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COURT OF APPEALS
STATE OF NEW YORK

ARROWHEAD CAPITAL FINANCE, LTD.,

Appellant,

-against-

No. 4

CHEYNE SPECIALTY FINANCE FUND L.P.,
et al.

Respondents.

20 Eagle Street
Albany, New York
January 9, 2019

Before:

CHIEF JUDGE JANET DIFIORE
ASSOCIATE JUDGE JENNY RIVERA
ASSOCIATE JUDGE LESLIE E. STEIN
ASSOCIATE JUDGE EUGENE M. FAHEY
ASSOCIATE JUDGE MICHAEL J. GARCIA
ASSOCIATE JUDGE ROWAN D. WILSON
ASSOCIATE JUDGE PAUL FEINMAN

Appearances:

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Sharona Shapiro
Official Court Transcriber



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CHIEF JUDGE DIFIORE: Good afternoon, everyone. The first appeal on this afternoon's calendar is appeal number 2, Arrowhead Capital Finance v. Cheyne Specialty Finance.

Counsel?

MR. GOLDIN: May it please the court. My name is Barry Goldin. I am counsel for the appellant/plaintiff, Arrowhead Capital Finance, Ltd.

I'd like to reserve four minutes, if I could.

CHIEF JUDGE DIFIORE: Did you say four, counsel?

MR. GOLDIN: Pardon?

CHIEF JUDGE DIFIORE: Four?

MR. GOLDIN: Four minutes.

CHIEF JUDGE DIFIORE: You may have your four minutes.

MR. GOLDIN: This case arises in this appeal because a dispute between - - - in the law between, on the one hand, this court, in its ruling in Dunn v. Eickhoff, and the Second and Third Departments which have followed that ruling in their decisions --

CHIEF JUDGE DIFIORE: Yes, counsel. Let me ask you this question. If there's a violation of the physical office requirement and that can be cured by bringing in



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local counsel after the violation is discovered, what's the effect of the statute?

MR. GOLDIN: well - - -

CHIEF JUDGE DIFIORE: Are we nullifying the statute if we agreed with you?

MR. GOLDIN: I think the effect of the statute was directed toward the attorney and not toward the client. So in my judgment, what should have gone on is if there's a complaint against the attorney, that should be brought as - - - as contemplated - - - excuse me - - -

CHIEF JUDGE DIFIORE: That's okay.

MR. GOLDIN: - - - under the - - - under the judiciary law. Remember, this is brought under the judiciary law and not under the Civil Practice Law and Rules. And as to the Civil Practice Law and Rules, 3211 and the "one motion rule" apply. The defendant could have brought - - - included in its initial motion to dismiss an objection and - - -

JUDGE FEINMAN: But that presumes knowledge at that time.

MR. GOLDIN: Yes, and they had that. Clearly, by their own admission, in their own documents, which they brought - - - they concealed that they had made - - - hired an investigator to investigate the office initially within



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a month of receiving - - -

JUDGE FEINMAN: So the rationale for not calling it a nullity would be this disincentivizes gamesmanship?

MR. GOLDIN: Absolutely.

JUDGE STEIN: Well, should a court have some discretion to decide whether to allow the violation to be cured or to nullify - - -

MR. GOLDIN: I - - -

JUDGE STEIN: - - - depending upon the circumstances. Let's say the circumstances weren't such as they are here - - -

MR. GOLDIN: And let me bring in exact - - - an exact similar example which is the corporations. If you remember, corporations are required to be represented in court by an attorney. And it has happened, not infrequently, that corporations, not knowing any better, have filed suit on their own behalf. And typically what happens is the judge, when that's brought to the judge's attention, stays the matter and says go get an attorney and you have thirty days or sixty days to have an attorney who is an admitted attorney in New York represent you, and then we'll proceed. If you don't do it in that time period, you're out.

JUDGE STEIN: So that's an alternative - - -



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that's a more in between nullify, right?

