

**THE EASTERN CARIBBEAN SUPREME COURT
ANTIIGUA AND BARBUDA**

IN THE HIGH COURT OF JUSTICE

CLAIM NO. ANUHCV2024/0018

BETWEEN:

**PATRICK PRENDERGAST
A.K.A. PADDY PRENDERGAST**

CLAIMANT

and

ANDREW O KOLA

DEFENDANT

APPEARANCES:

Ms. E. Ann Henry K.C. of counsel for the Claimant

Ms. Kivinee Knight Edwards and Ms. Dericia Browne of counsel for the Defendant

2025: October 24th

October 27th

RULING

[1] **DRYSDALE, J.:** The central issue is the scope of legal immunity afforded to an attorney at law against whom there is a claim for professional negligence.

The Pleadings

Statement of Claim

[2] The Claimant initiated these proceedings seeking damages in the sum of \$516,700.00 and interest thereon for professional negligence and or breach of contract. The Claimant is a businessman and owner of a Storage Facility located in Midway in the Parish of Saint John. He states that

- [3] Ronald Mind a person with him he had conducted business on 23rd May 2022 filed a claim against him for \$513,740.00 alleging that he had failed to properly store certain items belonging to him. Immediately upon being served he engaged the professional services of the Defendant to represent him in defending the matter. Notwithstanding this the Defendant failed to file a defence and on 6th July 2022 a judgment in default of defence was entered against the Claimant.
- [4] An application to set aside the default judgment was filed on 25th July 2023 claiming the delay in filing the defence was due to the Claimant contracting COVID-19 while traveling and subsequently being quarantined. The Defendant failed to attach essential exhibits, specifically the documentation supporting the delay and the proposed draft defence. The application came up for hearing on 20th September 2022 but there was no appearance either parties and or counsel. The Claimant claims that he was not notified of the date of the hearing.
- [5] Recognizing the application's shortcomings, the Master ordered the deficiencies to be cured. On the adjourned date, the Master's order to file the exhibits remained ignored, and again, there was no attendance. This led the Master to issue an unless order, setting a deadline for compliance. Ultimately, due to persistent non-compliance by counsel with the Master's directives, the application to set aside the default judgment was dismissed on November 9th 2022.
- [6] Both the Claimant's application to the High Court for an extension of time concerning two orders made in his absence and the appeal against the High Court's refusal of those applications failed. The resultant effect being that the judgment against the Claimant is now enforceable against him.
- [7] The Defendant has admitted in writing that he failed in his duties to the Claimant which resulted in the judgment being entered against him.

The Defence and Counterclaim

- [8] The Defendant filed a defence and counterclaim strenuously opposing the allegation of the Claimant. Specifically the Defendant denies that he practices law under the style and title Andrew O' Kola of OMO Law and states that he practices law thorough a company named OMO Law Ltd and not personally. Further he denies responsibility for the default judgment being entered against the Claimant contending that the judgment was irregular and was caused by the failure of the Claimant to provide instructions for a defence.
- [9] The Defendant admits to failing to properly prosecute the application to set aside the default judgment but denied liability for the judgment itself. The Defendant also disputes the Claimant's claimed loss of \$516,740.00 arguing the recoverable loss should be limited to the loss of a chance to defend the claim. He asserts that the judgment may yet be set aside due to its irregularity and offers to indemnify the Claimant for the reasonable costs of that application.
- [10] Concerning the counterclaim, the Defendant contends that the Claimant falsely made defamatory statements about him on Facebook and to a named client accusing him of unprofessionalism and dishonesty. The Defendant is therefore seeking damages for defamation alleged.

The Reply

- [11] The Claimant in his reply simply asserted that the defence discloses no reasonable ground for defending this claim.
- [12] As it relates to the counterclaim the Claimant states that the statements made by him were truthful and therefore is a complete defence to the defamation claim.

- [13] The parties opted to refer the matter for a judicial settlement conference but were unable to arrive at an amicable resolution. Thereafter the court raised the issue of whether the Defendant had legal immunity which would prevent these proceedings being maintained against him. The parties each filed submissions and save for some brief oral submissions elected to stand on their written submissions.

The Issue

- [14] The sole issue for consideration is whether the Defendant possesses legal immunity that precludes the maintenance of these proceedings against him.

Submissions of the Parties

The Claimant

- [15] The Claimant whilst acknowledging the existence of the concept of barrister's immunity argues that the common law authorities such as of **Rondel v Worsley**¹, **Saif Ali v Mitchell and Co**² and all subsequent authorities do not apply to the instant case as the law has been codified in Antigua and Barbuda. Specifically the Claimant relies on section 20(1) (c) of the Legal Profession Act³ which limits the immunity to an attorney "engaged as an advocate in any court". Through a literal interpretation of this clear statute, the Claimant submits that immunity applies only when the attorney is actively engaged in court. Since the complaint in these proceedings falls outside these strict statutory parameters, the Defendant is therefore not immune from the claim.

The Defendant

¹ [1969] 1 AC 191

² [1980] AC 198

³ No 22 of 2008

- [16] In contrast the Defendant takes the divergent position that his alleged negligence is fully protected by the common law immunity derived from **Rondel v Worsley**⁴ and **Saif Ali**⁵ cases. He argues that the alleged negligence which has been identified as failing to file a defence, failing to properly file an application to set aside the default judgment in compliance with the order of the Master and failing to attend the hearing of the application to set aside the default judgment constitutes professional conduct so closely related to the judicial process that it directly affected the court's resulting orders. Therefore, the Defendant argues he is protected by the established common law immunity.
- [17] The Defendant also highlighted the recent decision of **Lewis v Bowen**⁶ in which Williams J held that the authorities of **Rondel v Worsley**⁷, **Saif Ali**⁸ and **Janin Caribbean Construction Ltd v Wilkinson**⁹ applied to Antigua and Barbuda. The Defendant urged the court to adopt the same position unless a compelling reason could be demonstrated. Based on this established line of authority, the Defendant argues that this claim should be struck out.
- [18] In oral submissions the Defendant argues that his conduct falls squarely within the remit of section 20 of the Legal Profession Act once he entered an appearance for the Claimant he became an advocate in court as required by the statute. The Defendant additionally argues that the legal immunity was immediately activated upon the establishment of the attorney-client relationship.

