

IN THE COURT OF APPEALS OF MARYLAND

No. 15

September Term, 1997

ALAN F. POST, CHARTERED

v.

DOUGLAS M. BREGMAN
et al.

Bell, C.J.
Eldridge
Rodowsky
Chasanow
Raker
Wilner
Karwacki, Robert L.
(retired, specially assigned),

JJ.

Concurring Opinion by Rodowsky, J.

Filed: January 15, 1998

Rodowsky, J., concurring.

I join in the opinion of the Court, but I write separately to address further possible issues on remand.

On remand, Bregman presumably will argue that he is entitled to summary judgment on the facts and the law, as the latter is set forth in the opinion of the Court. In support of such a motion, or renewed motion, the analysis of the facts in the dissenting opinion of Judge Chasanow will undoubtedly be presented by Bregman.

If Post's defense survives summary judgment, then I believe that *Adams v. Manown*, 328 Md. 463, 615 A.2d 611 (1992), becomes relevant. One of the considerations under the opinion of the Court, "if the agreement is found to be so violative of the Rule as to be unenforceable," is "whether all or any part of the disputed amount should be returned to the client on the ground that, to that extent, the fee is unreasonable." ____ Md. ____, ____, ____ A.2d ____, ____ (1998) [slip opinion at 30]. The client, Stanley Taylor, however, is not a party to this action.

In *Adams v. Manown* the appeal was from a judgment as to which the trustee in bankruptcy of the judgment holder was the real party in interest, but the trustee was not a party. *Adams*, 328 Md. at 477, 615 A.2d at 618. In remanding the case we directed the trial court to send notice to the bankruptcy trustee and give the trustee an opportunity to intervene. *Id.* at 481, 615 A.2d at 619-20.

Here, if Post is successful on the merits in his defense, it does not necessarily follow that he keeps, for his own account, the portion of the fee claimed by Bregman. Because one

possible outcome is that the client is entitled to some or all of the disputed fee, the circuit court may deem it appropriate for the court to give notice to the client and an opportunity to intervene, similar to the procedure approved in *Adams*.