

[1988–90 Gib LR 212]

**SANGUINETTI ARCHITECTS LIMITED v. FIDUCIARY  
PROPERTY SERVICES LIMITED**

SUPREME COURT (Alcantara, A.J.): January 25th, 1990

*Legal Profession—professional etiquette—barristers—English Bar Code of Conduct applies to Gibraltar barristers except when specifically acting as solicitors, and to solicitors acting as barristers—judge aware of breach of Code to draw attention of barrister to relevant provision—Disciplinary Committee to adjudicate on alleged breach, not Supreme Court—Chief Justice, not Supreme Court, to refer matters to Disciplinary Committee—allegation of breach of Code not to be made merely to gain tactical advantage in litigation*

The plaintiff sought a ruling ordering that counsel for the defendant should cease to appear for the defendant, and the referral of the matter to the Disciplinary Committee.

Counsel for the defendant company had been one of its directors from November 1985 until December 6th, 1989; he resigned as a director when it became clear that the barrister who had previously been involved with the case would be unable to continue with the conduct of the proceedings, and it appeared that it would be more prudent for him to conduct the case himself.

The plaintiff submitted that (a) the Code of Conduct for the Bar of England and Wales was applicable to Gibraltar, which did not yet have its own Bar Association; and (b) given that this placed a prohibition on barristers who were current or former directors or secretaries of companies from acting professionally in relation to any matter that had been current while they held the directorship or secretaryship, counsel for the defendant should cease to appear for it.

The defendant submitted in reply that (a) the Code of Conduct for the Bar of England and Wales was not applicable to Gibraltar barristers, as frequent breaches of the Code arose from the merged legal profession in Gibraltar; (b) para. 1(g) of Annex 5 to the Code of Conduct did not apply, as counsel for the defendant had not been involved with the conduct of the case while a director of the company; (c) even if in technical breach of the relevant provision of the Code of Conduct, counsel for the defendant should be allowed to continue with the case for the sake of his client; and (d) the adjudication of any alleged breach should take place in the Disciplinary Committee established by the Barristers and Solicitors Rules.

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**Held**, refusing to make the order:

(1) The Code of Conduct for the Bar of England and Wales was applicable to Gibraltar barristers when they were not specifically acting as solicitors; it also applied to solicitors when they were acting as barristers. Section 33 of the Supreme Court Ordinance confirmed this view (para. 6).

(2) While it was the duty of a judge who became aware of a breach, proved or alleged, of the Code of Conduct to draw the attention of the barrister alleged to be in breach to the rule in question, the proper forum for the adjudication of alleged breaches was the Disciplinary Committee and not the Supreme Court. Since power to refer matters to the Disciplinary Committee was vested in the Chief Justice, rather than in the court, the order sought could not be made (para. 9; paras. 11–13).

(3) Allegations of breaches of the Code of Conduct should not be made merely to gain a tactical advantage over an opponent in litigation (para. 10).

**Case cited:**

(1) *Sorek Shipping v. Brown*, Supreme Ct., Case No. 1987 S. No 17, February 17th, 1987, unreported, applied.

**Legislation construed:**

Barristers and Solicitors Rules (1984 Edition), r.7(1): The relevant terms of this sub-rule are set out at para. 9.

r.8: The relevant terms of this rule are set out at para. 9.

Supreme Court Ordinance (1984 Edition), s.33: The relevant terms of this section are set out at para. 6.

s.34: The relevant terms of this section are set out at para. 9.

*D.J.V. Dumas* for the plaintiff;

*P.J. Isola* for the defendant.

1 **ALCANTARA, A.J.:** On the third day of the hearing of this action, Mr. Dumas, counsel for the plaintiff, rose to ask the court to make a ruling that Mr. Isola, counsel for the defendant, should cease to appear for the defendant, or in the alternative that I should make a note of his objection. Mr. Dumas's objection is that Mr. Isola is in breach of para. (1)(g) of Annex 7 to the Code of Conduct for the Bar of England and Wales, 3rd ed. (1985). In the latest edition, the 4th, it is now to be found in Annex 5, but nothing arises out of that. Paragraph (g), at 44, reads:

“A barrister who has been but has ceased to be a director or the secretary of any company should not act professionally, whether for the company or any other person, in any matter connected with or arising out of affairs relating to that company which were current while he was a director or the secretary.”

