scotland) Regulations 1966. In view of the findings *supra* the Auditor is not required to deal with it.

Max. Linton.

COURT OF SESSION, SCOTLAND

R E P O R T

By

AUDITOR OF THE COURT OF
SESSION

in causa



Pursuer

Against

STUDENT LOANS COMPANY
LIMITED.

Defenders

2002