

THE HIGH COURT

IN THE MATTER OF THE SOLICITORS ACTS 1954-2011; AND IN THE MATTER OF /

Una O'Donnell

SOLICITOR

-and-

ON THE APPLICATION OF /

Catherine Payne and George Flaherty Junior

APPELLANTS

Judgement of Kearns P. delivered on 28th day of July, 2014

By notice of motion dated 19th May 2014 Ms. Catherine Payne and Mr. George Flaherty Junior ('the appellants') appeal against the decision of the Solicitors Disciplinary Tribunal ('the Tribunal') dated 1st May 2014 that there is no prima facie case of misconduct against the respondent solicitor.

Background

The background to these proceedings involves a lengthy and often acrimonious dispute between various members of the same family. The appellants are brother and sister. Their mother, Ms. Veronica Flaherty, passed away on 11th October 2008. Two other sisters, Ms. Mary McLaughlin and Ms. Helen Flaherty, will also be referred to herein. An attendance note of a meeting at the offices of Nicholas Ruck & Co Solicitors on 23rd December 2008 where the contents of the late Ms. Flaherty's will were outlined is exhibited. The family home at 21 St. Catherine's Road, Killybegs, Co. Donegal was left to the first named appellant Catherine Payne, with her father, George Flaherty Senior, having a right of residence rent-free for as long as he wished.

The appellants' father subsequently sought to exercise his right of election under s.115 of the Succession Act and on 15th January 2009 this was communicated to Nicholas Ruck & Co. Solicitors, who were acting in the administration of the estate. A large amount of correspondence over the subsequent months is exhibited and disputes in relation to a number of matters are referred to therein. A number of these matters are relatively minor but, in the context of such fraught family relations, seem to have been amplified into matters of considerable importance. It is also clear from this correspondence that the appellants' relationship with their sister, Ms. Mary McLaughlin, is a very difficult one.

By letter dated 1st July 2009 from the respondent, Mr. Flaherty Senior sought to appropriate the family home and chattels therein pursuant to s.56 of the Succession Act 1965 and an issue arose in relation to whether or not there was consequently a conflict of interests on the part of the first appellant, who was an executrix. Correspondence continued on this and other points and a 'without prejudice' family meeting was eventually arranged for 17th December. Mr. Flaherty Senior subsequently resisted this meeting, apparently on the basis that he was disappointed with the behaviour of the appellants. The respondent solicitor acted for Mr. Flaherty Senior at all material times and a great deal of correspondence from her office in relation to these divisive issues is exhibited.

Circuit Court proceedings were commenced by the appellants' father and a Civil Bill issued on 4th November 2009. Extensive correspondence in relation to the Circuit Court matter is also exhibited. These protracted proceedings were eventually compromised on foot of a settlement agreement dated 31st May 2011. The respondent solicitor acted for Mr. George Flaherty Senior at all times in these proceedings. The first appellant subsequently filed an affidavit on 19th December 2011 which states that the respondent solicitor and Ms. Mary McLaughlin contacted another sister, Ms. Helen Flaherty, without her knowledge prior to the settlement agreement and that had she known of this it would have affected her decision to agree to the settlement.

The family dispute was ongoing when the appellants' father regrettably passed away on 2nd August 2012. His last will and testament appointed his daughter Ms. Mary McLaughlin as the executrix and bequeathed the remainder of his estate to her. The second appellant sought a copy of the will, which request was denied by the respondent solicitor as he was not a beneficiary under the will. Further correspondence is exhibited, much of which is not relevant to the complaints against the respondent solicitor.

