

THE HIGH COURT

2009 98 SA

IN THE MATTER OF THE SOLICITORS ACTS 1954 – 2002

AND IN THE MATTER OF KEVIN J. WHITE, A SOLICITOR

BETWEEN

KEVIN J. WHITE

SOLICITOR/RESPONDENT

AND

PATRICK REEN

APPLICANT/APPELLANT

JUDGMENT of Kearns P. delivered on the 15th day of February 2010

This is an appeal against the Solicitors Disciplinary Tribunal's finding of no *prima facie* case for inquiry into the conduct of the respondent solicitor concerning matters alleged to have occurred approximately 25 years ago. The appellant maintains that the Tribunal's finding that there was an unconscionable delay in making the application for an inquiry is unfounded in circumstances where it is alleged that the respondent solicitor engaged in fraudulent activities. The reasoning behind this claim appears to stem from a mistaken belief on the part of the appellant that as fraud is a criminal matter, no limitation period applies to the making of a complaint involving fraudulent activities.

In the application to the Tribunal for an inquiry into the conduct of the respondent solicitor on the grounds of misconduct, the appellant alleged that the respondent had failed to discharge the funeral expenses of his mother, the late Hannah Reen who died on 7 February 1985, from her estate as he had been instructed so to do by the appellant herein. The appellant claimed that he had received three separate assurances from the respondent that a cheque had been sent to the undertakers who had provided the funeral services for the appellant's mother. It was further alleged that Mr. Reen and the undertaker in question had attended the respondent solicitor's office on four separate occasions but each time failed to meet him and were informed by a secretary not to return. Finally, the appellant alleges that the respondent solicitor has caused him unnecessary embarrassment, mental anguish and frustration and reduced his standing before his friends and long term acquaintances. In addition to his own affidavits, the appellant relied on the affidavit of a Mr. Val O'Connor, the Director of the Funeral Home responsible for the late Mrs. Reen's funeral arrangements. This affidavit was sworn by Mr. O'Connor on 2 June 2009, over 24 years after Mrs. Reen's death. In response, the respondent solicitor expressed surprise at the averments contained in Mr. O'Connor's affidavit, stating that he had no recollection of the events described therein and that he did not know and had never met the deponent.

Each of the allegations made by the appellant against the respondent solicitor was rejected by the Disciplinary Tribunal by reason of the unconscionable delay in bringing the application.

From the replying affidavit of Kevin White, it appears that the appellant wrote to the respondent solicitor asking him to confess to a forgery he was alleged to have committed in or about 1984. That matter was investigated by the Gardaí at the appellant's insistence and that investigation concluded without prosecution in 2005. The appellant also brought judicial review proceeding in respect of various administrative matters affecting his late mother's estate. In those proceedings, allegations of forgery were made against another solicitor but, curiously in light of the allegations made in this application, no such allegations were made against the respondent solicitor at that time. The judicial review proceedings were dismissed with costs to the defendant and the appellant appealed that decision to the Supreme Court but failed to prosecute the appeal. The respondent solicitor claims that the present application is motivated by malice and seeks an Order dismissing the appeal.

The funeral expenses at the centre of this appeal arose in February 1985. The appellant made the application for an inquiry into the conduct of the respondent solicitor on 14 April 2009. No satisfactory explanation has been given for the extraordinarily lengthy delay in this case, although the appellant made an unconvincing attempt to explain it by virtue of the difficulty he encountered in finding solicitors to represent him. The respondent could not be expected to defend a claim against him involving events alleged to have occurred more than 25 years ago in circumstances where there has been culpable delay on the part of the appellant. In *Toal v. Duignan (No.1)* [1991] I.L.R.M. 135, the Supreme Court exercised its inherent jurisdiction to dismiss a claim by reason of delay. The claim was for damages for an injury allegedly suffered at birth and the proceedings were brought approximately 25 years later. In *Toal*, the plaintiff was considered to be blameless for the period which had elapsed and it was not a cause involving any culpable delay on the part of the moving party. In the course of delivering the unanimous judgment of the court on the defendants' applications to dismiss, Finlay C.J. stated as follows, at p.139:

"In the High Court it was held by Keane J. that the case was governed by the decision of this Court in O'Domhnaill v. Merrick [1984] I.R. 151. I am in agreement with that view of the law. It is unnecessary for me to repeat here the principles laid down by this court in that case, but they may be summarised in their application to the present appeal as being that where there is a clear and patent unfairness in asking a defendant to defend a case after a very long lapse of time between the acts complained of and the trial, then if that defendant has not himself contributed to the delay, irrespective of whether the plaintiff has contributed to it or not, the court may as a matter of justice have to dismiss the

action”.

The Court is satisfied that the finding of the Tribunal of no *prima facie* case of misconduct on the part of the respondent solicitor was entirely appropriate and that the within appeal is completely unfounded and unsustainable. The period of delay from the time of the events complained of to the date of the bringing of the application before the Disciplinary Tribunal was on any interpretation both inordinate and inexcusable. In those circumstances, I dismiss the appeal with an order for costs in favour of the respondent solicitor.