

THE HIGH COURT

2009 92 SA

IN THE MATTER OF THE SOLICITORS ACTS 1954 – 2002

AND

IN THE MATTER OF

DONAL SPRING, PAULA MURPHY AND AISLING HOURIGAN SOLICITORS OF

DANIEL SPRING & CO. SOLICITORS

RESPONDENTS

AND

LAWRENCE EVANS

APPELLANT

JUDGMENT delivered on the 23rd day of November, 2009 by Mr. Justice Nicholas Kearns, President of the High Court

This is an appeal brought by the appellant against the finding of the Solicitors Disciplinary Tribunal dated 31st August, 2009 which held that there was no *prima facie* case for inquiry into the conduct of the respondents.

The appeal is brought by the appellant pursuant to s.7 of the Solicitors (Amendment) Act 1960 as substituted by s.17 of the Solicitors (Amendment) Act 1994 as further amended by s. 9 of the Solicitors (Amendment) Act 2002.

The procedure for dealing with an appeal of this nature is detailed in Rule 12 of S.I. No: 701 of 2004.

That rule provides, *inter alia*, that every appeal to this Court against the finding of the Disciplinary Tribunal shall be brought within the period of 21 days and shall be supported by an affidavit sworn by or on behalf of the appellant averring to the relevant facts or alleged facts and exhibiting two copies of all documents produced before the Disciplinary Tribunal by or on behalf of the appellant.

The rule further provides that the respondent solicitor may respond by means of affidavit should he or they so desire.

The rule further provides that the papers shall be read by the president in chambers in the first instance and then shall be listed by the president for hearing in open court when submissions may be made by or on behalf of the appellant and responded to by or behalf of the respondent's solicitor, following which the appeal shall then be decided by the president.

The matter duly came before me in the High Court on the 9th November, 2009 on which occasion the appellant attended in person and the respondents were represented by solicitor and counsel.

I indicated to the appellant that, at his option, I could either adjudicate upon the matter by reference to the papers already lodged or, alternatively, that I would arrange for a date when a full hearing in open court could take place when the appellant could make more detailed submissions as he saw fit. The appellant indicated that he was satisfied that I should decide the appeal on the basis of the documentation already submitted. I thereupon reserved judgment.

I have now had an opportunity of reading all of the papers herein. These papers include, but are not confined to, the following:-

- (a) Formal application to the Disciplinary Tribunal for an inquiry into the conduct of the respondents on the ground of alleged misconduct, dated 2nd September 2008.
- (b) Affidavit of Lawrence Evans, sworn 9th September, 2008 and the documents attached thereto.
- (c) Replying affidavit of Donal Spring sworn on the 24th November, 2008 and the documents exhibited thereto.
- (d) Affidavit of Lawrence Evans, sworn 3rd February, 2009 and the documents attached thereto.
- (e) Affidavit of Paula Murphy, the second named respondent, sworn 3rd April, 2009 and the documents exhibited therein.
- (f) Affidavit of Lawrence Evans, dated 11th April, 2009 and the document attached thereto.

I have in addition considered:-

- (a) The detailed ruling of the Solicitors Disciplinary Tribunal dated 31st August, 2009.
- (b) The Notice of Motion by way of appeal lodged by the appellant on the 16th day of September, 2009.
- (c) The Affidavit of the appellant sworn in support of his appeal dated 9th September, 2009.
- (d) Miscellaneous transcripts of taped telephone conversations between the appellant and his solicitors and representatives of the Disciplinary Tribunal made by the appellant on different occasions between 2004 and the present time.

In all I have considered what I estimate to be in excess of 1,000 pages of documentary

material including:

- (a) The proceedings which are the subject matter of the complaint herein.
- (b) The correspondence and faxed communications from the appellant to the respondents in relation thereto.
- (c) The various medical reports relating to the appellant both in respect of the accident which occurred in November, 2001 and the other accidents in which the appellant has been involved.

The complaint herein arises in respect of legal proceedings entitled "*The High Court: Record No. 2002/13970P Laurence Evans v Tuskar Rock Divers Limited, Holyhead Towing Co. Ltd and Alfred McAlpine Services and Pipelines Limited*" brought on behalf of the appellant by the respondents in respect of an accident sustained by the plaintiff during the course of his employment with the first named defendants in proceedings when he was caused to slip or fall down a stairwell while working on a vessel, the property of the second named defendant, which was then on charter to the third named defendants, in Dublin Port. The plaintiff asserts that because the stairwell in question had grease or oil on the rungs thereof, he lost his footing and fell from a height of eight steps to the floor surface beneath, thereby suffering, inter alia, a significant head injury.

The appellant was referred to the respondent's solicitors through the trade union Amicus. The appellant is a single man who lives in the North East of England. He had no prior dealings with the respondent firm.

I am satisfied the case was a far from straight forward case. There were issues as to the ownership of the vessel. Because the vessel was not confined to a single location, there were delays in arranging an engineering inspection. Addition parties were to be joined to the proceedings as the ownership with regard to the vessel was clarified. There were significant discovery issues, both as regards the condition of the vessel and as regards the appellant's prior medical history.

At a very early stage I am satisfied the appellant displayed unreasonable expectations in that instructions communicated by him to the respondents would be acted upon instantaneously. Where matters did not progress to his immediate satisfaction, whether it concerned his legal or medical advisors, the appellant was quick to lodge complaints with the relevant professional authorities. He made a number of complaints at a very early stage in these proceedings to the Law Society about the respondents handling of this claim. These complaints were, correctly in my view rejected.

As time progressed, the appellant's behaviour towards the respondents became more insistent and aggressive. There are allegations of rudeness to members of the respondent's staff (which are denied by the appellant) and a virtual blizzard of faxed communications from the appellant chiding the respondents and members of their staff for alleged tardiness and delay in progressing his claim. I am satisfied there was no unreasonable delay whatsoever on the part of any of the respondents in dealing with this claim.

I do not find it necessary in those circumstances to address each and every aspect of the ruling delivered by the Disciplinary Tribunal herein, and I have additional reasons for declining to do so which I will refer to later. Suffices to say that there was abundant evidence before the Disciplinary Tribunal to enable it decide on this particular complaint in the manner which it did.

This view of mine is reinforced by the contents of the affidavit sworn by the appellant in the context of his appeal herein. Far from engaging with the reasoning of the Disciplinary Tribunal, the appellant has sought instead to raise further allegations about the conduct and truthfulness of members of the Law Society and to accuse the Law Society of both unfairness and "*malicious intent*" against the appellant. He further alleges that the independent adjudicator Caroline Casey, was "*rude and instigated another cover up for the legal system which seems a common occurrence*".

I do not consider that complaints that the society failed to consider surreptitiously taped conversations between the appellant and members of the Disciplinary Tribunal as advancing in any way the subject matter of the appellant's complaint herein.

I am satisfied that all complaints herein are completely without substance or justification and that nothing contained in appellant's affidavit sworn for the purpose of this appeal suggests that the Disciplinary Tribunal erred in any way in its reasoned decision and I therefore dismiss the appeal.