MR. GOLDIN: Correct.

JUDGE STEIN: Well, that's really the opportunity to cure that you're looking for.

MR. GOLDIN: That's right.

JUDGE STEIN: So I guess my question is might there be circumstances under which it would not be an abuse of discretion, or if there was discretion, should there be discretion on the part of a judge, under appropriate circumstances, to dismiss the action and - - - and let it be rebrought.

MR. GOLDIN: I don't see why there wouldn't be simply a stay granted, permission granted - - -

JUDGE STEIN: Under any circum - - -

MR. GOLDIN: Yeah, I think to - - -

JUDGE FEINMAN: Well, what if there was evidence that the lawyer and the client knew, all right, so you know, you didn't have the situation where, you know, you're punishing the client for something that he may not or she may not have known about, or if it's a corporation, it may not have known about the lawyer's status.

MR. GOLDIN: Then I think the appropriate thing would be referral and sanctions.

JUDGE FEINMAN: And the client doesn't bear any



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consequence there - - -

MR. GOLDIN: Well - - -

JUDGE FEINMAN: - - - even though the client knew?

MR. GOLDIN: Sanctions. Make them pay the costs. That's what you do in other circumstances.

JUDGE FEINMAN: Cost of what, though?

MR. GOLDIN: Pardon?

JUDGE FEINMAN: The cost of what? The motion - - -

MR. GOLDIN: The cost of whatever the - - -

JUDGE FEINMAN: - - - that the other side brought.

MR. GOLDIN: - - - the motion is, and - - - and whatever inconvenience caused to the court.

JUDGE FAHEY: You mean like the cost of bringing the motion to identify it.

MR. GOLDIN: Yes.

JUDGE FAHEY: So that kind of puts - - -

MR. GOLDIN: Yes.

JUDGE FAHEY: Let me ask this. If the rule was modified to a discretionary rule or - - - or if we adopted the Second Department's approach as opposed to the First Department's approach, would the rule need to be different



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in civil and criminal cases? In one you - - - you have a right-to-counsel problem; in another you don't. Would there be any reason to distinguish between the two?

MR. GOLDIN: I don't do criminal law, so - - -

JUDGE FAHEY: The reason I ask is - - - we're in the Court of Appeals, so I like to think of the policy implications and how this would affect this problem in another setting.

MR. GOLDIN: I'm uncomfortable answering that because I don't ever handle criminal cases.

JUDGE FAHEY: Okay. How about this? Have you corrected the error? I noticed there was a different - - -

MR. GOLDIN: Yes.

JUDGE FAHEY: - - - address. You have corrected it?

MR. GOLDIN: Yes. I've corrected it, and we also brought in their - - - the plaintiff's longstanding counsel who had obtained the original judgment in - - - in the - - - the very court - - - same court. To be very blunt, we were -- we were operating together all the time anyway.

JUDGE FEINMAN: So in the bottom line, though, what this really goes to is whether this is jurisdictional, and for you to prevail we would have to find that this is



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not jurisdictional. And why is that the case?

MR. GOLDIN: In *Dunn v. Eickhoff*, where the issue arose in which the attorney wasn't even admitted to practice in New York, this court said that even though he wasn't admitted, whatever the decision was of the lower court, which it obviously decided against his client, stood.

JUDGE FEINMAN: But is there any - - -

MR. GOLDIN: And they implicitly were saying that you had jurisdiction.

JUDGE FEINMAN: You're not really answering my question.

MR. GOLDIN: I don't think this is a jurisdictional issue.

JUDGE GARCIA: But isn't *Dunn* - - - and I think they did in their papers, your adversary -- distinguishable on the facts there, where they were affirmatively using the fact that they had a lawyer who was not admitted after they waited to see how the verdict would turn out? So is there a - - - you know, is there a difference in our application of the rule depending on the context?

