

**THE HIGH COURT**

**Record No. 2006/371SP**

**IN THE MATTER FOR COLM MURPHY A SOLICITOR AND IN THE MATTER OF THE SOLICITORS ACTS**

**Between:**

**THE LAW SOCIETY OF IRELAND**

**Applicant**

**and**

**COLM MURPHY**

**Respondent Solicitor**

**and**

**BALLINCOLLIG HOLDINGS LIMITED**

**Notice Party**

**Judgment of Mr Justice Kearns delivered the 10th day of December, 2012**

Before the Court is a notice of motion brought by the applicant seeking an order directing the payment of €153,610.99 plus interest from the client account of Colm Murphy ("the respondent solicitor"), held at Allied Irish Bank plc, Kenmare, Co. Kerry to Ballincollig Holdings Limited ("the notice party").

Affidavits grounding the notice of motion were filed on 6th November, 2012 and 29th November, 2012 by Seamus McGrath, Senior Investigating Accountant employed in the Regulation Department of the Society.

**Background**

I set out the background to this motion as follows, as it explains how the parties have arrived at this point.

The respondent solicitor ceased practice in 2005. On 18th May, 2009 the respondent solicitor was struck off the Roll of Solicitors by Order of this Court, but he is challenging that decision.

The within proceedings were issued by the Society in August, 2006 for what it claims was the respondent's failure to comply with various directions and orders of the Society's Committees as well as those of the Solicitor's Disciplinary Tribunal.

On 31st January, 2007 an Order was made by this Court directing inter alia that the respondent remove his name from all client account mandates, in particular the client account held at Allied Irish Bank, Kenmare, Co. Kerry. On 14th March, 2007, on being advised by the Society that there was non-compliance on the part of the respondent to have his name removed from all client account mandates, it was ordered that Mr McGrath, the Society's Senior Investigating Accountant, be substituted in lieu of the respondent, and he was thereby mandated as the signatory on the respondent solicitor's client account.

In 2007 the Society redistributed most of the funds held in the client account of the respondent's former practice, with the exception of €153,000 held and recorded on a ledger card relating to Donal Brendan O'Connell.

On 13th February, 2008 the respondent solicitor informed the Society by email that the sum of €153,000 related to Donal Brendan O'Connell and his company, Ballincollig Holdings Limited. The respondent also informed the Society that Mr O'Connell was a ward of court and the committee was his nephew, Frank O'Connell of C.F. O'Connell & Co. Solicitors.

On 29th February, 2008 the respondent wrote to Mr Frank O'Connell, copied to the Society, in which he stated that there were further outstanding fees due to him in respect of Donal Brendan O'Connell/Ballincollig Holdings and if agreement could not be reached on the fees, it would have to proceed to taxation and possibly proceedings.

On 5th March, 2008 Frank O'Connell wrote to the Society stating that the respondent's firm acted on behalf of Ballincollig Holdings Limited in connection with the sale of property for the sum of €300,000, completed on 24th March, 2004. In the letter, Frank O'Connell alleged that the respondent's former firm retained the proceeds of sale and did not account to Ballincollig Holdings Limited for those proceeds.

On 10th March, 2008 the respondent wrote 2 letters to Frank O'Connell. In the letter regarding Ballincollig Holdings Limited, the respondent confirms that he did receive the sum of €300,000 on behalf of Ballincollig Holdings Limited, the balance of which is with the Society.

On 13th March, 2008, following the death of Donal Brendan O'Connell on 10th March, 2008, the respondent wrote to the Society stating "I believe that the money held by the Law Society should be paid out to the representative of Donal Brendan O'Connell as that money forms part of the estate of Mr. O'Connell who held same in his personal capacity or in his capacity as the beneficial owner of Ballincollig Holdings Limited."

On 20th March, 2008 the Society wrote to Frank O'Connell stating that it would hold the money in a deposit account pending resolution of the dispute between him and the respondent solicitor.

On 16th September, 2011 C.F. O'Connell & Co. wrote to the Society instructed by the directors of Ballincollig Holdings Limited requesting release of the funds to Ballincollig Holdings Limited. The letter also stated that the respondent has no claim in respect of

costs and any cause of action he had against Ballincollig Holdings Limited was statute barred. In response to the Society's request for his views on this letter, the respondent raised a number of issues in relation to the validity of the will of Donal Brendan O'Connell.