Discussion and Disposition

⁴ [1969] 1 AC 191

⁵ 1980] AC 198

⁶ ANUHCv2023/0292

⁷ [1969] 1 AC 191

⁸ [1980] AC 198

⁹ [2016] UKPC 26

Whether the Defendant possesses legal immunity that precludes the maintenance of these proceedings against him.

- [19] Whilst the case of **Rondel v Worsley**¹⁰ has long established the existence of a barrister's immunity the precise scope of that immunity continues to remain a vexing issue which is the central issue this court must resolve. In Antigua and Barbuda the common law position has been codified in the Legal Profession Act. Section 20(1)(c) and aligns with the common law concept of barrister immunity by providing that an attorney-at-law "except where engaged as an advocate in any court, is subject to liability in respect of negligence, in a professional capacity."
- [20] As indicated earlier, the Defendant contends that the act of filing an Acknowledgment of Service triggered his status as an advocate "in court," thereby bringing him within the scope of the legal immunity contemplated by the relevant legislation. This argument is respectfully rejected. The filing of an Acknowledgment of Service is a purely procedural step to notify opposing counsel and the court of the intent to oppose and to name the representative. This administrative action does not require the skill or judgment of an advocate and can be executed by the party or a non-advocate solicitor as occurs in jurisdictions where the profession is not fused. Therefore it cannot be the trigger for the legal immunity envisioned by the legislation.
- [21] The Defendant argues that legal immunity was triggered by the simple act of being retained to represent the Claimant. By this premise the mere engagement of the Defendant was sufficient to confer legal immunity. The Legal Profession Act¹¹ merged the solicitor and barrister professions under the designation of Attorney-at-Law. This fusion allows an attorney to

¹⁰ [1969] 1 AC 191

¹¹ No. 22 of 2008

seamlessly transition between different roles and functions depending on the specific task at any given time. Section 20(1) (c) of the Legal Profession Act preserves this functional difference by limiting the immunity to acts performed by an advocate in court and not to all attorneys. Immunity therefore turns on the capacity the attorney was acting and not the status or title as attorney.

[22] The core issue concerns whether the Defendant's acts or omissions concerns work in court or in line with the **Saif Ali**¹² authority constituted work that was "so intimately connected with the conduct of the case in court that it can fairly be said to be a preliminary decision affecting the manner in which the cause is conducted." It must be remembered that the actions complained about resulting in this matter were all effectively at the pleadings stage. The Defendant failed to prepare and file any defence resulting in a default judgment against the Claimant. This is fundamentally different to the **O'Neil Lewis v Bowen**¹³ case which concerned a failure to file witness statements. This occurs significantly later in the course of litigation and after the close of pleadings. Further the statutory immunity was never raised or argued in that case and thus no judicial consideration was given to its effect in the judgment.

[23] The **Saif Ali**¹⁴ case, which dealt with pre-trial advice, contains a powerful statement from Lord Diplock specifically excluding negligence in settling pleadings and advising on parties from the scope of immunity as follows:

"The work which the barrister in the instant case is charged with having done negligently, viz, in advising as to who was to be a party to the action and settling pleadings with that advice was all done out of court.

¹² [1980] AC 198

¹³ ANUHCv2023/0292

¹⁴ [1980] AC 198

In my view it manifestly falls outside the limited extension of the immunity which I have just referred to,”

- [24] Extrapolated from the above it is pellucid that Lord Diplock distinguished between advocacy and preparation, characterizing tasks like advising on parties and settling pleadings as duties performed "out of court." As this preparatory and drafting work lacks the necessary connection to active court engagement, Lord Diplock held it to be manifestly excluded from the limited extension of the **Saif Ali**¹⁵ immunity test. Whilst this is persuasive authority I can see no compelling reason not to adopt its ratio decidendi. Although the lack of a defence certainly determines the court's outcome, the alleged negligence occurred during the preparatory and administrative stage of the litigation. This conduct occurred clearly before any in-court advocacy commenced and is tied to the duties of a solicitor. To grant immunity in the present circumstances would effectively protect against all pre-trial negligence that leads to a default judgment, a result that contradicts the established principle in **Saif Ali**¹⁶ which narrowly limits immunity to acts intimately connected to the conduct of the case in court.

Disposition

- [25] Based on the analysis of the **Saif Ali**¹⁷ precedent and the functional distinction preserved by the Legal Profession Act¹⁸, the court finds that the Defendant's failure to file a defence and properly pursue the set-aside application constituted preparatory and administrative work, falling outside the narrow scope of a barrister's immunity. The protection of barrister's immunity does not apply to these proceedings.

¹⁵ [1980] AC 198

¹⁶ [1980] AC 198

¹⁷ [1980] AC 198

¹⁸ No. 22 of 2008

ORDER

[26] In light of the foregoing, it is hereby ordered as follows:

- a. That the immunity conferred by section 20(1) (c) of the Legal Profession Act or at common law does not apply to these proceedings.
- b. The matter is adjourned to 13th November 2025 for further hearing.
- c. The court shall rule on the issue of costs on the adjourned date.

Jan Drysdale
High Court Judge

By The Court

Registrar