MR. GOLDIN: I don't see that in - - - and again, because I don't see it being jurisdictional. If - - - if it were jurisdictional, *Dunn v. Eickhoff* would have had to



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come out a different way.

JUDGE GARCIA: Could you look at Dunn as a waiver?

MR. GOLDIN: Yes.

JUDGE GARCIA: Right? The party waived it.

MR. GOLDIN: Yes.

JUDGE GARCIA: So - - -

MR. GOLDIN: If that's the - - -

JUDGE GARCIA: - - - if it was jurisdictional, they waived it because they were using it strategically. But here that's not the case, so - - -

MR. GOLDIN: In this case - - -

JUDGE GARCIA: - - - how is there not a waiver?

MR. GOLDIN: In this case, at the very outset of this proceeding, Cheyne had waived subject matter and personal jurisdiction, any objection to it. So if that's the case, there was already a waiver here.

JUDGE RIVERA: I think the point was the client's waiver, given the client's conduct in Dunn. I may have misunderstood - - -

JUDGE GARCIA: Yes.

JUDGE RIVERA: - - - but I understood that was Judge Garcia's question.

MR. GOLDIN: I understood that case to be



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different in that what they were saying was no do over, no gamesmanship.

JUDGE RIVERA: Well, I think in terms of the waiver, I think the question is what - - - what client's not going to waive.

MR. GOLDIN: I didn't - - -

JUDGE RIVERA: Unless you're going to get a dismissal without prejudice, you'd always waive because you want the proceeding to continue.

MR. GOLDIN: Keep in - - -

JUDGE RIVERA: Or am I misunderstanding where you're going with this?

MR. GOLDIN: And keep in mind what - - - what - - - what -- the underlying issue here with the gamesmanship which is also one of cost. Remember, there were two years of litigation in this case. Interrogatories were answered and notices to admit were answered.

JUDGE RIVERA: Well, counsel, let me ask you. If we disagree with your position - - -

MR. GOLDIN: Yeah.

JUDGE RIVERA: - - - does that mean every case you've appealed in is now nullified?

MR. GOLDIN: That would - - - that would - - - that's part of the reason why we appealed rather than - - -



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2 than - - - than refiling. We have already taken four EBTs
3 abroad, under the Hague Convention, with the court's order,
4 after these people knew whatever they knew about it. You
5 figure a Hague Convention litigation abroad, taking a
6 deposition abroad, to be very blunt, it's about 25,000
7 dollars a day, on top of which I don't know that I can go
8 back to a London court and say, you know, the court in New
9 York said this was no good. I don't think the - - - the
10 court in London is going to take - - - let us take the
11 depositions over again.

12 JUDGE FAHEY: Can I ask, Judge, just one more
13 question?

14 CHIEF JUDGE DIFIORE: Yes.

15 JUDGE FAHEY: Would that be all right?

16 CHIEF JUDGE DIFIORE: Please.

17 JUDGE FAHEY: The -- the second issue, on your
18 motion for leave, were you just appealing the 470 issue, or
19 were you also appealing the - - - the New York/Cayman
20 Island legal issue?

21 MR. GOLDIN: I was - - - on - - - on the notice
22 of appeal, I was strictly setting the grounds to get us up
23 here. I did not view that as a waiver of our grounds to
24 appeal the other issue as well.

25 JUDGE STEIN: But are you familiar with the Quain



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decision?

MR. GOLDIN: Yes, I am, and that was - - -

JUDGE STEIN: So why doesn't that apply to how you worded your application for leave?

MR. GOLDIN: Because Quain specifically dealt with the expedited appeal under - - - that as I remember, 400, 500, whatever, 21 - - -

JUDGE STEIN: Well I'm not sure about that because I think the section numbers may have changed and that when that was - - - when Quail - - - when Quain came out it was not applicable just to SSMS.

MR. GOLDIN: But to answer, as I read the commentaries and the law, it was that once the appeal gets up here it brings up everything.