On 23rd April, 2012 in a letter from C.F. O'Connell & Company, it was stated that Michael O'Connell, the managing director of Ballincollig Holdings Limited and principal beneficiary of Donal Brendan O'Connell's estate, was willing to give the Society a personal guarantee in respect of any liability the Society may incur to the respondent on account of returning the funds to Ballincollig Holdings Limited and/or the estate of Donal Brendan O'Connell.

On 19th July, 2012 the Regulation of Practice Committee directed the monies be paid to Ballincollig Holdings Limited, subject to the company indemnifying the Society in the event of any claim to the Society for those monies by the estate of Donal Brendan O'Connell or the respondent solicitor. This indemnity was received by the Society on 15th August, 2012.

By letter dated 22nd August, 2012 the respondent threatened the Society with legal proceedings if the money is paid out.

The Society explained to the respondent solicitor on 30th August, 2012 that it could not hold on to the monies indefinitely and now seeks a court order directing Allied Irish Bank to release the monies to Ballincollig Holdings Limited.

#### **Position of the Society**

Mr. Paul Anthony McDermott, on behalf of the Society said in Court last Monday that the Society does not want to be caught in the crossfire between the respondent and the notice party. He also said that the Society would rather pay the money out to the notice party but does not want to be in a situation where it may be sued by the respondent.

#### **Position of the respondent**

In the respondent's affidavit sworn on 30th November, 2012, he outlines in detail the various proceedings he is involved in as well as his views on the capacity of Donal Brendan O'Connell to make a will.

The respondent states that he appreciates why the Law Society would want to pay out the money in question, however his main reason for opposing the payment is his view that the directors of the notice party were not validly appointed as their appointment flows from the will of Donal Brendan O'Connell which is being challenged by him.

#### **Position of the notice party**

In response to the affidavit of the respondent, Michael O'Connell, director and secretary of the notice party, swore an affidavit on 3rd December, 2012, disputing the contents of the respondent's affidavit and briefly setting out the professional relationship between the respondent and Donal Brendan O'Connell. He outlines that an agreement was made between the solicitor for the notice party and the respondent that the respondent would tax the bill of costs he claimed was due to him, however he failed to do so. In or around May, 2010 the respondent issued proceedings on the notice party claiming the sum of €217,836 for costs.

The deponent says that regardless of the respondent's standing on the validity of the appointment of the directors of the notice party, the funds in question are the property of the company. Representing the notice party in Court last Monday, Frank O'Connell said that the company desperately needs the money and there is no basis for the Court refusing to order its payment.

#### **Ruling**

In this ruling, the Court is dealing solely with the motion brought by the Society and not the many ancillary issues raised by the respondent that offshoot from the main proceedings.

It is the view of the Court that this is a straightforward matter – funds are held by the Society for the benefit of Ballincollig Holdings Limited.

- The Society would prefer to pay out these monies to Ballincollig Holdings Limited.
- On 13th March, 2008 the respondent solicitor acknowledged that these monies form part of the estate of Donal Brendan O'Connell.
- Ballincollig Holdings Limited has made repeated efforts to have the money paid out to it.

Preventing and obstructing the payment of the monies to Ballincollig Holdings Limited thus far are 2 claims of the respondent:

- (1) that monies for professional fees are owing to him by Ballincollig Holdings Limited and/or Donal Brendan O'Connell; and
- (2) that the directors of Ballincollig Holdings Limited are not validly appointed.

In response to these claims by the respondent, the Court holds that any contention by the respondent for fees outstanding is a separate legal issue and should be dealt with in separate legal proceedings. Such a claim has no place in disciplinary proceedings taken by the Society against the respondent. Similarly, it would not be appropriate for the Court to deal with the respondent's contentions as to the validity of the appointment of the directors of the notice party in this ruling, as that too is a separate and independent issue from the distribution of client funds on the winding up of a former practice.

The Court holds that prima facie these monies are properly due and owing to Ballincollig Holdings Limited. No valid reason has been put forward by the respondent to prevent the payment out of these monies by the Society. I therefore grant the Society's motion in the terms set out by it.