2 The matter before me can easily be gathered from an exchange of correspondence between Mr. Dumas and Mr. Isola. Mr. Dumas wrote on January 12th, 1990 to his learned friend in the following terms:

“I also note that as at January 4th, 1990, the details of directorship showed that you resigned on December 6th, 1989 having been appointed on November 4th, 1985. You will recall the case of *Sorek Shipping v. Brown* in which you appeared for the plaintiff and I appeared with Levy Attias for the defendants, and I had to take over Levy’s brief when the judge learnt that Levy had been a director of one of the defendant companies. I telephoned you to discuss this before the case, but in your absence and that of Lionel Culatto, I spoke to your son Peter, who told me that the matter had been dealt with, presumably by removing you as director.

Since then, I have had an opportunity of considering the Code of Conduct for the Bar of England and Wales, to which the Chief Justice referred in the *Sorek Shipping* case, and also his ruling, and it seems that even though a barrister may have ceased to be a director or secretary of a company, he should not act professionally for that company in any matter connected with or arising out of affairs relating to the company which were current whilst he was a director or secretary thereof. Clearly this matter was current during your directorship.

I am instructed to raise this with the greatest respect to you and would be grateful if you could let me have your views on this subject.”

3 Mr. Isola’s reply to his learned friend on January 15th, 1990, was this:

“It is true that I resigned as a director of the company on December 6th, 1989 when we realized that Lionel Culatto, who had had the conduct of the case since its inception, would be leaving Gibraltar in the middle of December and would not be returning until the night before the case. In these circumstances I considered it prudent to resign as a director to appear in the proceedings. I do not believe that my appearing in court on behalf of the company having had nothing to do with the conduct of the case up until that date breaches the Code of Conduct for barristers as set out by the Bar Council in the United Kingdom. We have on this, of course, no guidelines in Gibraltar, as our Bar Association has still not come into existence.

I think that the case of *Sorek Shipping v. Brown* was a very different case. Mr. Levy Attias was still a director of the company at the time of the hearing and indeed had been reasonably active in relation to the company, which is something I have not been. I have given no advice on this case prior to December 6th, 1989, nor have I been

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involved in the pleadings or in any of the interlocutory steps in the action.”

4 Let me dispose of *Sorek Shipping v. Brown* (1) first. In that case, it was the Chief Justice who took the point when he noticed in some documents before him that Mr. Levy Attias was the director of one of the companies of the defendant. The particular paragraph of Annex 5 to the Code of Conduct allegedly infringed was para. (f) and not para. (g) as on this occasion. When Mr. Attias asked what he should do, the Chief Justice told him that he might do well to seek the views of the Leader of the Bar. This Mr. Attias did, and on the following morning he handed over his brief to Mr. Dumas, no doubt following the good and wise advice of the Leader of the Bar.

5 Mr. Isola has put forward before me two main contentions: (a) that in the circumstances of this case, para. (g) of Annex 5 to the Code of Conduct does not apply to him; and (b) that in any case, the Code of Conduct for the Bar of England and Wales does not apply to the legal profession in Gibraltar. I shall deal with his second point first, as I consider that this contention requires an immediate and clear answer. Mr. Isola has supported his contention with argument pointing out the frequent breaches by barristers of the Code of Conduct arising out of the fact that the professions of barristers and solicitors in Gibraltar are fused, and further that until such time as there is a Bar Council in Gibraltar, the etiquette and conduct of the Bar is a matter for the individual judgment of barristers, subject to what the Disciplinary Committee under the Barristers and Solicitors Rules might have to say or decide.