CHIEF JUDGE DIFIORE: Okay. Thank you, counsel. Counsel?

MS. HUSSEIN: Good afternoon. May it please the court. Shaimaa Hussein of Willkie Farr & Gallagher on behalf of the Cheyne defendants.

JUDGE WILSON: So why isn't a sanction sufficient?

MS. HUSSEIN: Well, Your Honor, it may be that the court decides that sanctions are a sufficient deterrent in order to make sure that Section 470 is effective and



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actually serves its purpose. But the question that Arrowhead has brought before this court and - - - and the ruling that Arrowhead asked this court to find is that in fact the cure is sufficient, that the later addition of cocounsel, that does in fact have a proper New York office, cured the violation in this particular instance and therefore - - -

JUDGE GARCIA: But why not? Why doesn't it cure it? I mean, this is - - - he's an attorney who's admitted in New York, so what's - - - what's the harm?

MS. HUSSEIN: Well, as this court has said, if - - - if a later cure is permitted to retroactively fix all of the prior actions that were taken while the attorney was in violation, well, then Section 470 effectively becomes meaningless.

JUDGE RIVERA: Well, you know, in Dunn - - - look, if a disbarred attorney -- as far as I can tell, you haven't claimed that he is not in good standing. He's admitted in New York; he's otherwise in good standing. And if in Dunn a disbarred attorney's presence doesn't nullify the proceedings, I'm very hard pressed to see, unless you could establish prejudice, why this proceeding should now be nullified --

MS. HUSSEIN: We submit that the facts in Dunn -



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JUDGE RIVERA: -- when they can just bring in, as they have, someone who has a New York office.

MS. HUSSEIN: Your Honor, that's a fair point, but the facts of Dunn are completely distinguishable. In Dunn it was the plaintiffs themselves who sought to move for a mistrial based on the fact that their own attorney was disbarred.

JUDGE STEIN: But that may be, but the question is is whether it must be nullified. And the - - - and I - - - I - - - one of my questions about that is what - - - what does it serve to nullify it. And in fact, isn't it a terrible waste of judicial resources, particularly in a case like this, where we've heard all about all the discovery and multi-national and everything else, and you know, aren't there other remedies, disciplinary proceedings, sanctions against either the -- just the attorney or both the client and the attorney, depending on the circumstances, that will suffice to enforce the purpose of the rule? Why - - - why nullify? I just - - - I don't - - - I don't understand - - -

MS. HUSSEIN: Well, nullification - - -

JUDGE STEIN: - - - what the purpose is.

MS. HUSSEIN: Nullification, Your Honor, is



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necessary because Section 470 is a requirement for a nonresident attorney to practice in New York. And so, in other words, if a nonresident attorney violates Section 470, that attorney does not have the authority of the State of New York to practice in the state, and so a complaint filed by that attorney - - -

JUDGE RIVERA: Well, how does a disbarred attorney have any more authority? I find that argument that you made before a bit absurd to me. You're arguing that when - - - when the client knows and acts badly it's not nullified, it's a good proceeding, it will have effect moving forward. But when the client - - - as far as I can tell you haven't argued here the client act -- acted badly or had knowledge that there was a violation of the rule - - - seems to be an innocent in this, they have to suffer the consequences of a completely nullified proceeding and the costs associated with that.

MS. HUSSEIN: Well, in Dunn, to allow the client to nullify the proceedings would effectively be to reward the client for its gamesmanship, to reward the client for waiting until the jury verdict came back and - - -

JUDGE GARCIA: But that's a - - -

MS. HUSSEIN: - - - seeing what it was.

JUDGE GARCIA: - - - difficult argument, it seems

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2 to me, because nullity then is a perspective. So if it's
3 in this context, it's a nullity; if it's in this other
4 context, it's not a nullity. And isn't that a difficult
5 rule, then, to apply, rather than a rule that says, you
6 know, if you can show prejudice you get some type of
7 result, but it's not automatically nullified?