Complaint to the Solicitors Disciplinary Tribunal

The appellants made a complaint to the Tribunal on 9th April 2013. The specific allegations of misconduct against the respondent solicitor were set out in the following terms:

"It is alleged that the respondent solicitor is guilty of misconduct in that she is/has

(a) personally known to Mary McLaughlin (daughter of George Flaherty Snr (deceased))

(b) colluded with Mary McLaughlin in the matter of the estate of the late Veronica Flaherty

(c) engaged in inflammatory and acrimonious correspondence divisive to family matters

(d) directed correspondence including service of civil bill direct to the home of Catherine Payne and George Flaherty Jnr. despite being advised both parties had legal representation

(e) neglected to consider issues raised regarding Mary McLaughlin's undue influence of her elderly father George Flaherty Senior (deceased)

(f) caused costs to be incurred by the parties by engaging in the misconduct outlined above

(g) failed to reply to concerns raised by Catherine Payne and George Flaherty Junior in relation to her conduct and failure to reply to a letter by George Flaherty Junior which raised the issue of her misconduct

(h) instructed a valuation at 21 St. Catherine's Road., Killybegs, Co. Donegal without notification to the executors Catherine Payne and George Flaherty

(i) ratified correspondence by Mary McLaughlin"

In her first replying affidavit to the Tribunal, the respondent solicitor replied to each of the specific allegations and outlined her belief that the complaints against her are groundless and would not have been made at all were it not for the appellants' mistaken belief that the Circuit Court claim by her client, the appellants' father, was a result of undue influence by Ms. Mary McLaughlin. The respondent states that the late Mr. Flaherty was an independent man who was *compos mentis* at all material times and was not subject to any undue influence. She states that she was at all times acting on his instructions and fulfilling her professional duty to her client.

The Tribunal considered the initial complaint as well as a number of replying affidavits of both parties. By decision dated 1st May 2014 the Tribunal concluded that there was no *prima facie* case of misconduct on the part of the respondent solicitor. A reason is provided for this finding in respect of each allegation at (a) – (i) above as follows –

(a) Even if proven this allegation does not disclose conduct that could be construed as misconduct

(b) There is no evidence whatsoever to support this allegation.

(c) The Tribunal has carefully examined the correspondence and cannot find any evidence to support this allegation.

(d) Service of a civil bill directly on the defendant in a case, even where the defendant has legal representation, does not constitute misconduct.

(e) There is no evidence whatsoever to support this allegation.

(f) Since the Tribunal has found that there is no prima facie case of misconduct in respect of the aforementioned allegations the issue of costs is a matter for the parties.

(g) This allegation, even if proven, does not disclose conduct that could be construed as misconduct.

(h) There was no duty on the respondent to notify the executors of the intention to conduct a valuation.

(i) This allegation does not disclose conduct that could be construed as misconduct."

Decision

I have given careful consideration to the submissions and affidavits of both parties. I have also carefully examined the extensive correspondence exhibited and the disputed decision of the Solicitors Disciplinary Tribunal dated 1st May 2014.

It is clear that the matters at issue in these proceedings originate out of the unfortunate and particularly fractious family history. However, it is not the role of this Court in these proceedings to analyse, attach blame, or attempt to mediate or resolve any aspect of this long running family dispute. The issue for this Court to consider is simply whether or not the Tribunal erred in finding that there is no *prima facie* case of misconduct against the respondent solicitor.

I have carefully examined all correspondence sent by the respondent solicitor and while I do not doubt that it may well have caused the appellants some upset or frustration this does not necessarily amount to misconduct or to a breach of the relevant regulatory codes referred to. It is an unfortunate reality that legal correspondence sent in the context of a tumultuous dispute between parties, often at times of heightened tension and increased sensitivity, causes upset to the parties concerned. This is often so even where great care has been taken to articulate the correspondence in such a way as to minimise any distress. I see no reason to depart from the finding of the Tribunal that there is no *prima facie* case of misconduct on the part of the respondent solicitor in relation to this aspect of the complaint. In relation to the other allegations, the Court, having considered all of the relevant material, finds that the reasons for dismissing the allegations as outlined by the Tribunal are entirely reasonable and no further evidence has been adduced by the appellants to warrant a departure from those findings.

For the reasons outlined above, the appeal is therefore dismissed.