

THE HIGH COURT

2010 71 SA

IN THE MATTER OF SECTION 7(12A) (a) OF THE SOLICITORS DISCIPLINARY TRIBUNAL ACT 1960

BETWEEN

THOMAS KEANE

APPELLANT

AND

SEAN FOY

SOLICITOR/RESPONDENT

JUDGMENT of Kearns P. delivered on the 11th day of April, 2011

This is an appeal by Thomas Keane ("the appellant") against a decision of the Solicitors Disciplinary Tribunal ("the Tribunal") dated the 12th of August 2010, that there is no *prima facie* case of misconduct on the part of Sean Foy, of Foy Murphy & Co. Solicitors, Gelbe Street, Ballinrobe, Co. Mayo ("the respondent solicitor").

Enquiries were made by the Law Society in this matter in June 1997, further to a request made by Mr. Keane alleging similar grounds of misconduct against the respondent solicitor. The Law Society made no finding of misconduct on the part of the respondent solicitor, and on 9th October, 1997 an independent adjudicator of the Law Society concluded that the Law Society dealt with the complaint fairly and impartially and the decision did not warrant any further intervention. The appellant again complained to the Tribunal in May 2010 regarding the respondent coming off record on his behalf in the Circuit Court proceedings of *O'Malley v. Keane*. In relation to those proceedings the appellant alleged as follows: that the respondent solicitor accepted proceedings from Garavan and O'Connor Solicitors, Castlebar, Co. Mayo, and that he failed and withheld those proceedings; that the respondent solicitor misled a Circuit Court judge, the late Judge John Cassidy; that those proceedings were adjourned three times; that the respondent solicitor deliberately stated that he had come off record which was not the case; and that the respondent solicitor failed to pass on to the applicant the applicant's full file.

Each of the allegations made by the appellant against the respondent solicitor was rejected by the Tribunal because of absence of evidence on which the Tribunal could form a view that there is a *prima facie* case for inquiry in respect of the particular allegation; that the allegation does not disclose conduct which could be construed as misconduct, and the allegation had been adequately rebutted by the respondent solicitor in his replying affidavit sworn on 15th June, 2010 and the exhibits thereto.

The appellant's claim that the respondent did not come off record for him in the Circuit Court proceedings is rejected for the following reasons:

- (i) In the ruling in *O'Malley v. Keane* delivered on 4th February 1994, Cassidy J. held *inter alia* that "there being no Appearance by or on behalf of the first named Defendant when called and on hearing the evidence of James O'Malley". Whether or not the appellant was aware of it, the respondent had come off record for him at this time.
- (ii) In a letter from Garavan & O'Connor, Solicitors, to the respondent solicitor, regarding the matter of *O'Malley v. Keane*, Rory O'Connor, solicitor states that the respondent solicitor came off record following an adjournment of the Circuit Court proceedings to 5th November, 1993.
- (iii) There is a letter on file from the respondent solicitor to the appellant dated 11th November, 1993 which states as follows: "*With reference to previous conversation we confirm that we have officially come off record in the proceedings O'Malley-v-Thomas Keane and Owen Keane on your behalf*".
- (iv) The respondent solicitor avers in his affidavit sworn on 15th June, 2010 that he did come off record in the Circuit Court as representative of the first named defendant. The respondent solicitor further avers that he wrote to Mr. Keane on 11th November, 1993 advising Mr. Keane that he came off record.

The appellant has produced no evidence to substantiate his allegation that the respondent solicitor failed to come off record to counter the evidence outlined above. The appellant states that he did not receive the letter dated 11th November, 1993 from the respondent solicitor until 1996, however this letter refers to an earlier conversation between the appellant and the respondent. It is therefore inconceivable that the appellant was unaware that the respondent solicitor was no longer acting on his behalf. Even if the appellant did not receive this letter until 1996 (and the Court is not making a finding in this regard), this does not constitute misconduct on the part of the respondent solicitor.

The Court agrees with the findings of the Tribunal, that there is no misconduct on the part of the respondent solicitor.

I therefore dismiss the appeal.