8 MS. HUSSEIN: Relying on a showing of prejudice
9 would, as I've stated, effectively make Section 470
10 meaningless. It would - - -

11 JUDGE GARCIA: But then you're arguing - - - I
12 think you're arguing, okay, you need a penalty to enforce
13 470 to ensure compliance, a deterrent, let's say, but isn't
14 that sanctions? Isn't that disciplinary action? What
15 attorney would risk disciplinary action?

16 MS. HUSSEIN: There has - - -

17 JUDGE GARCIA: Isn't that sanction, that penalty,
18 enough?

19 MS. HUSSEIN: The court may find that sanctions
20 are also a proper remedy. But Section 470 was intended, as
21 the second court - - - as the Second Circuit stated, to
22 ensure that nonresident attorneys establish a presence in
23 the state that is akin to that of resident attorneys.

24 JUDGE STEIN: So if you are saying that it
25 depends on the circumstances, then in answer to a question



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that I asked your adversary, are you really saying that it should be up to the discretion of the court to decide whether to nullify or to impose some other sanction or to simply allow a cure without any sanction?

MS. HUSSEIN: We submit, Your Honor, even if the court is to decide that it should have discretion to decide what - - - whether it is a nullity or whether the case can move forward with new counsel or a New York office - - -

JUDGE STEIN: That's not what happened here. Here the --

MS. HUSSEIN: That's --

JUDGE STEIN: -- court said it was constrained, it was required, under the -- the Appellate Division precedent, to do that.

MS. HUSSEIN: That's right. And the facts of this case would not really make it the proper case, even if the court had discretion, to turn a blind eye and decide that the - - - the prior action should not be nullified.

We're dealing with an attorney who, by his own admission, has been licensed to practice in New York for over 30 years. He's familiar with the -- the rules and he's well aware of -- of Section 470 because - - -

JUDGE STEIN: But why punish the client here?

MS. HUSSEIN: Well, there are - - - there are

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reasons why the legislature decided to enact Section 470,
and it serves - - -

JUDGE STEIN: Yes, but the legislature didn't say
that - - - that it rendered it a nullity.

MS. HUSSEIN: That's correct, that's not what the
legislature said, but that's how it's been interpreted by
the First Department courts.

JUDGE WILSON: Speaking of familiarity with the
rules, are you familiar at all with CPLR 321(c), and does
it have any application here?

MS. HUSSEIN: I am not familiar with CPLR 321(c).

JUDGE WILSON: Okay. It basically says -- and we
have a decision interpreting it; it's called Moray v. Koven
Krause at 15 N.Y.3d 384, if I'm reading correctly. The
rule basically says if an attorney is suspended or
disbarred or otherwise disabled, then there's an automatic
stay of the proceedings. And that runs from thirty days
from the point where the adversary sends notice. So
doesn't that - - - that suggest that the remedy for a
lawyer who is not, for whatever reason, able to represent a
client, is not throwing the action out but is holding
everything in place until a new lawyer comes in?

MS. HUSSEIN: Well, that would not provide a
sufficient deterrent, though, for nonresident attorneys, at



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the outset, to make sure that they are in compliance with the rule. There has to be - - -

JUDGE WILSON: But I think you already told me that the sanctions might be a sufficient deterrent.

MS. HUSSEIN: The court might decide that sanctions might be a sufficient deterrent, but that's not the question that Arrowhead has posed. Arrowhead is asking this court to decide in this matter that a later cure makes everything fixed, that you can look back retroactively and decide that no matter what the violation was - - -

JUDGE WILSON: But I think that's sort of what 321(c) says.

MS. HUSSEIN: That you in fact can - - -

JUDGE WILSON: That it provides for a later cure by substitution.

MS. HUSSEIN: Well - - -

JUDGE WILSON: And it stays everything until the cure can -- can take place.