6 This contention is in my view not only untenable but without foundation. To me it is clear, and has always been clear, that the Code of Conduct for the Bar of England and Wales applies with full force to all barristers when not acting specifically as solicitors, and to all solicitors when acting as barristers. The legal profession has privileges and therefore it is logical that it should be bound by rules, however inconvenient some of those rules might be to some members of the profession. If confirmation of this view is needed, reference should be had to s.33 of the Supreme Court Ordinance, which states:

“(1) Subject to the provisions of this Ordinance and of any rules of court for the time being in force the law in England for the time being in force relating to barristers and solicitors shall extend to Gibraltar, and shall apply to all persons practicing [*sic*] as barristers or solicitors in Gibraltar.

(2) The rules prescribed from time to time by the Bar Council and the Law Society in England in regard to the professional conduct of barristers and solicitors shall with such modifications as the Chief

Justice may deem fit to allow be respectively observed by barristers and solicitors in Gibraltar.”

7 I need say no more on the applicability of the Code of Conduct to the legal profession in Gibraltar. I will now deal with contention (a). Mr. Isola has told me that he was aware of para. (g) of Annex 5 to the Code of Conduct and that, before accepting the brief, he sought the advice of Mr. Lionel Culatto, another barrister in his chambers, who gave him a considered opinion that if he (Mr. Isola) resigned as a director he could accept the brief. He has followed such advice as he is satisfied that there is no conflict of interest. In any case, he would be doing a disservice to his client if he were now to withdraw from the case, which has already been partly heard. He also accuses Mr. Dumas of gross interference with the course of justice in bringing this matter before me, instead of complaining to the Disciplinary Committee.

8 As I understand it, Mr. Isola makes three points: (a) that para. (g) of Annex 5 to the Code of Conduct is not applicable in this particular case as there is no conflict of interest; (b) that he should be allowed to continue for the sake of his client even if in technical breach; and (c) that the proper forum for the adjudication of his action or future action is the Disciplinary Committee and not this court, and that is where Mr. Dumas erred.

9 I shall once again deal with the last point first. Rules 7(1) and 8 of the Barristers and Solicitors Rules provide, respectively, that “any complaint of the conduct of a barrister or solicitor in his professional capacity shall be in writing and shall be addressed to the Registrar,” and that “the Chief Justice may at any time refer to the committee any information regarding the conduct of a barrister or solicitor.” These Rules must be read in conjunction with s.34 of the Supreme Court Ordinance, the relevant part of which reads:

“(1) The Chief Justice may, for reasonable cause—

. . .

- (e) on the investigation of any complaint relating to the professional conduct of a barrister or solicitor, or on the determination of any proceedings relating to the professional conduct of a barrister or solicitor, make such order as he thinks fit as [to] the payment by the barrister or solicitor or the complainant or any other party of the costs of the investigation or proceedings.”

It appears to me that the proper and initial forum for the investigation of the conduct of a barrister in a situation such as this is the Disciplinary Committee and not the Supreme Court.

10 Mr. Dumas or his client should have complained in writing to the

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Registrar. The course that Mr. Dumas took can be viewed from two angles. If the reason or motive for bringing the matter to my attention was to score a tactical victory in court over his opponent (which is what Mr. Isola has implied) then Mr. Dumas's action is to be deprecated.

11 If, on the other hand, his action was to further emphasize the warning previously given of the danger of pursuing a course of action which might lead his colleague to breach a rule of the Code of Conduct, then it is to be welcomed. But whatever the reason or motive might be, once a judge becomes aware of a breach or alleged breach of the Code of Conduct, he should not turn a blind eye and ignore the situation. It is the duty of the judge to draw the attention of the barrister to the particular rule which appears to have been infringed or will be infringed.

12 Accordingly I draw the attention of Mr. Isola to para. (g) of Annex 5 to the Code of Conduct for the Bar of England and Wales, 4th ed., which applies to Gibraltar. As regards his points (a) and (b), those are matters to be considered by the Disciplinary Committee, should it be called upon to decide them.

13 It would appear that I have no power to refer this matter to the Disciplinary Committee. That power belongs to the Chief Justice. Whether this was intentional or accidental I do not know. All I can say is that the relevant legislation was passed at a time when there was only one judge in the Supreme Court, *i.e.* the Chief Justice. As the law stands, the power is vested in him.

*Order accordingly.*