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JONES v ST PAULS INTERNATIONAL INSURANCE CO LTD (2004)

Ch D (Hart J) 23/4/2004

INSOLVENCY - INSURANCE - LEGAL PROFESSION

BANKRUPTCY ORDERS : INSURANCE POLICIES : JOINT AND SEVERAL LIABILITY : LAW FIRMS : LIMITED LIABILITY PARTNERSHIPS : SOLICITORS : MEMBER'S LIABILITY UNDER INSURANCE POLICY

A member of a limited partnership had been liable under an insurance policy.

The appellant (J) appealed against a bankruptcy order. J had become a partner of a law firm, which had previously been a sole practise controlled by M, for a brief period prior to it becoming a limited partnership with J and M being members. Prior to the firm's incorporation, M obtained professional indemnity insurance to cover the liability of the principals of the firm and extending to members of the partnership. The policy provided for run-off liability in the event of the firm ceasing to be in practise. During the first year of the insurance policy, the limited partnership went out of business. The respondent (S) served a statutory demand upon J founded upon liability said to have arisen concerning a premium for run-off liability under the insurance policy. J argued that when he applied to set aside the statutory demand he had not had the opportunity to challenge the analysis of the insurance policy provided to the judge by S.

HELD: It was clear the unlimited partnership had authority to enter into the insurance policy to cover J's liability as a general partner of an unlimited partnership since it was obliged by the Law Society rules to provide that insurance. Equally it was clear that the limited partnership had authority to bind J. S's case had been that J was liable by virtue of the provisions of the insurance policy. J had not appealed the refusal to set aside the statutory demand. The point raised was the same as that raised on the application to set aside. The judge had been correct and J was liable under the policy.

Appeal dismissed.

Counsel:
For the appellant: In person
For the respondent: Mr Bredemear

Solicitors:
For the respondent: Kennedys

LTL 23/4/2004 EXTEMPORE (Unreported elsewhere)

Judgment Official - 8 pages - 8 pages

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(1) QUALIFIED INSURERS SUBSCRIBING TO THE ARP (2) CAPITA LONDON MARKET SERVICES LTD (Claimants) v (1) GRAHAM ROSS (Defendant) (2) THE LAW SOCIETY (Part 20 Defendant) (2004)

[2004] EWHC 1181 (Ch)

Ch D (Sir Andrew Morritt VC) 25/5/2004

INSURANCE - COMPETITION LAW - LEGAL PROFESSION

SOLICITORS : PROFESSIONAL INDEMNITY INSURANCE : DOMINANT POSITION : INSURANCE PREMIUMS : SCHEME UNDER SOLICITORS INDEMNITY RULES 2000 : ALLEGED ANTI-COMPETITIVE NATURE OF SCHEME : ABUSE OF DOMINANT POSITION : S.2 COMPETITION ACT 1998 : S.18 COMPETITION ACT 1998

The defendant's defence was summarily dismissed where he did not have any real prospect of establishing that the scheme whereby solicitors had to obtain on the open market professional indemnity insurance satisfying certain minimum conditions, failing which insurance would be provided by the Assigned Risks Pool, infringed either the Chapter I or the Chapter II prohibition contained in the Competition Act 1998.

The claimants (Q), who were qualifying insurers subscribing to an Assigned Risks Pool (ARP), applied seeking orders that the defence of the defendant solicitor (R) be either struck out or summarily dismissed. Under the Solicitors Indemnity Rules 2000, solicitors had to obtain, on the open market, professional indemnity insurance satisfying certain minimum conditions. R had obtained the requisite professional indemnity insurance for the year September 2000 to August 2001, at a cost of £16,865, but failed to obtain such insurance for the following year, with the consequence that the necessary insurance was provided by the ARP. R failed to pay the premium for that insurance, which was £56,847.73. R contended that (1) the Qualifying Insurer Agreement (which recognised certain authorised insurers as qualifying insurers from which solicitors could obtain professional indemnity insurance), the ARP Agreement (which provided for the constitution and operation of the ARP) and the Rules breached the Chapter I prohibition contained in the Competition Act 1998 s.2. The premiums charged for professional indemnity insurance of a solicitor in the ARP were excessive, the ability of a solicitor to leave the ARP was obstructed by the way the ARP was operated, and the restriction on backdating professional indemnity insurance introduced into the Rules in 2001 restricted the extent to which a solicitor in the ARP might reduce his liability for an ARP premium; (2) even if the Rules and the two agreements did not infringe the Chapter I prohibition, Q's conduct amounted to an abuse of a dominant position contrary to the Chapter II prohibition in s.18 of the Act.

HELD: (1) R's argument that because the ARP premium was higher than that paid for professional indemnity insurance outside the ARP, it was for the benefit of qualifying insurers to refuse such insurance outside the ARP in order to participate in the higher premium paid within the ARP, could not be accepted. It assumed without justification that all qualifying insurers would refuse cover outside the ARP if one of them did, which had not been demonstrated to be true. R's contention that the ARP premiums

were excessive was misconceived. It had not been shown that the premiums were so high that they prevented solicitors within the ARP continuing in practice. The change introduced into the Rules in 2001, which prevented a qualifying insurer from providing cover outside the ARP for a period of more than 30 days before its inception, did not have the effect of preventing solicitors leaving the ARP by arranging cover outside it during the course of the year. There was no evidence to show that the change in the Rules prevented solicitors within the ARP getting out of it. Accordingly, R did not have any prospect of establishing that the scheme under the Rules had either as its object or its effect the restriction, prevention or distortion of competition within the UK. R's defence based on infringement of the Chapter I prohibition had no real prospect of success. (2) It was not clear how Q could collectively enjoy dominance in the market for professional indemnity insurance. Each of the 28 insurers that together comprised Q was a competitor in the market. The only element in which there was no such competition was the ARP. However, the ARP was not a separate market, rather it was part of a scheme which was, overall, pro-competitive. R had no prospect of establishing that the charge for premiums within the ARP arose from a dominant position enjoyed collectively by Q, let alone from an abuse of it having any appreciable effect on trade. R did not have any real prospect of establishing a breach of the Chapter II prohibition. Q's application to summarily dismiss R's defence was granted, and judgment was given in favour of Q against R in the sum of £56,847.73 with interest.

Judgment for claimants.

Counsel:
For the claimants: Fergus Randolph, James Purchas
For the first defendant: In person
For the Part 20 defendant: Stephen Morris QC

Solicitors:
For the claimants: Berwin Leighton Paisner
For the Part 20 defendant: Norton Rose

LTL 11/6/2004 (Unreported elsewhere)

Judgment Draft - 18 pages

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