MS. HUSSEIN: We'd submit that that still undermines the purpose of Section 470. For - - -

JUDGE WILSON: Well, then the legislature's undermined.

MS. HUSSEIN: Well, but - - -

JUDGE FEINMAN: Is it that 321(c) presumes that



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you start out with an attorney who is in fact authorized to do whatever he or she is, and then 321(c) kicks in when they become disabled or suspended or whatever or perhaps fails to pay their registration fee under 486-A, whatever the problem may be.

MS. HUSSEIN: That's exactly right, Your Honor. We're dealing with a situation in which, from the outset, the attorney is not in compliance with Section 470.

JUDGE FEINMAN: Right.

MS. HUSSEIN: And so in - - -

JUDGE FEINMAN: So but that gets - - - so if we're talking about what's at the outset, what you're really talking about is whether or not this is jurisdictional. And so I ask you the same question that I asked your adversary: why is this jurisdictional?

MS. HUSSEIN: It is jurisdictional because there are requirements to practice law in New York, and if an attorney is not compliant with all of those requirements he does not have the authority to practice. So a complaint - - -

JUDGE FEINMAN: So if it is jurisdictional, why isn't your adversary correct that there's been a waiver here of both subject matter and -- and personal jurisdiction issues?



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MS. HUSSEIN: The waiver dealt only with regard to - - - to those issues and they - - - it was later, at a subsequent point, that the Cheyne defendants became aware that in fact Mr. Gold - - - Mr. Goldin was practicing without a New York office.

JUDGE FEINMAN: Well - - -

JUDGE RIVERA: So let me just clarify the parameters of your reading of the statute and your rule. So if the lawyer was in compliance with 470 when the papers are initially filed, and loses the lease, let's say, a year into the litigation, what happens?

MS. HUSSEIN: That's a different - - -

JUDGE RIVERA: Your rule.

MS. HUSSEIN: That's a different situation.

JUDGE RIVERA: I'm asking you under your rule.

MS. HUSSEIN: In that - - - in that instance there could be appropriate sanctions or remedies, but it would not nullify the entire action because - - -

JUDGE RIVERA: Why not?

MS. HUSSEIN: - - - at the time that the complaint was filed it would have been filed by an attorney - - -

JUDGE RIVERA: What about during that period when they lost their lease?



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MS. HUSSEIN: Well, during the period that they lost their lease that would depend on, sort of, the facts of the instances of the case and what happened in that instance.

JUDGE RIVERA: But you can see there might be parts of the lawsuit or the entire lawsuit that are not nullified even though the lawyer is not in compliance with 470.

MS. HUSSEIN: Absolutely, but those are not the facts in this case.

JUDGE RIVERA: So how is it then jurisdictional?

MS. HUSSEIN: Well, it's not a jurisdictional issue; it's an issue of as to whether the lawyer has the authority to practice and whether the lawyer had the authority to file the papers. It deals with the matter and -- and the ability of this court to hear it.

JUDGE RIVERA: And continue to file papers, no?

MS. HUSSEIN: And to continue to file papers.

JUDGE RIVERA: In my example the lease lapses, doesn't get another address in New York, but continues to file papers. Let's say they do it for another two years.

MS. HUSSEIN: That's correct, but that's still an instance in which - - -

JUDGE RIVERA: But you say that's not



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nullification?

MS. HUSSEIN: Well, that would not implicate --

JUDGE RIVERA: Won't nullify.

MS. HUSSEIN: -- the commencement of the case.

That would implicate, perhaps, things that happened subsequent to the commencement, but here we're dealing with the commencement of the action.

JUDGE WILSON: But does the rule on commencing an action say that the summons and complaint must be served by a lawyer or that it must be represented at that point? What commences a case?

MS. HUSSEIN: It may very well be that you decide to - - - to proceed pro se or that you're not represented by an attorney, but if you are represented by an attorney, that attorney has to have the authority to practice in this state. And - - -

JUDGE RIVERA: What if you're represented by more than one counsel and only one of them doesn't have the office?

MS. HUSSEIN: That would be fine.

JUDGE RIVERA: As you argue in this case, now that they've had Arrowhead.

MS. HUSSEIN: That would be fine. If they had had their -- their New York counsel, the Wollmuth firm,



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2 from the beginning, that would have been fine and the
3 Wollmuth firm could have filed the -- the complaint and
4 signed the complaint, and that would not have been a
5 violation under Section 470.

6 JUDGE RIVERA: As long as some attorney - - -

7 MS. HUSSEIN: I think that's right, as long as
8 there is an attorney that is practicing - - -

9 JUDGE RIVERA: Do they have to be the one that
10 signs all the papers?

11 MS. HUSSEIN: Yes. In order for the papers to be
12 valid it has to been an attorney with the authority to
13 practice.

14 JUDGE RIVERA: Just quickly, your red light is
15 on, if the Chief permits me, you just want to take a moment
16 to address the second point - - -

17 MS. HUSSEIN: Yes.

18 JUDGE RIVERA: - - - about the remaining issues?

19 MS. HUSSEIN: Thank you. Thank you, Your Honor.

20 As the court has already recognized, Mr. Goldin,
21 when - - - when Arrowhead filed its motion for leave to
22 appeal, it did in fact identify only a single issue, the
23 dismissal pursuant to section 470. Under the Quain v.
24 Buzzetta construction case, it is clear that the appeal
25 cannot later be expanded to add additional issues, here

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specifically, the dismissal of the Cheyne general partner.

And as the court explained in the Quain case, that's because it would be unfair. It would be unfair for the other parties to not have notice of all of the legal issues that are - - - that are being presented for appeal. Had they been aware of the other additional issues, the other parties may have decided to cross-appeal or take some other action.

We think that the Quain case is controlling precedent, the circumstances are exactly the same as here, and for that reason we ask the court to strike question 2 and part 2 of the appeal brief.

CHIEF JUDGE DIFIORE: Thank you, counsel.

MS. HUSSEIN: Thank you very much.

CHIEF JUDGE DIFIORE: Counsel?

MR. GOLDIN: Yes.

JUDGE FEINMAN: So if I may, can you just articulate for me how you would word the rule and - - - and secondly, what's the rationale you would give for the rule?

MR. GOLDIN: Which rule?

JUDGE FEINMAN: The rule that this is a curable defect.

MR. GOLDIN: I would simply say exactly what you just said. This is a curable - - -



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JUDGE FEINMAN: It's a rule that - - -

MR. GOLDIN: This is - - - when an attorney is an admitted New York attorney who for some reason does not have a sufficient New York office - - - the issue isn't that I didn't have a New York office; the issue is only the sufficiency of the New York office, which I could have contested if there had been a sanctions hearing. Much of the evidence in here came up on rebuttal.

JUDGE STEIN: I thought the rationale for your rule was that this is not jurisdictional and, at least under these circumstances, the client should not be punished.

MR. GOLDIN: Absolutely. Absolutely. So to answer your question, where there is an admitted New York attorney, and for some reason his - - - his law office in New York is held to be insufficient, that the proper remedy of the court below is to stay the proceedings for a given period of time until a proper New York attorney with an - - - with a sufficient New York office can be brought in to handle the matter, and if that doesn't happen within a specified period of time, then dismissed without prejudice.

CHIEF JUDGE DIFIORE: Thank you, counsel.

(Court is adjourned)



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C E R T I F I C A T I O N

I, Sharona Shapiro, certify that the foregoing transcript of proceedings in the Court of Appeals of ARROWHEAD CAPITAL FINANCE, LTD. v. CHEYNE SPECIALTY FINANCE FUND L.P., et al., No. 4, was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

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